



Australian
Competition &
Consumer
Commission

ACCCOUNT

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

1 July to 30 September 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 August the government publicly released the ACCC's inquiry report into the competitiveness of retail prices for standard groceries. The ACCC made three recommendations to the government in relation to planning laws, the Horticulture Code of Conduct and unit pricing. These recommendations arose after careful consideration of information provided to the ACCC through submissions, evidence given at public hearings and the use of the ACCC's information-gathering powers under s. 95ZK of the Act.

Mr Peter Kell and Dr Michael Schaper were appointed as deputy chairs of the ACCC, both for a period of five years. On 5 September 2008 Mr Pat Walker resigned as the Petrol Commissioner. This takes the total number of commission members to seven. On 17 July 2008 Mr Andrew Reeves was appointed as the part-time state/territory member of the AER for a five-year term.

During the September quarter, 18 enforcement related litigation proceedings were commenced in the Federal Court, 10 of which relate to alleged breaches of Part V of the *Trade Practices Act 1974*. One of these new proceedings relates to the use of the ACCC's compulsory information-gathering powers under s. 155 of the Act. The ACCC has again taken this action to protect the integrity of its information-gathering powers and its enforcement investigation processes.

For only the second time since the High Court's Boral decision in 2003 the ACCC commenced proceedings alleging two breaches of s. 46. On this occasion two breaches are alleged by Cement Australia and Pozzolanica in relation to entering into and amending a contract to acquire flyash from Millmerran Power Station in south-east Queensland.

During the last three months, nine litigation proceedings were finalised. Through the GM Holden case the ACCC highlighted the need for accurate representations in green marketing. In the cosmetics industry the ACCC made a valuable contribution to awareness about the risks of using solariums. Proceedings were taken against the Australian Tanning Association and a number of individual solariums resulting in injunctions, declarations and the publication of the courts orders in various forums.

The Federal Court also found a north Queensland art dealer had misled consumers that artwork sold by the gallery was produced by Indigenous artists. The ACCC will continue to scrutinise alleged misleading and deceptive conduct in relation to the Aboriginal Art industry and take action where appropriate.

The ACCC coordinated the international internet sweep held under the banner of the International Consumer Protection and Enforcement Network. It targeted exaggerated and false claims—such as representations about energy savings, ‘too good to be true’ performance and consumers’ refund rights. State and territory fair trading offices and representatives from the Department of the Treasury and the Department of Broadband, Communications and the Digital Economy will also take part in the sweep.

In the area of product safety, the ACCC welcomed the introduction of the Trade Practices (Consumer Product Safety Standard) (Reduced Fire Risk Cigarettes) Regulations 2008 imposing new reduced fire risk requirements on cigarettes manufactured or imported from March 2010. The ACCