



Australian
Competition &
Consumer
Commission

ACCCOUNT

A report of the Australian Competition and
Consumer Commission's activities

1 April to 30 June 2008

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Overview

The Australian Competition and Consumer Commission's core business is to ensure compliance with the *Trade Practices Act 1974*. We do this by promoting competition and informed markets; encouraging fair trading and protecting consumers. The ACCC is committed to carrying out its functions in an efficient and professional manner. We manage our regulatory and enforcement processes to achieve effective outcomes maximising the use of ACCC resources.

In June the ACCC wrapped up its public hearings for the national grocery inquiry. During the course of the hearings, the ACCC visited all capital cities and many regional centres. The report is being finalised and will be submitted to government by 31 July 2008.

During the quarter Mr Ed Willett was reappointed for a five-year term as a member of the ACCC. On 2 May 2008 the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, the Hon. Chris Bowen MP, announced the appointment of Ms Sarah Court as a new member of the ACCC. This brings the total number of members of the Commission to seven.

Six enforcement-related litigation matters were commenced over the past three months, three of which relate to the use of the ACCC's compulsory information-gathering powers under s. 155 of the Trade Practices Act. The ACCC took these actions to protect the integrity of its information-gathering powers and its enforcement investigation processes

Following an extensive education and information campaign and the acceptance of four s. 87B undertakings relating to potential non-compliance with the Horticulture Code of Conduct, the ACCC instituted proceedings in the Federal Court of Australia for an alleged contravention of Part IVB of the Trade Practices Act

Ten litigation proceedings were finalised during the June 2008 quarter. Through the Arnotts and Nudies cases, the ACCC reinforced its message of the importance of accurate food labelling. Further enforcement outcomes were achieved with the acceptance of two s. 87B undertakings that also related to food representations.

In the area of product safety, the ACCC targeted two major shopping centres to trace sunglasses that failed to comply with the prescribed mandatory product safety standard. As a result the ACCC accepted a number of court enforceable undertakings from four retailers that had supplied sunglasses which failed the labelling obligations imposed by the standard.

Merger activity remained constant. During the March to June quarter, the ACCC began informal reviews on a number of major transactions, including BHP Billiton Ltd's proposed acquisition of Rio Tinto Ltd and Westpac Banking Corporation's proposed acquisition of St George Bank Limited.

Following notification by eBay international of its proposal to require participants to only offer PayPal or COD for payment of goods purchased over eBay, the ACCC

issued a draft notice proposing to revoke protection for this conduct. Subsequently eBay withdrew the notification.

The ACCC was directed to monitor prices, costs and profits relating to the supply of car-parking services at Australia's five major airports. This monitoring is being undertaken by the ACCC as part of its broader role of monitoring airports under Part VIIA of the Trade Practices Act.

As part of its new functions relating to water markets in the Murray-Darling Basin, the ACCC has released issues papers seeking submission on the development of water market rules and water charge rules for irrigation infrastructure operators. The ACCC intends to undertake further consultation on these issues before providing its final advice to the Minister for Climate Change and Water in the 2008–09 financial year.

In the area of legislative amendments, the Minister for Competition Policy and Consumer Affairs introduced the National Fuelwatch (Empowering Consumers) Bill in parliament in May 2008. On 18 June 2008 the Bill was referred to the Senate Economics Committee, which is due to report on the proposed legislation later this year.

1. Enforcement and compliance

Maintaining and enhancing compliance with the Trade Practices Act is a key objective of the ACCC. We do this by promoting competition and informing markets, encouraging fair trading and protecting consumers. The enforcement function of the ACCC, including litigation, is well supported by our liaison, analysis, outreach and compliance arms.

Responding to businesses and consumers

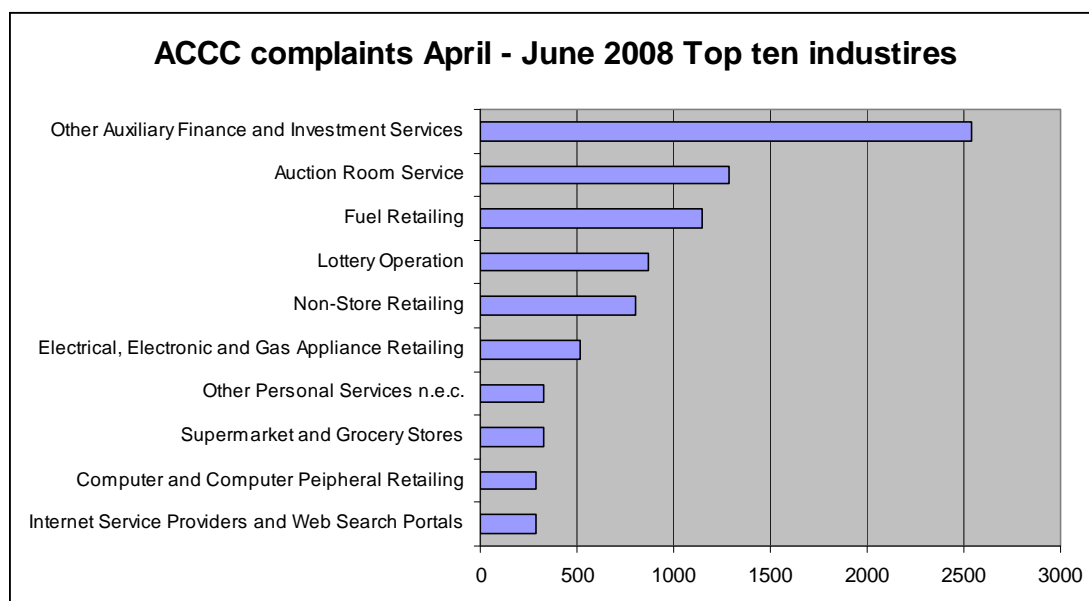
The ACCC Infocentre is a telephone and email information and complaints service for consumers and businesses. It is the initial response centre for all inquiries and complaints to the ACCC on competition and consumer issues in Australia.

During the June 2008 quarter the ACCC Infocentre received 30 769 complaints and inquiries (email: 6671; telephone: 23 292; letter correspondence, 806) from businesses and consumers.

Of these complaints and inquiries, 19 041 were entered onto the ACCC's database, a level of contact around 14 per cent higher than during the same period last year. Significant drivers of these higher contact levels were the level of concern expressed about fuel pricing, the reporting of scam-based activity and the ACCC's consideration of eBay's proposal to require customers to use PayPal.

The Infocentre escalated 182 matters to regional offices of the ACCC for initial investigation during the June quarter. In general, Infocentre staff refer Part IV-related allegations to the regional office closest to the caller's location. Part IVA and some complex Part V matters requiring further investigation are also escalated.

The following chart indicates the ten industries that attracted the most complaints during the June quarter.



The top category in this chart refers primarily to complaints received about advance fee and other financial fraud schemes.

Sixty-three per cent of complaints and inquiries entered onto the ACCC's database related to consumer protection matters, higher than the 2007 quarterly average of 54 per cent. Competition matters accounted for 7 per cent of contacts, compared with the 4 per cent quarterly average seen during 2007. Other matters accounted for 30 per cent, down from the 42 per cent 2007 quarterly average

Enforcing for businesses and consumers

In undertaking its enforcement activity the ACCC remains committed to conducting its work in an efficient and professional manner. The ACCC manages its enforcement processes to achieve effective outcomes and use of ACCC resources.

Litigation commenced

Six enforcement litigation proceedings were commenced in the Federal Court during the June 2008 quarter.

ACCC v Hercules Iron Pty Ltd and Anor

Commenced 6 May 2008 | **VID1186/2007**

Contempt proceedings for alleged breaches of orders 14 and 15, made by Justice Gordon and dated 5 February 2008. The original proceedings relate to breaches of mandatory product safety standard (bunk beds) under Part V of the Trade Practices Act.

ACCC v Grove & Edgar Pty Ltd

Commenced 16 June 2008 | **NTD11/2008**

Proceedings under Part IVB for alleged contravention of the Horticulture Code of Conduct.

ACCC v Richard Pratt

Commenced 19 June 2008 | **VID443/2008**

Proceedings under Part XII for allegedly providing false or misleading evidence at a s. 155(1)(c) examination in contravention of s. 155(5).

ACCC v Australian Tanning Association Inc and Ors

Commenced 11 June 2008 | **VID420/2008**

Proceedings under Part V for alleged false, misleading or deceptive conduct in relation to advertisements promoting solarium use.

Singapore Airlines Ltd and Anor v ACCC

Commenced 17 April 2008 | **VID234/2008**

Application to overturn s. 155 notice based on jurisdiction and burden.

Emirates (ARBN 073 569 696) v ACCC and Anor

Commenced 23 April 2008 | **VID252/2008**

Application to overturn s. 155 notice based on jurisdiction and burden.

Proceedings concluded

Ten enforcement litigation proceedings were finalised during the June 2008 quarter.

ACCC v Imagine Essential Services Limited and Ors

Commenced 29 June 2007 | **concluded** 2 April 2008 | **VID578/2007**

Proceedings under Part V for alleged misleading and deceptive conduct and misrepresentations in connection with the sale of licences to provide discounted 'essential services' to members.

Justice Gordon | Federal Court, Melbourne

Outcomes | **Proceedings against Imagine Essential Services Ltd:** declarations, injunctions, compliance programs and a contribution to the ACCC's costs of \$50 000.

Proceedings against Triumphant Group Pty Ltd: declarations, corrective notices, establish a trade practices compliance program in the event it recommences business in Australia. **Proceedings against Richard Evans:** declarations.

ACCC v Arnott's Biscuits Ltd

Commenced 15 November 2007 | **concluded** 29 April 2008 | **NSD2252/2007**

Proceedings under Part V for alleged misleading or deceptive conduct in relation to the labelling and packaging of biscuit products.

Justice Gyles | Federal Court Sydney

Outcome | declarations. The court also accepted undertakings from Arnott's Biscuits Ltd that it will:

- cease manufacturing and supplying the 'Snack Right' products in its current packaging within three months
- will not supply fruit pillow biscuits or fruit slice biscuits in packaging that conveys that there was a not insubstantial proportion of the depicted fruits in the biscuit filling
- will publish a corrective notice on its website
- review its trade practices compliance program
- pay costs.

ACCC v Terania Pty Ltd and Anor

Commenced 2 March 2007 | **concluded** 22 May 2008 | **NTD7/2007**

Proceedings under Part V for alleged misleading or deceptive conduct and false or misleading representations about rug sales conducted in 2005 and 2006

Justice Mansfield | Federal Court, Darwin

Outcome | injunctions, implement and maintain a trade practices compliance program, and costs. The court noted an undertaking by Mr Barry Solomon that he will attend a trade practices compliance seminar.

ACCC v Construction Forestry Mining and Energy Union and Ors
Commenced 23 August 2006 | **concluded** 16 May 2008 | **NDS1611/2006**
Proceedings under Part IV for alleged contraventions of secondary boycott provisions of the Trade Practices Act.

Justice Finn | Federal Court, Sydney

Outcome | Justice Finn dismissed the ACCC's application against the Construction Forestry Mining and Energy Union and CFMEU members, Mr David Noonan and Mr Laslo Lancsar, finding there was no relevant arrangement or understanding between the CFMEU and Bovis Lend Lease.

In October 2007, on the basis of a statement of agreed facts between the ACCC and Bovis, Justice Gyles ordered Bovis to pay a penalty of \$100 000, the ACCC's costs and made injunctions restraining Bovis' conduct nationally for a period of four years for its admitted contraventions of ss. 45E and 45EA.

ACCC v Kokos International Pty Ltd and Ors
Commenced 1 November 2006 | **concluded** 23 April 2008 | **WAD312/2006**
Proceedings under Part IV for alleged price fixing and other anti-competitive conduct relating to the provision of education services to Korean students.

Justice French | Federal Court Perth

Outcome | declarations, injunctions, penalties and costs.

ACCC v Nudie Foods Australia Pty Ltd
Commenced 13 February 2008 | **concluded** 19 June 2008 | **WAD32/2008**
Proceedings under Part V for alleged misleading claims on packaging and in promotional material for two of Nudie's fruit juice products.

Justice French | Federal Court Perth

Outcome | declarations, injunction, corrective notices, establish a trade practices compliance program and costs.

Korean Air Lines Co Ltd
Commenced 3 December 2007 | **concluded** 15 May 2008 | **NSD2371/2007**
Federal Court application by Korean Air Lines Co Ltd to review ACCC decision to issue notice.

Justice Jacobson | Federal Court Sydney

Outcome | court dismissed the application by Korean Air Lines Co Ltd challenging a statutory demand for information and documents issued by the ACCC under s. 155 of the Trade Practices Act. Applicant to pay costs.

Telstra Corporation Ltd v ACCC

Commenced 21 September 2007 | **concluded** 6 May 2008 | **VID1229/2007**

Misleading and deceptive conduct in representations concerning Telstra's Next G mobile network.

Background | on 19 December 2007 Justice Gordon of the Federal Court, Melbourne made declarations and ordered injunctions and costs. On 24 December 2007 Telstra Corporation Ltd appealed Justice Gordon's whole judgment.

Outcome | appeal discontinued by Telstra Corporation Ltd.

Kiran Rubina Shahid v Australasian College of Dermatologists

Commenced 19 November 2007 | **concluded** 9 May 2008 | **WAD113/2007**

Background | intervention by ACCC to the Full Federal Court appeal; intervention limited to the finding by Justice Nicholson that the conduct of the college was not 'in trade or commerce'.

Justices Branson, Stone and Jessup | Federal Court Perth

Outcome | the Full Court allowed the appeal awarding damages to the appellant together with costs of both proceedings. The majority of the court found in favour of the appellant that representations made by the Australasian College of Dermatologists in the process of admission for training for professional qualifications were made in 'trade or commerce'.

Channel Seven Brisbane Pty Ltd and Ors v ACCC

Commenced 27 September 2005 | **concluded** 23 June 2006 | **NSD2129/2007**

Misleading or deceptive conduct in relation to the promotion of millionaire property investment mentoring program 'Wildly Wealthy Women' ('WWW')

Justices Sundberg, Jacobson and Lander | Full Federal Court Sydney

Background | on 12 October 2007 Justice Bennett of the Federal Court, Sydney made declarations and ordered injunctions, a publication order and costs.

Outcome | the Full Federal Court reversed the finding by Justice Bennett that Channel Seven had contravened s. 52 of the Trade Practices Act during broadcasts of *Today Tonight* in late 2003 and early 2004 in stories about a property investment program known as 'the Wildly Wealthy Women mentoring program'. This appeal does not affect the consent orders made by Justice Bennett against the WWW principals on 12 October 2007.

Current Full Federal Court applications

One enforcement matter is currently under appeal to the Full Federal Court:

Baxter Healthcare Pty Ltd and others

Commenced | 1 November 2002

Misuse of market power and exclusive dealing relating to the supply of health products to state government purchasing authorities.

Background | on 20 September 2006 the ACCC sought special leave to appeal the decision of the Full Court of the Federal Court handed down on 24 August 2006. The matter was heard by the High Court of Australia on 15 May 2007 and judgment was handed down on 29 August 2007.

Status | awaiting judgment. Currently before the Full Federal Court for consideration of substantive matters under ss. 46 and 47 of the Trade Practices Act.

Current Supreme Court applications

One application is before the Supreme Court of the Northern Territory:

Braddon Ralph Webb

commenced | 16 June 2008

Application by the ACCC for an examination of the respondent pursuant to Order 67 of the Supreme Court Rules (Supreme Court of the Northern Territory).

Examination to be heard on 29 July 2008. A warrant for the arrest of Braddon Ralph Webb was issued and executed on 16 June 2008 under the Absconding Debtors Act.

Current High Court applications

There are no current enforcement High Court applications.

Section 87B undertakings accepted

The ACCC accepted 24 enforcement s. 87B undertakings during the June 2008 quarter. Undertakings were received from:

1. Jinlong Shen

undertaking | in addition to the undertakings offered by ATI Enterprise Pty Ltd and its directors on 11 March 2008, Jinlong Shen has provided a court enforceable undertaking to:

- recall the cots sold and provide a refund to consumers
- ensure all future products sold by ATI will comply with the relevant mandatory product safety standard
- publish a public disclosure notice on its eBay website
- implement and maintain a trade practices compliance program.

2. Natur-all Pty Ltd, trading as Go Natural

undertaking | Natur-all Pty Ltd has provided court enforceable undertakings that it will:

- amend the name and the packaging of the Go Natural berry/apricot pieces in yoghurt product
- amend the representations on its website www.gonatural.com.au relating to these products
- publish an article for the food industry about this experience; this article will be available to the Australian Food and Grocery

Council and will be available to the public on the Go Natural website

- review and implement changes to its trade practices compliance program.

3. Richard Alexander Roberson

undertaking | Richard Alexander Roberson has provided court enforceable undertakings that he will:

- write to all subscribers of Backpacker Employment Services ('BES') for whom he has addresses, informing them of the undertaking and offering a refund
- publish a consumer notice in relevant newspapers, correcting the misrepresentations made
- provide a refund of the entire subscription fee to any BES subscriber who requests a refund
- implement a trade practices compliance program.

4. A. Giumelli & Sons (1989) Pty Ltd

undertaking | A. Giumelli & Sons (1989) Pty Ltd has provided court enforceable undertakings that it:

- will not trade in produce subject to the Horticultural Code of Conduct without entering into code-compliant agreements
- will prepare, publish and make publicly available its terms of trade
- will write to growers explaining its contraventions of the code and this undertaking
- will conduct a trade practices seminar focussing on the code and s. 51AD of the Act for those authorised to sign horticulture produce agreements on its behalf and for growers of horticultural produce that it trades with who wish to attend
- will publish an information notice in the *Countryman* newspaper, distributed in Western Australia.

5. Jayco Corporation Pty Ltd

undertaking | Jayco Corporation Pty Ltd has provided court enforceable undertakings that it:

- Will not, in relation to any good subject to a mandatory consumer product safety standard under the Trade Practices Act that it supplies, represent that the good complies with the mandatory consumer product safety standard when it does not;

and supply or offer to supply that good if it is a good intended to be used or is of a kind likely to be used by a consumer unless the good complies with the mandatory consumer product safety standard.

- Will establish and maintain an upgraded trade practices compliance program for a period of three years/

6. Trading Post Australia Pty Ltd

undertaking | Trading Post Australia Pty Ltd has provided court enforceable undertakings that it:

- will consent to suitable declarations being made by the court (see Federal Court proceedings **NSD1323/2007**)
- will not permit the publication of search engine advertisements where the title or headline contains a known competitor's name and the user is directed to the Trading Post website, in circumstances where no information regarding, or advertisements by, that known competitor is contained on the Trading Post website.

7. Sensis Pty Ltd

undertaking | Sensis Pty Ltd has provided court enforceable undertakings that it will:

- not permit the publication of search engine advertisements where the title or headline contains a known competitor's name and the user is directed to the Trading Post website, in circumstances where no information regarding, or advertisements by, that known competitor is contained on the Trading Post website
- implement a trade practices compliance program.

8. Paris Miki Australia Pty Ltd

undertaking | Paris Miki Australia Pty Ltd has provided court enforceable undertakings that it will:

- ensure goods supplied by it that are subject to a mandatory safety and/or information standard prescribed under the Act comply with the relevant standard
- put in place procedures to ensure display and sales stock of sunglasses are appropriately labelled
- implement a trade practices compliance program.

- 9. Fossil Retail Stores (Australia) Pty Ltd undertaking** | Fossil Retail Stores (Australia) Pty Ltd has provided court enforceable undertakings that it will:
- ensure goods supplied by it that are subject to a mandatory safety and/or information standard prescribed under the Act comply with the relevant standard
 - put in place procedures to ensure display and sales stock of sunglasses are appropriately labelled
 - implement a trade practices compliance program.
- 10. De Longhi Australia Pty Ltd undertaking** | De Longhi Australia Pty Ltd has provided court enforceable undertakings that it will:
- refrain from making false or misleading representations contrary to Part V of the Trade Practices Act, particularly ss. 52, 53(aa) and 53(c)
 - implement a trade practices compliance program.
- 11. J.L. Footwear Pty Ltd undertaking** | J.L. Footwear Pty Ltd has provided court enforceable undertakings that it will:
- ensure that sunglasses supplied by Nine West that are subject to a mandatory safety and/or information standard prescribed under the Trade Practices Act will comply with that standard
 - implement a trade practices corporate compliance program
- 12. Laura Ashley (Australia) Pty Ltd undertaking** | Laura Ashley (Australia) Pty Ltd has provided court enforceable undertakings that it will:
- refrain from offering for sale merchandise items bearing two price labels, one price being higher than the other, where those items have not been offered for sale in relevant Laura Ashley stores at the higher ticketed price reasonably recently and for a reasonable period of time
 - refrain from offering for sale merchandise items at a percentage off the higher ticketed price where those items have not been offered for sale at the higher ticketed price immediately prior to percentage off and/or promotional sales
 - display an information notice about the ACCC's concerns in this matter at the point-of-sale counter in each of its national stores
 - publish the information notice in the *ARA Retailer* magazine
 - implement a trade practices compliance program.

13. Harvey Fresh (1994) Ltd

undertaking | Harvey Fresh (1994) Ltd has provided court enforceable undertakings that it will:

- not make a representation that a fruit juice product contains 100 per cent juice, when the product does not contain 100 per cent juice
- contact all retail customers to which it has supplied the Product to inform them of the conduct and recall all units of the Product that it has supplied to them
- publish an information notice on its website for a period of 30 days informing consumers about the conduct, and
- implement and maintain a trade practices compliance program.

14. Karragullen Cool Storage Pty Ltd

undertaking | Karragullen Cool Storage Pty Ltd has provided court enforceable undertakings that it will:

- not trade in produce subject to the Horticulture Code without entering into code-compliant horticulture produce agreements
- prepare, publish and make publicly available its terms of trade
- write to growers explaining its contraventions of the code and this undertaking
- conduct a trade practices seminar focusing on the code and s. 51AD of the Act for those authorised to sign horticulture produce agreements on its behalf and for growers of horticultural produce that it trades with who wish to attend
- publish an information notice in the *Farm Weekly* newspaper and in the *WA Farm Weekly* magazine distributed in Western Australia.

15. Chelsea Girl Pty Ltd

undertaking | Chelsea Girl Pty Ltd has provided court enforceable undertakings that it will:

- ensure sunglasses supplied by it that are subject to a mandatory safety and/or information standard prescribed under the Act comply with the relevant standard
- put in place procedures to ensure display and sales stock of sunglasses are appropriately labelled
- implement a trade practices compliance program.

16. Alco Battery Sales (Aust) Pty Limited

undertaking | Alco Battery Sales (Aust) Pty Limited has provided court enforceable undertakings that it will:

- refrain from making, in connection with the supply or possible supply of batteries, any representation that the batteries it supplies are gel batteries in circumstances where they are not gel batteries
- refrain from making any other representation that the batteries it supplies or proposes to supply are of a particular composition when the batteries are not of that composition
- offer a full refund of the purchase price of the product to those consumers who purchased the product from Alco Battery Sales, or a distributor or a retailer who supplied them with the product or offer a replacement battery
- implement and maintain a trade practices compliance program.

17. Video Ezy Australasia Ltd

undertaking | Video Ezy Australasia Ltd has provided court enforceable undertakings that it will:

- Not represent that the advertised price for the retail of a DVD title is the ‘cheapest price in Australia, guaranteed’ without including the qualification, ‘or we’ll beat any lower advertised price by \$1’. In the case of oral statements, the qualification must be made immediately after the first statement, and in the case of text, the two statements must appear simultaneously.
- Ensure that all national advertising is approved by its compliance officer.
- Review and implement necessary changes to its trade practices compliance program.
- Refund the difference between Video Ezy’s advertised price and the lowest advertised price identified in Australia, for the titles *Knocked up*, *Harry Potter and the Order of the Phoenix*, *Shrek the Third*, *The Simpsons’ Movie* and *Die Hard 4.0*.
- Provide corrective notices through direct mail, catalogues, in-store advertisements and magazines and its website, and to send a corrective text to people who received advertising via text.

18. Thompsons Motor Group

undertaking | Thompsons Motor Group has provided court enforceable undertakings that it will:

- implement and maintain a trade practices compliance program.

19. Kerandis Pty Ltd trading as Urban Rhythm Furniture

undertaking | Kerandis Pty Ltd has provided court enforceable undertakings that it will:

- refrain from offering goods at a discount using two-price representations where those good have not been previously offered for sale by the company at the higher price for a reasonable period of time immediately prior to the period of the commencement of the discount
- ensure that all future advertising and other forms of promotion comply with Part V of the Trade Practices Act
- establish and implement a trade practices law compliance program.

20. Brimcove Pty Ltd

undertaking | Brimcove Pty Ltd has provided court enforceable undertakings that it will:

- not trade in produce subject to the Horticulture Code without entering into code-compliant horticulture produce agreements
- prepare, publish and make publicly available its code-compliant terms of trade
- write to growers explaining its contraventions of the code and the s. 87B undertaking
- conduct a trade practices seminar focusing on the code and s. 51AD of the Act for those authorised to sign horticulture produce agreements on its behalf and for growers of horticultural produce that it trades with who wish to attend.

21. Hoover Floorcare Asia Pacific Pty Ltd

undertaking | Hoover Floorcare Asia Pacific Pty Ltd has provided court enforceable undertakings that it will:

- only make a representation about the power output of its vacuum cleaners where that representation is correct and can be verified
- include extra attachments if needed to achieve the represented power output or indicate prominently that they are not included
- discontinue distributing publishing material that misrepresents the power output of the Powerforce H5003 Vacuum and Hoover Handivac JVC 2026
- request that retailers display a notice in their stores regarding the conduct
- cause to publish an information notice regarding the conduct in the *Weekend Australian* newspaper and on the Hoover website

- establish a trade practices compliance program.

22. Scamonte Ventures Pty Ltd trading as Scalzi Produce WA undertaking | Scamonte Ventures Pty Ltd has provided court enforceable undertakings that it will:

- not trade in produce subject to the Horticulture Code without entering into code-compliant horticulture produce agreements
- prepare, publish and make publicly available its code-compliant terms of trade
- write to growers explaining its contraventions of the code and the s. 87B undertaking
- conduct a trade practices seminar focusing on the code and s. 51AD of the Act for those authorised to sign horticulture produce agreements on its behalf and for growers of horticultural produce that it trades with who wish to attend, and
- publish an information notice in the *Countryman* newspaper distributed in Western Australia.

23. GoTalk Ltd undertaking | GoTalk Ltd has provided court enforceable undertakings that it will:

- compensate any consumers who transferred their services to it as a result of the conduct and suffered loss as a result of that transfer
- write to all its current customers who were obtained through telemarketing, and advertise in a number of newspapers to reach former customers
- display a copy of the advertisement on its website, www.gotalk.com.au
- implement and maintain a compliance program.

24. Goodyear Tyres Pty Ltd undertaking | Goodyear Tyres Pty Ltd has provided court enforceable undertakings that it will

- refrain from making the representations about unsubstantiated environmental benefits of the Eagle LS2000 tyre
- publish a corrective notice in a major metropolitan newspaper in each capital city, on its Australian website and in each Goodyear autocare centre

- provide a partial refund to customers who purchased the Eagle LS2000 tyre between 1 February 2007 and 31 March 2008 who relied on the unsubstantiated representations
- implement a trade practices compliance program.

2. Communicating with businesses and consumers

The ACCC's commitment to strong liaison, outreach and advocacy programs continues as evidenced in the wide range of activities undertaken. Industry associations play a key role in helping to disseminate information and draw industry issues to our attention. Our expanded product safety role has seen us active in enforcement, monitoring and standard setting.

Liaison education activities

The ACCC works with other regulators, government departments, businesses and consumer associations in monitoring emerging trade practices issues and educating relevant stakeholders.

During the June 2008 quarter, the ACCC:

- attended 80 meetings with government and industry representatives, small business operators and consumer groups nationally
- participated in 12 franchising expos and field days
- conducted 26 presentations to small business operators, industry associations and consumer groups at such forums as the Franchising Expo (South Australia), Tasmanian AGFEST, the Trade Practices and Corporate Compliance Summit and the COSBOA National Small Business Summit in Sydney.

Of benefit to both consumers and business was the release in June of the ACCC's guidance on carbon offset claims, including specific publications for consumers and industry as well as a background paper outlining key concerns arising from the submissions provided to the ACCC's issues paper, *The Trade Practices Act and carbon offset claims*. The material was developed in consultation with stakeholders, including consumer groups, accreditation agencies, offset providers and corporate participants in carbon offset schemes.

The ACCC was also involved in the following areas:

Consumers

- Developed the 'Managing your mortgage' page on the ACCC website in collaboration with Kildonan Uniting Care, Consumer Action Law Centre, the Australian Financial Counselling and Credit Reform Association and the Consumer's Federation of Australia. This webpage provides information on practical steps homeowners experiencing financial difficulties can take before they consider selling their home. It also links to relevant pages on the Australian Securities and Investments Commission (ASIC) consumer website, [FIDO](#).

- Launched *Avoiding hot air: a consumer guide to carbon claims* on the newly created 'environmental claims' section of the consumer area of the ACCC website.
- Conducted presentations at community legal centres across South Australia (in conjunction with ASIC, Office of Consumer and Business Affairs and the Insolvency and Trustee Service Australia) to educate lawyers and staff about the issues facing disadvantaged and vulnerable consumers.
- Launched the online *Consumer and Business Directory*, a one-stop shop for Australians to get the information they need to resolve consumer or small business problems. The CBD allows users to search for contact details of a large number of organisations that offer complaint-handling and advisory services, including industry associations, government agencies, advocacy groups and independent mediation/dispute resolution services.
- Signed a memorandum of understanding with Consumer Affairs Victoria. Under the memorandum, the two consumer agencies will consult each other about recent judgments, current law reform, policy issues, news releases, joint publications and stakeholder groups. It also enables the agencies to work together on joint strategies, taskforces and investigations.
- Sent out two SCAMwatch radar alerts warning of a telemarketing scam targeting the Chinese community and a medical scam directly targeting doctors' surgeries and health clinics.
- Conducted a meeting of the ACCC's Consumer Consultative Committee, which comprises representatives of organisations dealing with consumer credit, legal issues, product safety and disadvantaged and vulnerable consumers. A range of topics were discussed, including debt collection practices, 'green' marketing and mobile phone issues.
- Participated in a number of meetings and roundtables, including:
 - the 'Fair go for tourists' initiative hosted by Department of Industry Tourism and Resources dealing with consumer protection issues faced by inbound tourists
 - a meeting of the Standards Australia Consumer Standing Committee that deals with consumer issues in standards development
 - meetings with the Australian Communications and Media Authority and the Telecommunications Industry Ombudsman concerning consumer issues in telecommunications.

Businesses

- Assessed 21 compliance program review reports, accepted 26 verifications of trade practices training obligations and finalised six trade practices compliance program matters.

- Conducted meetings of the ACCC's Health Sector Consultative Committee (HSCC), Small Business Advisory Group (SBAG) and Franchising Consultative Panel (FCP). These included discussions regarding:
 - HSCC—credentialling in the medical profession, relationships with health insurers, informed financial consent
 - SBAG—unconscionable conduct, retail tenancy, methods for engagement with small business, the ACCC petrol and grocery inquiries
 - FCP—amendments to the Franchising Code of Conduct, a research project being undertaken by Griffith University and ACCC educational initiatives.
- Released two publications on carbon offset claims—*Carbon claims and the Trade Practices Act*, a guide for business and industry, and *Carbon offset claims: Trade Practices and other key concerns*, a background paper that explores the concerns identified in response to the ACCC's issues paper *The Trade Practices Act and carbon offset claims*.
- Attended meetings with Standards Australia and associated organisations concerned with development of the new Standard for Organic and Biodynamic Products and the Therapeutic Goods Advertising Code Council (TGACC)
- Placed ads in business opportunities classified pages in newspapers around the country to direct prospective franchisees to ACCC information about franchising and due diligence.
- Assisted primary producers by:
 - visiting regional New South Wales and Tasmania to discuss collective bargaining opportunities for wine grape growers, honey beekeepers and other farmer and grazier groups
 - conducting mail-outs to the Horticulture Code information network, providing details on horticulture code enforcement outcomes and the ACCC Grocery inquiry issues paper into the Horticulture Code
- Continued to expand and service the information subscription services for stakeholders in the Franchising Code of Conduct, Horticulture Code of Conduct and the Oilcode.

Codes of conduct

Mandatory codes

The ACCC is currently responsible for administering three prescribed industry codes of conduct—the Franchising Code, the Oilcode and the Horticulture Code.

- Trade Practices (Industry Codes—Franchising) Regulations 1998

The purpose of this code is to regulate the conduct between franchisors and franchisees. It came into effect on 1 July 1998. On 1 March 2008 the Australian Government amended the Franchising Code with the aim of increasing the transparency, quality and timeliness of disclosure to existing and prospective franchisees.

During the June 2008 quarter, the ACCC:

- Continued to educate industry participants about their rights and responsibilities under the Franchising Code, as well as working with the Department of Innovation, Industry, Science and Research with a particular focus on raising awareness about the amendments to the code.
- Published hard-copy and CD versions of the *Franchising Code of Conduct Compliance Manual* for franchisors and master franchisees. A copy of the CD was mailed to all franchisors.
- Considered 98 complaints and 65 inquiries about various aspects of the Franchising Code. The subject matter of these complaints and inquiries varied, but included, unconscionable conduct towards franchisees by franchisors, failure to meet disclosure obligations, the requirements of transferring a franchise and misleading representations made by franchisors to franchisees. Of the 99 complaints received, 32 were progressed for further investigation
- Presented at Legalwise seminars for professional advisors in the franchising sector.
- Continued to work with Griffith University on a joint research project to better understand conflict in franchise systems

- Trade Practices (Industry Codes—Oilcode) Regulations 2006 (the Oilcode)

The Oilcode regulates the conduct of suppliers, distributors and retailers in the downstream petroleum retail industry. It came into effect on 1 March 2007 as a prescribed mandatory code of conduct under the Trade Practices Act.

During the June 2008 quarter the ACCC:

- liaised with and distributed its educational and compliance materials to industry stakeholders such as associations, petroleum retailers and distributors
- considered one inquiry into the Oilcode on matters including the application of the Oilcode to commission agents and alleged contractual breaches.

- continued to liaise with the Department of Resources Energy and Tourism about the ACCC's activities in the downstream petroleum retail industry and provided a submission to the 'Oilcode Review 2008'.
- Trade Practices (Horticulture Code of Conduct) Regulations 2006 (the Horticulture Code)

The purpose of the Horticulture Code is to regulate the trading of horticulture produce between growers and traders in the horticulture produce industry. It came into effect as a prescribed industry code of conduct under the Trade Practices Act on 14 May 2007.

During the June 2008 quarter, the ACCC:

- Continued to educate industry participants about their rights and obligations in relation to trading under the Horticulture Code with a particular emphasis on trading with compliant agreements.
- Reviewed 21 inquiries of which 13 were complaints referred to enforcement. The issues complained about included traders not providing compliant horticulture produce agreements, failure to agree on a price, failure to pay within the terms of the horticulture produce agreements and non-compliant warranty requirements.

Voluntary industry codes of conduct

Effective voluntary industry codes serve the purpose of fostering more effective compliance with the Trade Practices Act. During the June 2008 quarter, the ACCC participated in the development and/or review of a number of voluntary industry codes of conduct, including the Fire Protection Industry Code of Conduct, Airconditioning Contractors Code of Conduct, Pallet Hire Code of Conduct and the Showman's Guild Code of Conduct

Product safety

A new Product Safety Branch was created in April within the Enforcement and Compliance Division of the ACCC. Ms Ruth Mackay was appointed to head the branch.

The ACCC is responsible for developing, reviewing and enforcing Trade Practices Act product safety and information standards as well as product bans. The Product Safety Branch receives product recall notifications and enters the recalls on the Product Recalls Australia website. The branch also provides advice to suppliers on correct recall procedures and monitors emerging safety issues, including the investigation of injury reports.

Compliance strategies for the new mandatory standard for prams and strollers have been implemented, with the standard taking effect from 1 July 2008.

The ACCC continues to liaise with cosmetic industry stakeholders regarding the Productivity Commission's review of chemicals and plastics regulation.

The ACCC continues to liaise with state and territory fair trading/consumer affairs agencies with regard to the following Standing Committee of Officials of Consumer Affairs projects:

- product safety framework
- product safety system/overarching review
- harmonisation of standards and bans.

The June 2008 quarter was a busy period for the Product Safety Branch.. Highlights of the branches activities include:

Mandatory product safety and information standards

Lead in toys

A draft regulatory impact statement proposing a new mandatory standard prescribing maximum levels of lead in toys was developed and published for public and stakeholder comment. Comments were due by 20 December 2007. Comments on the RIS have been assessed, analysed and summarised. Negotiations on the final content are continuing. A follow-up round of consultations may be necessary before approval is sought from the Office of Best Practice Regulation (OBPR), with the aim of introducing a mandatory standard in late 2008.

Reduced fire risk cigarettes

A RIS was drafted in late 2007 and subjected to preliminary comment by key stakeholders and the OBPR. A revised draft was published for broad stakeholder consultation in January 2008, with comments due by the end of February 2008. Submissions received have been assessed and the RIS has been approved by OBPR. It is anticipated that the minister will make a decision on the introduction of a mandatory standard in the near future. The proposal is to require cigarettes to self-extinguish when tested using the relevant Australian standard, with the objective of reducing smoking-related domestic and bush fires.

Cosmetic products—ingredient labelling

An amended mandatory standard requiring all cosmetic products, including toiletries, supplied in Australia to be labelled with their ingredients was introduced in May 2008. The amendment provides new definitions for flavour and aroma.

Product safety enforcement outcomes

Product safety enforcement outcomes during the June 2008 quarter included:

- In response to ACCC concerns about a potential quality issue with black-and-white **Fisher Price Link-a-Doos**, Mattel Pty Ltd issued a product alert. The alert was issued by Mattel to advise parents and carers of the hazard of excess white plastic moulding along the edges and seams of some black-and-white Link-a-Doos, which could be dislodged, posing an inhalation risk when being mouthed by infants.

The issue appeared to be limited to only some packets of some batches of production and while the potential for inhalation (and other injury) had a low probability, there were possible serious health consequences should it occur. Consumers were advised to inspect their products and to contact Mattel if they had further concerns.

- DVIN Corporation Australia Pty Ltd issued a national voluntary recall of three models of **baby cots** following the ACCC raising concerns about safety. The cots were imported by DVIN Corporation and sold through online auction websites. The ACCC was concerned that the cots posed safety issues because:
 - the height of the cot sides/ends caused a potential falling-out hazard
 - entrapment hazards identified within the structure of the cot
 - protrusions causing potential snag hazards
 - the absence of the required informative and warning labels.

Once the concerns were raised by the ACCC, DVIN Corporation conducted a prompt national consumer recall of the cots.

- The ACCC accepted undertakings from Fossil, Paris Miki, Nine West and Chelsea about the supply of **sunglasses** that failed to comply with the prescribed mandatory product safety standard. This followed a retail blitz on two major shopping complexes in November 2007 that targeted retailers of non-compliant sunglasses.

The four major retailers supplied sunglasses that failed the labelling obligations imposed by the standard. As part of their undertakings, the retailers must ensure that the sunglasses supplied subject to a mandatory safety and/or information standard prescribed under the Act comply with the standard; institute procedures to ensure display and sales stock are appropriately labelled; and implement a trade practices law compliance program. Fossil, Nine West and Chelsea also conducted voluntary product safety recalls.

- Caravan manufacturer, Jayco Corporation Pty Ltd, gave the ACCC a court-enforceable undertaking over the supply of certain **vehicle jacks** with its

caravans. These vehicle jacks, which Jayco obtained from an Australian jack manufacturer, were not marked with their 'safe working load' or 'working load limit' as required by the prescribed mandatory consumer product safety standard. Jayco undertook a voluntary national product safety recall and gave the ACCC an undertaking that included an upgraded trade practices compliance program with a focus on prescribed consumer product safety standards.

Trade Practices Act ban on fire footbags.

A Trade Practices Act ban on fire footbags was gazetted in June 2008. The footbags consist of balls manufactured from fire-resistant material, designed to be doused in flammable liquid and ignited. The footbags are intended to be used for the purpose of amusement by kicking or throwing. They include, but not limited to, goods supplied as 'Fire footbags', except where such goods are supplied for use by professional entertainers or for theatrical use, and where the purchaser is able to demonstrate such qualifications or intended use.

The reasons for introducing the ban were:

- When used as intended, the product becomes a flaming ball and/or a flaming missile, with the clear potential to cause serious burns to the user either by directly burning the skin or by igniting clothing or by igniting nearby flammable materials.
- Fire authorities have advised that in their opinion any plaything linked to flammable liquid and fire has the potential to ignite combustibles or burn the person playing with the product.
- Fire authorities have also advised that the potential for domestic and bush fires in built or natural environments is very real from the use—particularly the careless use—of these products.

Product Recalls Australia

The Product Recalls Australia website, which provides consumers and state and territory regulators with up-to-date information on all Australian safety-related recalls, continued to operate effectively during the June 2008 quarter. During this quarter some 197 new recalls were entered on the database; these comprised 48 consumer product recalls, 13 food products, 91 therapeutic goods and 45 motor vehicles.

3. Mergers

A primary aim of the ACCC is to encourage competitive market structures. This objective is supported through the assessment of mergers, acquisitions, asset sales and certain collaborative arrangements under ss. 45 and 50 of the Act.

A total of 99 reviews (including confidential and public merger reviews) were conducted by the ACCC between 1 April and 30 June 2008. Of these, 89 were not opposed, one was publicly opposed outright and the ACCC expressed concerns following one confidential review.

Additionally, one variation to an existing s. 87B undertaking was accepted and seven reviews were conducted where no decision was made, because the ACCC was either advised that the proposal was withdrawn or would no longer be proceeding, or a view could not be formed on a confidential basis. Further, 39 of the 99 reviews were conducted publicly.

Merger reviews undertaken in the June 2008 quarter

	Confidential	Public	Total
Total reviews undertaken 1 April 08 to 30 June 08	60	39	99
This total can be broken down into the following categories			
Not opposed	55	34	89
Finished—no decision (including withdrawn) ¹	4	3	7
Opposed outright	0	1	1
Confidential review—ACCC concerns expressed	1	0	1
Resolved through undertakings ²	0	0	0
Variation to undertaking accepted	0	1	1

Notes 1 These are matters where no decisions were made. They are not included in the timings in the table below.

2 Only public matters can be resolved through undertakings.

Time taken to assess mergers

The following table provides a breakdown of the time taken by the ACCC to complete its assessments in the June 2008 quarter. This does not include the eight matters where no decisions were made and the two variations to an existing undertaking.

Time taken to undertake merger reviews	Number of reviews	Percentage of mergers
Two or fewer weeks	46	51
Four or fewer weeks	28	82
Six or fewer weeks	9	92
Eight or fewer weeks	4	96
More than eight weeks	4	4

Statements of issues

Three statements of issues were released during the June quarter:

- Pact Group Pty Ltd—proposed acquisition of Viscount Plastics Pty Ltd—25 June 2008
- Flinders Ports Pty Ltd—proposed joint venture of DP World (SA) Pty Ltd—18 June 2008
- Woolworths Limited—proposed acquisition of the Karabar Supabarn supermarket—4 June 2008.

Public competition assessments

To improve the handling of matters and provide an enhanced level of transparency in its decision-making, the ACCC provides a public competition assessment outlining how a decision is reached on matters of particular public interest or have important precedence value.

The ACCC issued two public competition assessments relating to the following matters during this quarter:

- Pact Group Pty Ltd—proposed acquisition of Brickwood Holdings Pty Ltd—21 May 2008
- Lake Imaging and Western Medical Imaging—12 May 2008.

Section 87B undertakings

No s. 87B undertakings were accepted on matters reviewed within the June quarter.

One variation to an existing s. 87B undertaking for Toll Holdings Ltd's proposed acquisition of Patrick Corporation was accepted in relation to Toll's acquisition of a controlling interest in BALtrans Holdings Limited ('BALtrans').

Additionally, a number of decisions were made during the June quarter under various undertakings already accepted by the ACCC, including a number of approvals required to be considered by the ACCC. These decisions have not been included in the undertaking figures within the table, which refer to new undertakings and varied undertakings only.

Major merger matters currently under review or being monitored

At the end of the June 2008 quarter the ACCC was considering a number of significant merger reviews, including:

- BHP Billiton Ltd—proposed acquisition of Rio Tinto Ltd and Rio Tinto plc
- Flinders Ports Pty Ltd—proposed joint venture with DP World (SA) Pty Ltd
- Westpac Banking Corporation—proposed acquisition of St George Bank Limited.

At the end of the June 2008 quarter the ACCC was monitoring the possible sale of Australian Co-operative Foods Limited (Dairy Farmers). Litigation had commenced for:

- ABC Learning Centres—compliance with undertakings
- Toll—compliance with undertakings.

Summaries of major matters under consideration:

BHP Billiton Ltd—proposed acquisition of Rio Tinto Ltd and Rio Tinto plc summary | on 6 June 2008 the ACCC received a submission from BHP Billiton Ltd requesting informal clearance for its proposed acquisition of Rio Tinto plc and Rio Tinto Ltd. The ACCC began market inquiries into the proposed acquisition, focusing on the production and supply of iron ore, coal, bauxite, alumina, aluminium, copper, gold and uranium and the acquisition of infrastructure services and mining inputs. Market inquiries closed on 1 July 2008 and the ACCC is currently reviewing the material it received. The proposed date for announcement of ACCC's findings is 13 August 2008.

Westpac Banking Corporation—proposed acquisition of St George Bank Limited

summary | on 2 June 2008 the ACCC commenced the review of the proposed acquisition. Market inquiries were conducted with a broad range of market participants, including competitors, banking customers and interested parties. The ACCC released a market inquiries letter and conducted two surveys (one for personal banking customers and one for business banking customers) to assist in this regard. Market inquiries closed on 23 June 2008. The ACCC is now working towards the proposed decision date of 30 July 2008.

Flinders Ports Pty Ltd—proposed joint venture with DP World (SA) Pty Ltd

summary | on 24 April 2008 the ACCC began a review into a proposed joint venture between Flinders Ports Pty Ltd and DP World (SA) Pty Ltd for the operation of the stevedoring facility located at Outer Harbour Container Terminal at Port Adelaide. The ACCC released a statement of issues on 18 July 2008 in which it outlined its preliminary concerns about the transaction and the areas in which it is seeking further information and comment from market participants. Submissions relating to the statement of issues close on 2 July 2008 and the proposed date for the announcement of the ACCC's findings is 16 July 2008.

Possible sale—Australian Co-operative Foods Ltd (Dairy Farmers)

summary | on 17 March 2008 the ACCC commenced monitoring the possible sale of Dairy Farmers after recent press articles indicated that it may be considering entering into a sales process. The ACCC is monitoring the possible sale of Dairy Farmers, including consideration of potential consortium bidders. The consortium bidders being publicly considered are Murray Goulburn Cooperative Ltd and Parmalat SpA (decision date of 17 July 2008), and National Foods and Warrnambool Cheese and Butter Factory Company Ltd (timeline currently suspended awaiting information that the parties wish to put to the ACCC). The ACCC was also reviewing a proposed bid by Fonterra Cooperative Group Limited; however, the application for informal review was withdrawn on 30 June 2008.

ABC compliance with undertakings

summary | on 19 June 2008 the ACCC began proceedings against ABC Learning Centres Ltd (ABC) for breaches of an enforceable undertaking that ABC gave to the ACCC in 2004 when it acquired Peppercorn Management Group Ltd, another childcare provider. The ACCC alleges that ABC has breached the undertaking by failing to:

- divest two childcare centres as required
- properly assist an agent appointed to oversee the divestitures
- maintain the centres as viable, competitive businesses.

The two centres, Kidz Retreat and Little Buccaneers, are located in Geraldton, Western Australia. The ACCC is seeking a number of remedies, including divestiture of the centres, compliance with the undertaking, compensation of losses incurred by third parties and penalties.

Toll compliance with undertakings

summary | on 13 June 2008 Toll Holdings Ltd commenced proceedings against the ACCC. Toll sought a declaration under s. 163A of the Trade Practices Act that its conduct in offering casual labour hire through Toll Personnel Pty Ltd to Asciano Limited and its related bodies corporate was not in breach of its s. 87B undertaking to the ACCC. (Asciano is the infrastructure company created following Toll's restructure in 2007; it comprises Pacific National's rail operations and Patrick's port and stevedoring operations.)

This undertaking imposes on Toll, among other things, several obligations to ensure the separation of Toll and Asciano. Toll has also sought judicial review under the *Administrative Decisions (Judicial Review) Act 1977*, of the ACCC's decision not to accept a variation to Toll's undertaking that would allow Toll to engage in this conduct. At the first directions hearing on 30 June 2008, Justice Gray ordered that the proceedings be referred to a registrar for mediation to be completed, if possible, by 18 August 2008. The directions hearing was adjourned until 21 August 2008.

Major matters completed

Major matters completed during the June 2008 quarter included:

- Pact Group Pty Ltd—proposed acquisition of Brickwood Holdings Pty Ltd
- Woolworths Limited—proposed acquisition of the Karabar Supabarn supermarket
- Carter Holt Harvey Limited—proposed acquisition of timber processing and distribution assets of Weyerhaeuser Australia Group.

Pact Group Pty Ltd—proposed acquisition of Brickwood Holdings Pty Ltd

summary | on 6 February 2008 Pact Group announced that it had entered into a new agreement to acquire Brickwood, and sought a second informal merger clearance review from the ACCC, citing new information concerning the market for the supply of polyethylene terephthalate (PET) bottles.

On 8 February 2008 the ACCC began a fresh review of the proposed transaction and conducted extensive market inquiries into all possible relevant markets.

The 2008 review confirmed the majority of the ACCC findings and conclusions from the 2007 review of the proposed acquisition. This included the ACCC's conclusion that on the basis of the corporate and family relationships between Pact Group and Visy, it is unlikely that the merged entity would compete effectively against Visy post-acquisition.

However, through additional information obtained from the ACCC's extensive investigation, including voluntary submissions and responses to s. 155 notices, the ACCC found that large beverage suppliers possess a greater degree of

bargaining power and potential countervailing power than had been indicated in information provided to the ACCC during the 2007 review.

This included information provided by the major beverage suppliers that the ACCC considered (in 2007) were the most likely to suffer harm from the proposed acquisition (i.e. Cadbury Schweppes, Coca-Cola Amatil, National Foods and P&N Beverages).

On the basis of the information before it, the ACCC was not satisfied it had the necessary evidence to establish that a lessening of competition in the market for the manufacture and supply of PET bottles to large beverage suppliers arising from the proposed acquisition would be substantial, which is the threshold for establishing a contravention under s. 50 of the Act.

Therefore, on 23 April 2008 the ACCC announced that it would not oppose the proposed acquisition.

The 2008 review confirmed conclusions regarding the proposed acquisition's likely effect on competition in other markets. These included:

- smaller beverage manufacturers are able to obtain PET bottles on a cost-effective basis either through self manufacture or from small PET bottle suppliers
- the proposed acquisition is unlikely to give rise to a substantial lessening of competition with respect to the manufacture and supply of HDPE bottles
- the proposed acquisition is unlikely to give rise to a substantial lessening of competition with respect to the manufacture and supply of plastic closures (lids and caps).

The ACCC has released a public competition assessment setting out the reasons for its decision.

Woolworths Limited—proposed acquisition of the Karabar Supabarn supermarket

summary | on 25 June 2008 the ACCC decided to oppose the proposed acquisition.

The ACCC published a statement of issues on 4 June 2008, outlining its preliminary view that the proposed acquisition was likely to result in a substantial lessening of competition in the local retail supermarket market when compared with the likely scenario if the proposed acquisition did not proceed (the 'without scenario').

The statement of issues identified the without scenario to be that the Supabarn Supermarket Group (an independent operator of three supermarkets in the Australian Capital Territory and one in New South Wales, unrelated to the Karabar Supabarn supermarket) would be likely to acquire the Karabar supermarket and expand it to operate as a large format full-line supermarket.

The statement of issues identified a number of price and non-price elements on which the Supabarn Group was likely to compete with existing operators under the without scenario, including prices and promotions, the quality of fresh produce and other products, service levels and range (Supabarn has a large range of products and sells many products not stocked by Woolworths, Coles or Aldi). The number of operators with a bundled liquor and supermarket offering would also be higher under the without scenario.

The ACCC also considered the effect of the acquisition on the likely level of competition between the Karabar supermarket and the Woolworths supermarket at nearby Jerrabomberra, and took into account the likely competitive impact of a proposed residential development at Googong to the south of Karabar and the proposed extension of Edwin Land Parkway, linking Jerrabomberra with Karabar.

After a comprehensive review, the ACCC confirmed its preliminary view that the proposed acquisition was likely to substantially lessen competition in the local retail supermarket market consistent with the reasons outlined in its statement of issues.

The ACCC also examined a number of other markets:

- the state-wide market for the procurement of products sold in supermarkets by supermarket wholesalers
- the state-wide market for the wholesaling of products sold in supermarkets
- the local market for the retail sale of packaged liquor for off-premises consumption
- the state-wide market for the procurement of packaged liquor for subsequent sale by retail liquor outlets for off-premises consumption
- the state-wide market for the wholesale of packaged liquor for subsequent sale by retail liquor outlets for off-premises consumption.

The ACCC formed the view that the proposed acquisition was unlikely to substantially lessen competition in any of these markets.

In reaching its decision, the ACCC conducted extensive market inquiries and received submissions from a range of parties, including the parties to the proposed transaction, customers, competitors, landlords and government agencies.

Carter Holt Harvey Wood Products Australia Pty Ltd—proposed acquisition of the timber processing and distribution assets of Weyerhaeuser Australia Group

summary | on 12 May 2008 Carter Holt Harvey Wood Products Australia Pty Ltd publicly announced its intention to acquire the timber processing and distribution assets of Weyerhaeuser Australia Group (proposed acquisition). On

14 May 2008 the ACCC commenced its public informal review of the proposed acquisition.

The proposed acquisition was considered in the context of separate markets for the production and supply of structural softwood sawn timber, the production and supply of industrial softwood sawn timber and the acquisition of softwood sawlogs. For the purposes of reviewing the proposed acquisition, it was not necessary to identify whether the relevant markets were national or more localised based on regional areas of close competition.

On 25 June 2008 the ACCC formed the view that although the proposed acquisition would result in the removal of the acquirer's closest competitor, the proposed acquisition was unlikely to substantially lessen competition in the relevant structural and industrial softwood sawn timber markets because of

- the presence of a large alternative domestic producer
- the presence of smaller domestic producers
- constraint from independent imports with respect to particular products.

In relation to the acquisition of softwood sawlogs, the ACCC formed the view that the proposed acquisition was unlikely to substantially lessen competition because of the existence of alternative sawlog customers and the ability of plantation owners to by-pass the merged entity.

4. Adjudication

Authorisations

During the June 2008 quarter, the ACCC received seven new authorisation applications (excluding gas and electricity applications).

The total number of authorisation matters being considered by the ACCC on 30 June 2008 (excluding those being considered on gas and electricity matters) was 12.

Matters finalised

Refrigerant Reclaim Australia Ltd—A91079

Refrigerant Reclaim Australia Ltd sought the revocation of authorisation A91008 and its substitution by a new authorisation to allow Refrigerant Reclaim Australia Ltd to increase the levy from \$1.50 to \$2.00 per kilogram of ozone-depleting and synthetic greenhouse gas refrigerants imported as bulk or contained in equipment and sold in Australia. On 14 May 2008 the ACCC granted authorisation to the arrangements until 31 December 2010.

Rural Doctors Association of Australia Limited—A91078

The Rural Doctors Association of Australia Limited and its constituent state associations sought authorisation to collectively negotiate with state and territory health departments the terms of contracts for rural generalist and general practitioner visiting medical officers in rural areas, particularly with respect to payments for services provided to public patients and for on-call services. It is not proposed that the RDAA negotiate on behalf of other medical specialists or with individual hospitals.

On 14 May 2008 the ACCC granted authorisation to application A91078 until 30 June 2013.

International Air Transport Association—minor variation—A90855

The International Air Transport Association sought a minor variation to extend the duration of the protection afforded to the cargo tariff coordination system by three months beyond the current expiry date of 30 June 2008 to 30 September 2008. The ACCC granted IATA's requested minor variation on 11 June 2008.

Draft determinations issued (not otherwise appearing above)

CEMEX Australia Pty Limited—A91082

CEMEX Australia Pty Limited (formerly Rinker Australia, trading as Readymix) has sought re-authorisation of a cartage allocation system for concrete carriers in Western Australia (known as the EOT system). On a rolling 12-month basis, the

system ensures that each carrier receives an even amount (within the specified margin of the Western Australian fleet average) of work from CEMEX. On 28 May 2008 the ACCC issued a draft determination proposing to grant authorisation to CEMEX until 30 June 2013. The ACCC is currently preparing its final determination in this matter.

International Air Transport Association—A91083

IATA has applied for authorisation of the contracts, arrangements or understandings constituting the IATA passenger tariff coordination conference and the new system adopted through resolutions of the conferences. On 25 June 2008 the ACCC issued a draft determination proposing to grant authorisation to IATA until 31 July 2013. The ACCC is currently seeking submissions from the applicant and interested parties in respect of this matter.

Job Futures Limited—A91084 and A91085

Job Futures is seeking authorisation for an arrangement between its members (both current and future) to permit Job Futures to:

- Tender on behalf of members for government contracts to provide employment services on condition that members will not tender for the same or similar program while delivering that program or similar program under sub-contract to Job Futures. Job Futures will also not tender for new contracts against a member organisation where they have historically provided that program in that location.
- Develop cooperative tendering arrangements that include agreements on the price that will be tendered and the price paid for services provided by members to Job Futures and agreements about the territories in which members and Job Futures will tender to deliver services.

On 26 June 2008 the ACCC issued a draft determination proposing to grant authorisation to aspects of Job Futures' arrangements. The ACCC is currently seeking submissions from the applicant and interested parties in respect of this matter.

Applications lodged

Central Queensland Local Government Association—A91087

The Central Queensland Local Government Association is seeking authorisation on behalf of the regional councils of Rockhampton, Gladstone, Central Highlands and Isaac for a collective tender process for the provision of waste and recyclables collection and processing from all residential premises in their combined local government areas. The ACCC granted interim authorisation to the arrangement on 14 May 2008 and is currently preparing a draft determination in respect of CQLGA's application.

The Australian Medical Association (NSW) Limited—A910888

The Australian Medical Association (NSW) Limited is seeking authorisation to collectively negotiate with New South Wales Health and New South Wales public health organisations the terms and conditions (including, but not limited to, remuneration) of visiting medical officer contracts in the New South Wales public hospital system. The ACCC is currently preparing a draft determination in respect of the AMA NSW's application.

Dairy Farmers Milk Co-operative Limited and Ors—A91089 and A91090

Dairy Farmers Milk Co-operative Limited (DFMC) and Australian Co-operative Foods Limited (ACF) have lodged applications for authorisation for:

- the amendment of the Milk Supply Agreement before the completion of any sale of ACF to provide for the continuation of the back-to-back pricing and back-to-back milk purchasing policies provisions contained in clauses 4.4 and 5.6 of the MSA
- in the event that authorisation is denied for the conduct above, implementation of the back-to-back pricing and back-to-back milk purchasing policies by DFMC in its dealings with farmers for the supply of milk to ACF.

On 18 June 2008 the ACCC considered the request by DFMC and ACF for interim authorisation. The ACCC decided not to grant interim authorisation at this time because the legal protection provided by interim authorisation for both existing and future supply contracts is not needed until DFMC and ACF cease to be related bodies corporate. Until this time, DFMC and ACF are able to continue with the current arrangements without the need for interim authorisation.

The ACCC notes DFMC's advice that the proposed sale process will be ongoing for some months. The ACCC therefore considers it more appropriate to assess the request for interim authorisation when the sale of ACF is imminent should this come before the ACCC has issued its final determination. The ACCC is currently preparing a draft determination in respect of the applications for authorisation.

Myer Pty Ltd—A91091

Myer is seeking revocation of authorisation A40082 and its substitution by a new authorisation to allow Myer to be able to invite concession businesses operating within Myer stores to participate in storewide and category-wide discount promotions, bonus Myer One points offers, Myer Card and Myer Visa Card promotions, a discount price matching policy and other agreed bonuses. The ACCC granted interim authorisation to the arrangement on 18 June 2008 and is currently preparing a draft determination in respect of Myer's application.

Australian National Retailers Association Limited—A91093

The Australian National Retailers Association (ANRA) is seeking authorisation to conduct a pilot program, supported by the Victorian Government, which will run for four weeks beginning in August 2008. Under the program, Woolworths, Coles

and IGA retailers will collectively impose a charge for lightweight plastic bags of ten cents per bag. A number of other retailers, including FoodWorks, Target and Kmart, may also participate in the pilot program. The program will run in three locations in Victoria—Fountain Gate Shopping Centre in Narre Warren and surrounds, Wangaratta and surrounds, and Warrnambool and surrounds.

ANRA is also seeking authorisation to allow the dissemination of information and data obtained from the pilot program to ANRA and its members, any other retailers that participate in the pilot program, the Victorian Government and the Environment Protection and Heritage Council. The ACCC is currently seeking submissions from interested parties in respect of the matter.

CALMS Ltd—authorisation—A91092

CALMS is seeking authorisation for a ‘not to exceed’ fee schedule (capped fee arrangement) for the provision of after-hours primary care medical consultations in the Australian Capital Territory. A previous authorisation relating to the same conduct expired on 30 June 2008.

Exclusive dealing notifications

During the quarter ending 30 June 2008 the ACCC received 85 new notifications involving 59 new exclusive dealing matters. Notifications of interest being considered during the quarter include:

▪ **Eastern Suburbs Newspapers—review of notification—N90330**

On 12 November 1993 General Newspapers Pty Limited, Double Bay Newspapers Limited and Brehmer Fairfax Limited, trading as Eastern Suburbs Newspapers, lodged a notification in respect of contracts entered into between it and eastern suburban Sydney real estate agents. The contracts provide that the real estate agent agrees to place 75 per cent of the total suburban advertising by it, or on behalf of its vendor/clients, in respect of eastern suburbs real estate display advertising, with the *Wentworth Courier*.

The ACCC issued a final notice revoking the notification on 29 May 2008.

▪ **National Association of Speedway Racing Incorporated and Ors—notifications—N93297—N93300**

The National Association of Speedway Racing Incorporated and the National Association of Speedway Racing Pty Ltd (together NASR) have lodged notifications for both third line forcing conduct and related exclusive dealing conduct other than third line forcing.

Under third line forcing notifications (N93297 and N93298), NASR proposes to offer and supply licences on condition that:

- the offeree only races at tracks and venues that are sanctioned or approved by NASR

- the offeree obtain membership of the relevant national and/or state and/or regional club or association for the offeree's relevant speedway racing category.

Under exclusive dealing other than third line forcing notifications (N93299 and N93300), NASR proposes to offer and supply speedway racing licences on condition that the offeree only participates or competes in speedway racing categories that NASR approves.

On 11 June 2008 the ACCC issued a draft notice proposing to revoke notifications N93297 and N93298 for third line forcing conduct. The ACCC is currently seeking submissions from the applicants and interested parties in respect of the draft notice.

▪ **eBay International AG—N93365**

eBay proposes to supply the services offered on the eBay site (including search, listing and transaction functions) to registered users of the eBay site, on condition that users only acquire the online payment services provided by PayPal Australia Pty Ltd.

The ACCC issued a draft notice proposing to revoke eBay's notification on 12 June 2008.

▪ **Co-operative Bulk Handling Limited—N93439**

Co-operative Bulk Handling (CBH) will offer to supply storage and handling services on the condition that growers or marketers acquire:

- supply chain coordination services from CBH
- to the extent that grain remains in CBH's custody, that they only acquire transport services from CBH (through its nominated carrier).

The ACCC is currently seeking submissions from interested parties in relation to CBH's proposal.

Collective bargaining notifications

The ACCC did not receive any valid notifications of collective bargaining during the June quarter.

5. Regulatory affairs

The ACCC and the Australian Energy Regulator have roles in promoting competition in network industries—communications, energy, transport, water and petrol. The ACCC is also involved in monitoring prices of selected goods and services. The ACCC and the AER ensure that participants in the regulated industries comply with access obligations and revenue pricing arrangements that apply to facilities such as gas transmission pipelines, electricity transmission networks, telecommunications networks and airports.

Communications

In the June quarter 2008 the ACCC:

- Issued a draft decision proposing to grant Telstra exemptions from its obligations to supply two ‘declared’ services—i.e. local carriage service (LCS) and wholesale line rental (WLR) in parts of metropolitan Australia.
- Issued its final report on declaring the digital data access service (DDAS) and integrated services digital network (ISDN) services and accompanying pricing principles with respect to these services.
- Released a final pricing principles determination for the unconditioned local loop service (ULLS) for 2008–09.
- Released and received submissions on draft pricing principles determinations and indicative prices for the WLR and the LCS for the period from 1 January 2008 to 31 July 2009.
- Announced and commenced arbitration proceedings in 11 new access disputes and made three final determinations and ten interim determinations.
- Issued a final version of the telecommunications transmission cost model to guide pricing of the service on 16 April 2008—the model has been designed with the flexibility to calculate cost-based pricing for backhaul on any land based (terrestrial) or under sea (submarine) telecommunication transmission routes in Australia.
- Issued two legislative instruments regarding the access regime to be applied to digital radio as follows:
 - digital radio multiplex transmitter licences (decision-making criteria) determination 2008
 - digital radio multiplex transmitter licences procedural rules 2008.

- Was notified of three additional proceedings that Telstra has commenced in the Federal Court seeking review of the ACCC's final determinations issued in ULLS access disputes.
- Welcomed Telstra's withdrawal of its appeal against the Federal Court's December 2007 ruling that it had engaged in false, misleading or deceptive conduct in relation to the coverage available on its Next G mobile network.
- Released and received submissions on a draft record-keeping and reporting rule (RKR) proposing that Telstra maintain and report monthly to the ACCC in relation to access to Telstra exchange facilities.
- Released and received submissions on a set of procedural rules to apply to the telecommunications-specific regulatory provisions under the Trade Practices Act. These rules will apply to various telecommunications specific processes including access undertakings, access dispute resolution, declaration inquiries, pricing principles inquiries and exemption applications.
- Issued the eighteenth and nineteenth quarterly reports under the enhanced accounting separation regime for Telstra on 10 April 2008 (December quarter 2007) and 30 June 2008 (March quarter 2008).
- Issued the tenth current cost accounting report relating to Telstra for the July to December 2007 period.
- Provided two statutory reports to the minister under Part XIB of the Trade Practices Act on telecommunications competitive safeguards and changes in prices paid for telecommunications services.
- Delivered two speeches on the communications industry.

Declarations

DDAS and ISDN declaration review

On 4 June 2008 the ACCC issued its final report on declaration of DDAS and ISDN services and their accompanying pricing principles. The report extends regulation of the DDAS and ISDN services in regional areas and outlines an extension of the declarations of these services until 30 June 2009.

Telstra's exemption applications

In the June quarter 2008, the ACCC issued its draft decision proposing to grant Telstra exemptions from its obligation to supply two 'declared' services (i.e. LCS and WLR) in parts of metropolitan Australia. Submissions were due by 27 May 2008. Telstra was also informed of the ACCC's decision to extend the statutory decision-making timeframe for three months.

Access pricing—undertakings and disputes

Telstra's ULLS undertaking

On 4 June 2008 the ACCC issued a discussion paper considering Telstra's revised undertaking submitted to the ACCC in March 2008 (by withdrawing its previous submission dated 21 December 2007). The undertaking proposes a monthly charge of \$30.00 for each Telstra ULLS connected at an exchange building in a Band 2 exchange area. The ACCC invites submissions from interested parties by 12 August 2008.

ULLS indicative prices for 2008-09

In June 2008 the ACCC set final copper local loop indicative prices for 2008–09. The final indicative prices for the ULLS monthly charge are to apply from 1 July 2008 to 31 July 2009, with an increase from the previous period to reflect the rise in interest rates and input costs.

Access disputes

The ACCC is vested with powers to arbitrate telecommunications access disputes on declared services and to make a final binding determination to resolve a dispute.

Arbitration hearings are private and the ACCC generally does not make any public comment on disputes except to announce when a dispute has been notified or a determination has been made.

In the June quarter 2008, 10 new access disputes were notified to the ACCC:

- Netspace Networks Pty Ltd and Telstra Corporation Ltd (LSS)
- Optus Mobile Ltd and Telstra Corporation Ltd (MTAS)
- Optus Network Pty Ltd and Telstra Corporation Ltd (MTAS)
- Primus Telecommunications Pty Ltd and Telstra Corporation Ltd (ULLS)
- Optus Networks Pty Ltd and Telstra Corporation Ltd (two separate ULLS disputes)
- XYZed Pty Ltd and Telstra Corporation Ltd (ULLS)
- Request Broadband Pty Ltd and Telstra Corporation Ltd (ULLS)
- PowerTel Limited and Telstra Corporation Ltd (ULLS)
- Chime Communications Pty Ltd and Telstra Corporation Ltd (ULLS)
- Macquarie Telecom Pty Ltd and Telstra Corporation Ltd (ULLS).

These new access disputes are related to monthly rental, connection and other charges to be paid to Telstra by the access seekers. Optus also notified a dispute

related to the terms and conditions on which Telstra supplies interconnection facilities to enable Optus to acquire the ULLS.

Interim determinations

During the June 2008 quarter, the ACCC made one interim determination relating to a dispute over access to the LSS and nine interim determinations relating to disputes over access to the ULLS.

Final determinations

In the June 2008 quarter, the ACCC made three final determinations in arbitration disputes over access to the ULLS as follows:

- between Chime Communications and Telstra Corporation Ltd
- between Optus Networks and Telstra Corporation Ltd, and
- between Primus and Telstra Corporation Ltd.

Published determinations

In the June 2008 quarter, the ACCC published two final determinations made in arbitrations concerning disputes over access to the ULLS between Chime Communications and Telstra and Optus Network and Telstra.

The following table summarises the determinations made in the June quarter and the active disputes as at 30 June 2008.

	Total
Active disputes at 30 June 2008	35*
Decisions subject to Federal Court review	18
New arbitrations commenced	11
Interim determinations	10
Final determinations	3
Published determinations	2

* This measure previously reported inclusive of concluded arbitrations subject to Federal Court review

Reports

In June 2008 quarter, the ACCC issued several public reports as follows:

- The eighteenth Telstra accounting separation report for the December quarter 2007. This report noted that the imputed margins improved during the quarter. It also noted that service levels for some wholesale fixed-line telephony services slipped during the quarter, but otherwise wholesale customers on average received service levels practically as good as or better than retail customers.
- The tenth current cost accounting report relating to Telstra for the period of July to December 2007. The report indicates that on a current cost basis,

Telstra's valuation of assets for the core access services is higher than the historical cost valuations.

- The two annual statutory reports (divisions 11 and 12) on telecommunications competitive safeguards, and changes in the prices paid for telecommunications services under Part XIB of the Trade Practices Act. These were submitted to the minister and were tabled in parliament in June 2008. The reports show that overall prices for telecommunications service fell in real terms by 2.7 per cent and average prices for fixed-line fell by 3 per cent and average prices for mobiles fell by 2.3 per cent during 2006–07. The report also noted that the period showed the highest level of investment on telecommunications in the ten years since the introduction of competition.
- The nineteenth Telstra accounting separation report for the March quarter 2008. This latest report highlights two concerns—imputed margins generally remained steady, with only margins on fixed to mobile declining significantly, and wholesale residential customers received inferior service for those basic access connections that require work at the customer premises.

Energy

On 1 July 2005, the AER assumed the ACCC's responsibilities for the regulation of electricity transmission services in the national electricity market (NEM). The AER commenced economic regulation of electricity distribution networks on 1 January 2008. In preparation for the commencement of the regulatory determinations for the ACT and NSW distribution networks the AER consulted with the businesses on the development of the regulatory framework under which the determinations will be progressed. Gas transmission and distribution functions were transferred to the AER from the ACCC and state regulators (except WA) on 1 July 2008 following the commencement of the *National Gas Law*.

There has been considerable progress on the development of the new national framework for gas and electricity retail regulation, however there has been some delay in the transfer of the retail functions to the AER. Under the Australian Energy Market Agreement 2004 (amended in 2006), the states and territories agreed that the national framework for the regulation of retail activities would be implemented in new national rules by 1 January 2008. At their 13 December 2007 meeting, the MCE agreed to reschedule the finalisation of the legislative package that will enable the transfer. The MCE intends to introduce the legislative package to the South Australian parliament to by no later than 30 September 2009.

Electricity decisions

Approval of TransGrid and Transend's proposed cost allocation methodology

The AER is required to assess transmission network services providers (TNSPs) proposed cost allocation methodology (CAM), which governs how the businesses

will allocate costs to the prescribed, negotiated and other transmission services it provides.

The AER assessed TransGrid's proposed CAM on 24 April 2008 and determined that it:

- is in accordance with the National Electricity Rules (NER)
- gives effect to, and is consistent with, the AER cost allocation guidelines for electricity TNSPs

Accordingly, the AER has approved TransGrid's proposed CAM.

Similarly, the AER assessed Transend's proposed CAM on 9 May 2008 and determined that it:

- is in accordance with the NER
- gives effect to, and is consistent with, the AER cost allocation guidelines for electricity TNSPs.

Accordingly, the AER has approved Transend's proposed CAM.

McGrathNicol Corporate Advisory was engaged to review the CAMs and advise the AER about their compliance with the NER and guidelines.

Service standards compliance review 2007

On 28 April 2008 the AER released the outcome of its service standards compliance review for the 2007 calendar year. AER staff and the AER's expert consultants, Sinclair Knight Merz (SKM), reviewed the reporting systems and results for eight TNSPs.

ElectraNet electricity transmission determination

On 30 April 2008 the AER released its final decision and transmission determination for ElectraNet for the regulatory control period from 1 July 2008 to 30 June 2013. The AER has approved a maximum allowed revenue for ElectraNet that increases from \$226 million in 2008–09 to \$304 million in 2012–2013 (\$nominal). The total revenue cap for ElectraNet over the next regulatory control period is \$1319 million.

The final decision provides for \$650 million to be invested in ElectraNet's electricity transmission network over the next five years, an increase of more than 45 per cent from the investment over the past five years. The AER also determined a total operating and maintenance allowance of \$299 million for the regulatory control period.

The transmission determination includes decisions on ElectraNet's negotiating framework and its pricing methodology for the regulatory control period, and specifies the negotiated transmission service criteria that apply to ElectraNet.

TransGrid—proposed pass-through for network support

On 13 March 2008 TransGrid submitted a notice of proposed pass-through for network support under the pass-through rules in the ACCC's decision on the New South Wales and Australian Capital Territory transmission network revenue cap 2004–05 to 2008–09 (April 2005). The network support relates to the provision of up to 350 MW of effective network support during the summer of 2008–09 as part of TransGrid's western 500 kV conversion project.

On 9 May 2008 the AER formed the opinion that the proposed pass-through amount of \$21.9 million to be applied over the 2008–09 financial year satisfied the requirements of the pass-through rules.

A regulatory test process established that some level of network support would be the least-cost option for TransGrid to meet its reliability standards while addressing consumer needs during the 2008–09 summer. The AER considered that TransGrid's conduct about the pass-through was consistent with 'good electricity industry practice' (as defined in the NER).

Oxiana Prominent Hill network service provider exemption

On 9 May 2008 Oxiana Prominent Hill applied for an exemption from registering as a network service provider and the operation of chapter 5 of the NER. The AER decided on 27 May 2008 to grant a full exemption, subject to conditions, for Oxiana Prominent Hill.

Oxiana Prominent Hill distribution loss factor for 2008–09

On 3 June 2008 the AER received an application for approval of the distribution loss factor for 2008–09 for Oxiana Prominent Hill, which it approved on 10 June 2008.

National regulation of electricity distribution businesses—final guidelines released

On 26 June 2008 the AER, in its new role in the national regulation of electricity distribution businesses under the National Electricity Law (NEL) and the NER, released final guidelines comprising:

- cost allocation guidelines
- the post-tax revenue model
- the roll forward model
- an efficiency benefit sharing scheme
- a service target performance incentive scheme.

On 1 April 2008 the AER released its proposed guidelines, models and schemes, and undertook consultation as required by the NER. The AER held a public forum in April 2008 to discuss the proposed regulatory arrangements and subsequently

received 16 submissions, which it took into account when finalising the guidelines, models and schemes.

ACT and NSW electricity distribution regulatory proposals

On 27 June 2008 the AER published regulatory proposals from EnergyAustralia, Country Energy, Integral Energy and ActewAGL Distribution for their respective electricity distribution networks.

Under the NER, the AER is required to make distribution determinations in respect of these businesses that will establish network charges for the period from 2009 to 2014.

The AER intends to hold a public forum on the proposals submitted by the distribution network service providers on:

- Tuesday, 29 July in Canberra (ActewAGL)
- Wednesday, 30 July in Sydney (for New South Wales DNSPs).

The public forums will enable each DNSP to explain its regulatory proposal. Stakeholders will also have an opportunity to ask questions on the proposals.

The AER invites written submissions in response to the Australian Capital Territory and New South Wales DNSP proposals. Submissions close on 8 August 2008.

TransGrid electricity transmission revenue proposal

On 27 June 2008 the AER published TransGrid's revenue proposal, proposed negotiating framework and proposed pricing methodology for the period from 1 July 2009 to 30 June 2014 for consultation. Under the NER, the AER is required to make a transmission determination for TransGrid that will establish network charges for the period from 2009 to 2014.

The AER intends to hold a public forum on TransGrid's proposal in Sydney on Wednesday, 30 July 2008, which will enable TransGrid to explain its proposal. Stakeholders will also have an opportunity to ask questions on the regulatory proposals.

The AER invites written submissions in response to TransGrid's regulatory proposal. Submissions close on 8 August 2008.

Transend electricity transmission revenue proposal

On 27 June 2008 the AER published Transend's revenue proposal, proposed negotiating framework and proposed pricing methodology for the period from 1 July 2009 to 30 June 2014 for consultation. Under the NER, the AER is required to make a transmission determination for Transend that will establish network charges for the period from 2009 to 2014.

The AER intends to hold a public forum on Transend's proposal in Hobart on Wednesday, 6 August 2008, which will enable Transend to explain its proposal.

Stakeholders will also have an opportunity to ask questions on the regulatory proposals.

The AER invites written submissions in response to Transend's regulatory proposal. Submissions close on 11 August 2008.

Energex and Ergon Energy—2010–15 regulatory control period—AER preliminary positions

The AER is preparing to undertake distribution determinations for two Queensland DNSPs, Energex and Ergon Energy, to apply in the 2010–15 regulatory control period.

Under the NER, the AER is required to publish framework and approach papers setting out its likely approach to the application of the following schemes to Energex and Ergon Energy:

- a service standards incentive scheme
- efficiency benefit sharing scheme
- demand management incentive scheme.

On 30 June the AER began consultation on its framework and approach to the application of these schemes to Energex and Ergon by releasing its preliminary positions paper.

The AER invites submissions from interested parties on its preliminary positions paper. Submissions will close on 11 August 2008.

ETSA Utilities—2010–15 distribution determination—AER preliminary positions

The AER is preparing to undertake a distribution determination for ETSA Utilities, a DNSP in South Australia, to apply in the 2010–15 regulatory control period.

Under the NER, the AER is required to publish framework and approach papers setting out its likely approach to the application of the following schemes to ETSA Utilities:

- a service standards incentive scheme
- efficiency benefit sharing scheme
- demand management incentive scheme.

On 30 June the AER began consultation on its framework and approach to the application of these schemes to ETSA Utilities by releasing its preliminary positions paper.

The AER invites submissions from interested parties on its preliminary positions paper. Submissions will close on 11 August 2008.

Gas Code decisions

Annual tariff variations

On 4 June 2008 the ACCC approved the 2008–09 annual reference tariff variations for the Moomba-to-Sydney, Central West, Roma-to-Brisbane, Central Ranges and the Dawson Valley pipelines under their respective access arrangements.

GasNet revised access arrangement—ACCC final approval

On 14 November 2007 the ACCC released a draft decision proposing not to approve GasNet's proposed revised access arrangement for the principal transmission system.

The draft decision set out matters that needed to be addressed before the ACCC could approve the revised access arrangement. GasNet's response to this draft decision did not fully address all the issues raised by the ACCC. Therefore, on 30 April 2008 the ACCC released a final decision that did not accept a number of GasNet's revisions and proposed amendments.

Following further amendments by GasNet that satisfactorily addressed the issues raised, on 25 June 2008 the ACCC released a further final decision approving GasNet's revised access arrangements.

Moomba-to-Sydney Pipeline—extension of time to submit access arrangement revision

The access arrangement setting out terms and conditions for access to the Moomba-to-Sydney pipeline from 1 July 2009 to 30 June 2014 is due for submission on 30 June 2008. The APA Group (on behalf of the MSP's owner East Australian Pipeline Limited) has asked the ACCC for an extension of time to submit its access arrangement proposal.

The request is sought because the APA Group intends applying to the National Competition Council to have the MSP classified as a light regulation pipeline. This application will be submitted when the National Gas Law (NGL) commences on 1 July 2008. Under the NGL, a light regulation pipeline is not subject to upfront price and revenue regulation and does not need to submit an access arrangement. In its letter seeking the extension, APA outlined its reasons for seeking a light regulation classification for the MSP; these reasons include that the MSP is only partially covered.

If the ACCC approves the extension, any subsequent access arrangement proposal submitted by MSP (e.g. in the event the light regulation classification application is unsuccessful) will be considered under the NGL's decision-making processes by the AER and not the ACCC.

After consultation with interested parties, the ACCC has approved an extension of time to 15 December 2008 for the APA Group to submit its revision to the Moomba-to-Sydney Pipeline access arrangement.

Energy markets

Recent high-priced events in the national electricity market

The AER is required under the NER to investigate and report on any instances in the National Electricity Market (NEM) where the spot price exceeds \$5000/MWh. During the first quarter of this year, the spot price exceeded \$5000/MWh on 71 occasions, mostly in South Australia.

Two price reports detailing events when the 30-minute spot price exceeded \$5000/MWh were published in May. The first report, covering events in South Australia between 5 and 17 March 2008, was published on 29 May 2008. The second report, which dealt with events in Victoria and the Snowy region on 17 March 2008, was published on 30 May 2008.

On 26 occasions between 5 and 17 March 2008, electricity spot market prices in South Australia exceeded \$5000/MWh. These events caused the average electricity spot market price in March to increase to \$325/MWh, the highest-ever monthly price since the market began in 1998.

The report outlined a number of factors contributing to the high-priced events in South Australia. At the time, South Australia was in the middle of an extended heatwave that created unprecedented levels of electricity demand. The report also found that the high-priced events were caused by AGL's bidding behaviour (a significant factor) and network availability (in particular the import limit into South Australia from Victoria).

The AER is continuing to investigate this issue.

The \$5000/MWh report covering events in Victoria and the Snowy region on 17 March 2008 found that the high prices were caused by record levels of electricity demand caused by extreme temperatures.

National Electricity Market quarterly compliance report

The NEM quarterly compliance report for January to March 2008 was published in June 2008. The report provides an update on the progress of technical performance standards audits and associated compliance programs conducted by consultants on behalf of the AER. The audit results will be published later this year.

The report also contains the outcome of the AER's targeted compliance reviews. The AER targeted eight provisions under the NER.

Transport and prices oversight

Formal price inquiries

On 22 January 2008 the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, the Hon. Chris Bowen MP, requested the ACCC to hold a public inquiry into the competitiveness of retail prices for standard groceries under Part VIIA of the Trade Practices Act.

The inquiry is currently being conducted by ACCC Chairman, Mr Graeme Samuel, and commissioners Stephen King and John Martin. On 11 February 2008 the ACCC released an issues paper and called for submissions from interested parties. On 20 May 2008 the ACCC released a second issues paper on matters relating only to the Horticulture Code.

Over 200 public submissions have been received, as well as a number of confidential submissions. The ACCC has held hearings in all state and territory capitals and in Cairns, Griffith, Shepparton, Launceston, Port Lincoln and Bunbury. The ACCC is expected to submit its report to the federal government by 31 July 2008.

Transport

Part IIIA access undertakings

Australian Rail Track Corporation Ltd interstate rail access undertaking

The Australian Rail Track Corporation Ltd (ARTC) was established in 1998 to manage the infrastructure and access to the standard gauge rail network connecting the mainland capital cities (i.e. the interstate rail network).

On 20 December 2007 ARTC lodged a voluntary access undertaking application (the December undertaking) with the ACCC for the interstate rail network. The ACCC assessed ARTC's proposed undertaking under Part IIIA of the Trade Practices Act, which requires it to consider, among other things, the economically efficient operation and use of, and investment in, the infrastructure.

In April 2008 the ACCC released its draft decision on the proposed undertaking. The ACCC asked ARTC to address a number of price and non-price provisions to ensure a balance of interests between the access provider (ARTC), access seekers and the public interest. Submissions were received in response to the draft, and the ACCC expects to make a decision on whether to accept the undertaking in July 2008.

Airport monitoring—car parking

On 7 April 2008 the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs the Hon. Chris Bowen, MP, directed the ACCC (through Direction no. 31 under Part VIIA of the Trade Practices Act) to monitor prices, costs and profits relating to the supply of car-parking services at Adelaide, Brisbane, Melbourne (Tullamarine), Perth and Sydney (Kingsford Smith)

airports. The ACCC is undertaking this monitoring as part of its broader monitoring role of airports under Part VIIA of the Act.

Involvement in copyright matters

Since the amendments to the *Copyright Act 1968* took effect, the ACCC has been made a party to two proceedings before the Copyright Tribunal. The progress of these proceedings in the June 2008 quarter is as follows:

Reference for 'fitness class' tariffs by the Phonographic Performance Company of Australia

In May 2007 the ACCC was made a party to this reference. The Phonographic Performance Company of Australia has served its lay and expert evidence. PPCA has filed an amended reference that provides a proposed rate for the use of sound recordings by fitness centres in fitness classes of \$4.54 per member of a fitness centre per month and 99 cents per visit by a casual attendee. Fitness Australia, a respondent, has filed its lay and expert evidence. The ACCC has commissioned an expert witness and its evidence is due on 11 July 2008.

Reference for the tariff for 'digital music services' by APRA/AMCOS

The ACCC was made a party to this reference in September 2007. The Australasian Performing Right Association Limited and the Australasian Mechanical Copyright Owners' Society Limited has served its lay evidence and expert evidence is due on 2 July 2008. The ACCC has engaged an expert witness to assist it in the proceeding.

Fuel monitoring

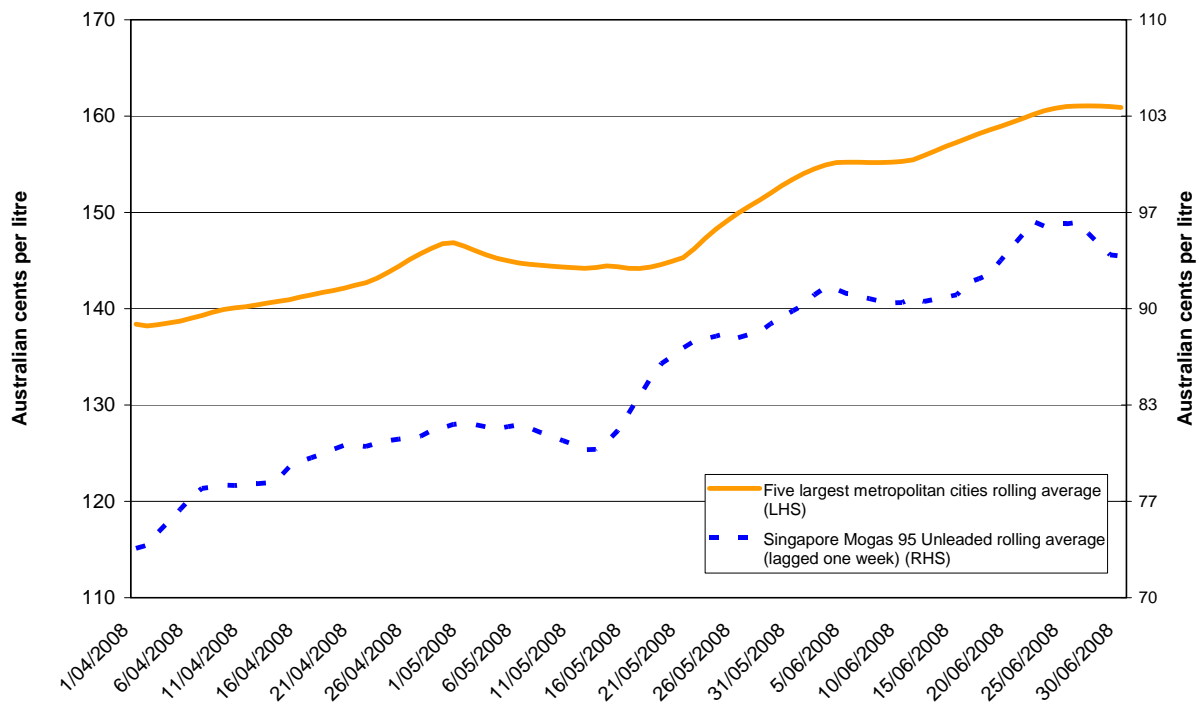
The ACCC monitors retail prices of petrol, diesel and automotive liquid petroleum gas in all capital cities and in around 110 country towns, as well as international crude oil and refined petrol and diesel prices. The ACCC also closely follows developments in the petroleum industry. On 16 February 2008 the federal government asked the ACCC to increase its focus on diesel and LPG prices.

Petrol

As part of its petrol price monitoring activities, the ACCC examines movements in domestic retail petrol prices compared with movements in international benchmark prices. More specifically, the ACCC examines movements in the seven-day rolling average retail unleaded petrol prices in the five major metropolitan cities (i.e. Sydney, Melbourne, Brisbane, Adelaide and Perth) and seven-day rolling average prices for Singapore Mogas 95 Unleaded (lagged one week) in Australian cents per litre.

The following chart shows movements in these series over the period from 1 April to 30 June 2008, and the difference between the two. Retail prices are shown on the left-hand side and Singapore Mogas prices are on the right-hand side. It is important to remember that a comparison of these two series is an indicative rather than an exact science, and that other factors can influence retail

petrol prices in the short run. It can be seen that retail petrol prices broadly tracked movements in the benchmark.



Retail unleaded petrol prices—seven day rolling averages—1 April 2008 to 30 June 2008

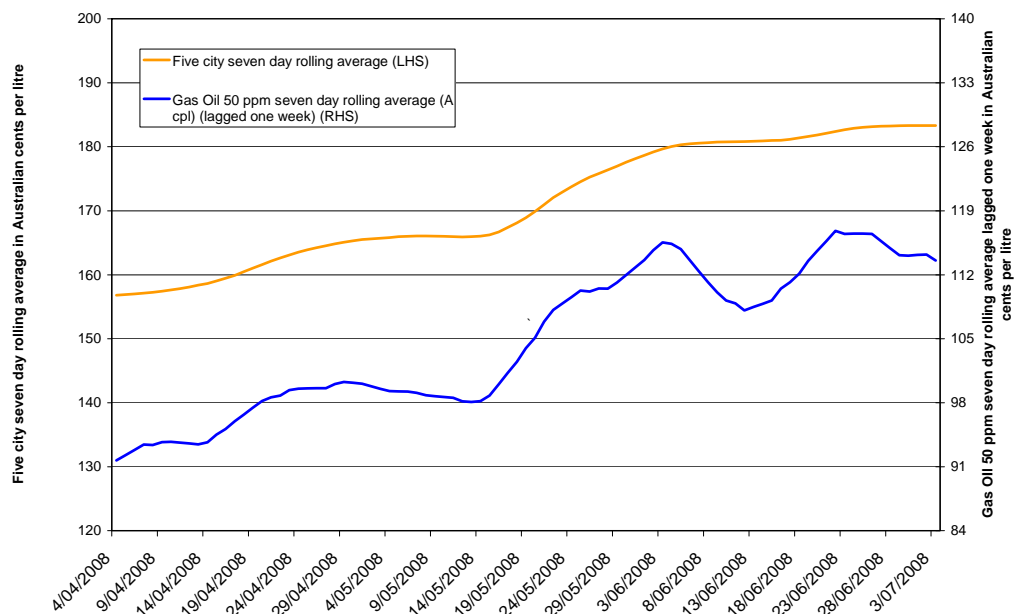
On 7 May 2008 the ACCC issued a media release that noted that in Melbourne, Brisbane, Sydney and Adelaide, Coles Express was leading petrol prices higher as the petrol pricing cycle peaked on that day. It advised consumers to shop around and not automatically rely on their petrol discount voucher to necessarily deliver the lowest price.

Diesel

On 26 May 2008 the ACCC issued a media release noting the recent strong increases in diesel prices in Australia and identifying some of the factors contributing to the price rise—namely, higher prices of crude oil and refined diesel and continuing strong demand for diesel in China and other countries. The devastating earthquake in China in May damaged power infrastructure and constrained coal transportation, which resulted in greater demand for diesel to generate electricity.

The ACCC monitors the movement of diesel retail prices against international benchmark prices (in Australia's case, the Singapore Gas Oil 50 parts per million sulphur content). Retail prices are shown on the left-hand side and Singapore Gas Oil prices are on the right-hand side. The following chart shows that retail prices broadly tracked movements in the benchmark over the June quarter.

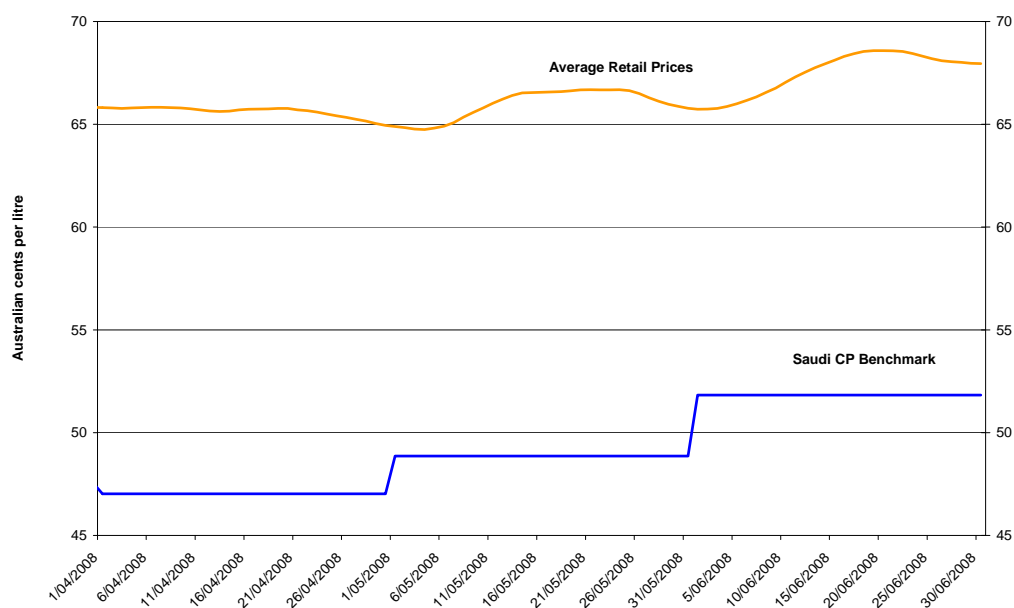
Retail diesel prices—seven day rolling averages—1 April 2008 to 30 June 2008



Automotive liquid petroleum gas

The ACCC monitors the movement of automotive LPG prices against the internationally recognised benchmark for LPG (the average price of Saudi Aramco propane and butane contracts, issued on the first day of every month). The following chart shows that retail prices broadly tracked movements in the benchmark over the June quarter.

Automotive LPG—seven-day rolling average retail prices—1 April to 30 June 2008



Australia Post

Assessment of draft notification to increase reserved letter prices

Australia Post provided a draft price notification to the ACCC on 5 February 2008, in which it proposed to increase the price of a number of its reserved mail services (i.e. services over which Australia Post has a statutory monopoly), including increasing the basic postage rate (BPR) from 50 to 55 cents.

The ACCC has a role in assessing Australia Post's proposed price increases for reserved services under the price notification provisions under Part VIIA of the Trade Practices Act.

Australia Post also proposed to increase the price of other mail services, including large and small ordinary letters, large and small pre-sort ordinary letters, clean mail, reply-paid mail, impact mail and local delivery mail. The proposed price increases are the first for the BPR and other ordinary letters since January 2003 and the first general increase to pre-sort letters since January 1992.

On 20 June 2008 the ACCC released a preliminary view about Australia Post's proposed price increases. The ACCC's preliminary view is not to object to Australia Post's proposed price increases. This preliminary view provides guidance to Australia Post on how it should structure future price notifications to provide more certainty to users of its postal services, and to ensure that Australia Post has strong incentives to reduce costs and increase productivity over time.

Taking account of interested parties' views on the ACCC's preliminary view, the ACCC will form a final decision on the proposed price increases under the price notification provisions of the Trade Practices Act.

Medical indemnity insurance

On 2 May 2008 the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, the Hon Chris Bowen MP, released the ACCC's fifth medical indemnity insurance monitoring report. The report found that medical indemnity insurance premiums were actuarially and commercially justified, including within jurisdictions, for all medical indemnity insurers.

Grocery price monitoring

On 13 May 2008 the federal government announced that the ACCC would be funded to conduct a monthly survey of the prices for typical grocery baskets (e.g. meat vegetables and dairy products) across Australia, and to publish the survey results on a dedicated consumer website. The monthly survey is designed to improve transparency in the grocery market and help consumers locate the cheapest grocery prices and supermarket chain in their area. Development work on the survey and the website has begun and is progressing according to schedule.

Water

Under the *Water Act 2007* the ACCC is responsible for:

- providing advice to the Minister for Climate Change and Water on water market rules
- providing advice to the Minister for Climate Change and Water on water charge rules
- monitoring and enforcing compliance with the water market rules and water charge rules
- providing advice to the Murray-Darling Basin Authority on water trading rules.

These functions are designed to ensure greater consistency and transparency in water-charging arrangements and to enable water markets to operate freely.

On 4 April 2008 the ACCC released an issues paper seeking submissions on the development of water market rules. The purpose of the water market rules is to free up the trade of water access rights within the Murray-Darling Basin. The rules will ensure that policies or administrative requirements of operators of irrigation infrastructure who hold group water access entitlements on behalf of their member irrigators do not prevent or unreasonably delay trade.

On 30 May 2008 the ACCC released an issues paper seeking submissions on the development of water charge rules for irrigation infrastructure operators. Water charge rules applied consistently across the Murray-Darling Basin will help the efficient functioning of water markets by removing distortions to trade and by sending signals to water users about efficient investment in water infrastructure assets. Water charges based on full cost-recovery for water services will contribute to achieving an economically efficient and sustainable use of water resources and water infrastructure assets.

The ACCC will undertake further consultation on water market rules and water charge rules before providing its final advice to the Minister for Climate Change and Water in 2008–09.

5. International activities

The ACCC's international activities support the work the ACCC by promoting international enforcement assistance and best practice regulation as well as by developing and maintaining effective networks and links with international counterpart agencies. Core activities undertaken include:

- managing the ACCC's involvement at international forums, including the coordination and preparation of contributions on issues of relevance to the ACCC
- coordinating information-sharing and enforcement assistance with counterpart agencies
- managing the ACCC's technical assistance activities with developing economies
- advising the ACCC of various global developments through research, analysis and reporting
- building and sustaining strong links with key international officials and organisations.

Bilateral meetings

The ACCC participates in a variety of international events throughout the year. Attendance at these events:

- advocates the work of the ACCC
- promotes competition and consumer protection in the region
- assists in the ACCC receiving global development updates, information and best practice strategies on enforcement activities from counterpart agencies
- assists in building and sustaining strong links with key international officials and organisations.

During the June 2008 quarter, the ACCC:

- participated at the annual International Competition Network conference in Kyoto, Japan.
- was a panel member in a competition roundtable hosted by the Taiwan Fair Trade Commission in Taipei, Taiwan.
- presented and participated at the International Consumer Protection Enforcement Network in Porte Monte, Chile

- attended the International Bar Association's annual communications and competition law conference in Munich, Germany.
- attended the General Counsel Conference in New York, United States of America (USA)
- participated in the Organisation for Economic Co-operation and Development (OECD) competition committee meeting in Paris, France
- attended the OECD ministerial meeting on the Future of the Internet Economy in Seoul, South Korea.
- attended the International Bar Association's 'European and globalisation of anti-trust' conference in Berlin, Germany.

Free trade agreements

The ACCC continues to be an active participant in the Free Trade Agreement negotiation rounds contributing to work on competition and consumer protection issues. The ACCC's goal in participating in such negotiations is to promote competition in the region, ensure that the agreements are compatible with Australia's competition regulations, are practical in implementation and that FTAs contain mechanisms to build cooperative arrangements between the relevant enforcement authorities.

Information requests

The ACCC continues to be active in information-sharing with its international counterpart agencies. During the June 2008 quarter, the ACCC received requests from Canada, Fiji, Mexico, New Zealand, Pakistan, Taiwan, USA and Vietnam. Examples of shared information included the ACCC's activities regarding jewellery 'Was/Now' pricing actions, product safety standards, outreach methodology, cross-border marketing fraud and general competition, regulatory and consumer protection processes and law inquiries.

The ACCC made similar requests to its counterparts in Canada, Germany, the Netherlands, New Zealand, the United Kingdom and the USA about mass marketing fraud, green claims and carbon offset guidelines, and general inquiries to assist enforcement investigations.

Information exchange meetings and study visits

In conjunction with information requests, the ACCC meets with counterpart authorities to share experiences or to provide ACCC expertise to assist in the development of that authority. The following meetings and study visits took place this quarter:

- officials from the Singapore Ministry of Trade and Industry and the Consumers Association of Singapore met with ACCC officers to discuss product safety

- staff exchanged information in two separate meetings with the New Zealand Ministry of Commerce and New Zealand Ministry of Economic Development, particularly on merger and adjudication issues
- staff met with academics and embassy staff from Japan to discuss Australia's competition regime
- telecommunications staff met with officials from the Kenyan Communication Commission
- provincial Chinese officials visited the ACCC to discuss electricity regulation
- ACCC officers met with an official from the Chile Competition Authority for information exchange on competition issues.

Capacity-building activities

The ACCC has an active technical assistance program that is highly regarded internationally. ACCC involvement in technical assistance programs provides staff with valuable experience in training delivery. Capacity-building activities that took place this quarter include:

- Hosting an official from the Chinese Ministry of Commerce, who participated in the Australia–China legal exchange program. The official also participated in the ACCC investigations course, and worked as an investigator in the ACCC's Enforcement and Compliance Division.
- Meeting with Indonesian officials from the Commission for the Supervision of Business Competition to discuss potential capacity-building options.
- Meeting with staff from the Vietnam Competition Administration Department to discuss potential development of a capacity-building program.

6. Reviews and inquiries

Legislative amendments

Trade Practices Legislation Amendment Bill 2008

On 1 May 2008 the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, the Hon. Chris Bowen MP, released an exposure draft of the Trade Practices Legislation Amendment Bill 2008 for public consideration. The draft bill proposes the following amendments to the *Trade Practices Act 1974*:

- The reference to ‘market share’ in s. 46(1AA) is replaced with ‘market power’ and the concept of ‘take advantage’ is introduced into the provision.
- New s. 46(1AB) makes it clear that an ability to recoup losses from predatory pricing conduct is not necessary in order for a corporation to breach s. 46(1AA).
- Clarification is provided on the meaning of ‘take advantage’ in s. 46.
- Private actions claiming a breach of s. 46 may be commenced in the Federal Magistrates Court.
- The monetary threshold under s. 51AC is repealed and the provision will no longer have a threshold.
- The ACCC’s powers under s. 155 are to be extended beyond the commencement of injunctive proceedings until substantive proceedings have been initiated.
- At least one deputy chairperson of the ACCC must have small business knowledge or experience.

On 26 June 2008 the bill was introduced into federal parliament and read a second time (debate being adjourned to a later stage).

National Fuelwatch (Empowering Consumers) Bill 2008

On 29 May 2008 the Australian Government introduced the National Fuelwatch (Empowering Consumers) Bill 2008 into parliament. If passed, the bill will require petrol retailers to notify the price of petrol by 2.00 pm each day and then sell petrol at the notified price for 24 hours, beginning at 6.00 am the following day. Following passage through the House of Representatives on 5 June 2008, the Senate referred the bill and related matters to the Senate Economics Committee for review.

Wheat Export Marketing Bill 2008

The Wheat Export Marketing Bill 2008 became law on 30 June 2008. The legislation proposes to implement reforms to Australia's export wheat-marketing arrangements. It will establish a statutory entity, Wheat Exports Australia (WEA), to regulate the export of bulk wheat from Australia through a wheat export accreditation scheme.

The *Wheat Export Marketing Act 2008* creates the WEA and gives it the powers necessary to develop an accreditation scheme to assess the suitability of companies to be exporters. The WEA will have the power to suspend and revoke accreditation, as well as place conditions on an accreditation granted to an exporter. The WEA will be required to report regularly to growers.

The ACCC's role will be to assess any proposed access undertakings in relation to port facilities that the Bulk Handling Companies submit. The Bulk Handling Companies may choose to provide an undertaking to the ACCC in order to be granted accreditation to export wheat. The proposed access undertakings will be assessed by the ACCC under Part IIIA of the *Trade Practices Act 1974*.

Inquiries

Productivity Commission inquiry into consumer policy

On 30 April 2008 the Productivity Commission released its final *Review of Australia's consumer policy framework* report. This report contains the following important recommendations:

- A national generic consumer protection law should be adopted by the Australian Government and all states and territories.
- The ACCC and state and territory fair trading agencies should have joint responsibility for enforcing the new generic law.
- The ACCC should have sole responsibility for enforcing the product safety provisions of the new law.
- The new generic law should include an unfair contract terms provision that allows regulators and consumers to take action where detriment has been suffered as a result of the use of an unfair term.
- Regulators should be able to take representative legal actions on behalf of consumers whether or not affected consumers are parties to the proceedings.
- The new generic consumer law should include provision for civil pecuniary penalties (including recovery of profits from unlawful activity), banning orders, substantiation notices and infringement notices for minor breaches of the law.

7. Consultative committee liaison activities

Consumer Consultative Committee

The ACCC's Consumer Consultative Committee met on Friday, June 27. Main topics discussed were the Productivity Commission's final report on its review of the Australia's consumer policy framework and the ACCC's consumer education and information strategies. Centrelink staff provided committee members with an overview of the Centrelink review process and ACCC staff updated members on ACCC activities for consumers, including product safety and initiatives for the disadvantaged and vulnerable.

Health Sector Consultative Committee

The ACCC's Health Sector Consultative Committee met on 4 April 2008. Topics discussed at the meeting included recent ACCC enforcement activity, complaints and inquiries received by the ACCC about the health and medical sectors, retail leasing, concerns about possible trade practices issues arising from the credentialling process and ACCC education initiatives.

Infrastructure Consultative Committee

The Infrastructure Consultative Committee met on 16 May 2008 for its fifth meeting. Recent reforms in water were the key focus of the meeting, with a presentation from the Australian Water Association on state reforms and an update from the ACCC on its new water role. The strong interconnection between the water and energy industry (spikes in electricity prices in 2007 were in part attributed to drought) heightened ICC interest in water industry reforms and infrastructure developments.

In response to a member's request, the ACCC provided an overview of work in the area of green marketing and the Trade Practices Act, looking specifically at issues recently raised about carbon offset claims. Progress on the new ICC project, benchmarking international regulatory practices and processes, was detailed. The next meeting of the ICC is due to be held in November 2008 and an invitation will be extended to the newly convened Infrastructure Australia to attend and provide a presentation to ICC members.

Small Business Advisory Group

The Small Business Advisory Group met on 2 May 2008 and discussed a range of issues, including the ACCC's petrol and grocery inquiries, recent legislative amendments, retail leasing, unconscionable conduct, compliance and education initiatives and different methods of engagement with the small business community.

Franchising Consultative Panel

The Franchising Consultative Panel met once during the June quarter on 14 May 2008. The issues discussed at the meeting included the March 2008 amendments to the Franchising Code, ACCC franchising education initiatives, the ACCC's joint research project with Griffith University regarding conflicts in franchising systems and a report from the Office of the Mediation Adviser.

Appendix

Speeches

The Chairman, commissioners and staff gave 21 addresses and presentations in the June 2008 quarter. Significant presentations included:

ACCC Chairman

- 11 June 2008—*Taking a holistic approach to assisting small business*—National Small Business Summit, Sydney.
- 24 May 2008—*Recent and foreshadowed reforms of the Trade Practices Act*—Competition Law Conference, Sydney.
- 30 June 2008—*Delivering for Australian Consumers: making a good Act better*—National Press Club, Canberra.

Deputy Chair

- 8 May 2008—*Green Marketing and the ACCC*, National Product Liability Association.

News releases

During the June 2008 quarter, the ACCC issued 100 news releases and the AER issued seven news releases.

Publications

Publications released during the June 2008 quarter

Corporate

ACCCount, January to March 2008 (electronic only)

ACCC ejournal, issues 46 to 49 (electronic only)

Section 155 and the Trade Practices Act (electronic only, update)

For consumers

Your consumer rights, mobile phone handsets, fact sheet (electronic only)

For small business

Carbon claims and the Trade Practices Act (electronic only)

Small business and the Trade Practices Act (update)

Unconscionable conduct in small business transactions, fact sheet (update)

Product safety

Bunk beds: complying with the mandatory standard, fact sheet

Hot water bottles, safety alert

Keeping baby safe, creating and maintaining a safe environment for infants (DVD)

Prams and strollers, product safety: a mandatory standards guide

Prams and strollers, safety alert

Prams and strollers—safety requirements, fact sheet

Industry codes of conduct

Franchising Code of Conduct compliance manual for franchisors and master franchisees, CD and manual

Franchisee start-up checklist (update)

ACCC reports

ACCC telecommunications reports 2006–07

Medical indemnity insurance: fifth monitoring report (electronic only)

Report to the Australian Senate on anti-competitive and other practices by health funds and providers in relation to private health insurance, 1 July 2006 to 30 June 2007

ACCC issues paper

Carbon offset claims: trade practices issues and other key concerns (electronic only)

Regulated industries

Network, issue 28 (electronic only)

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Callers who are deaf or have a hearing or speech impairment can contact the ACCC through the National Relay Service **www.relayservice.com.au**.

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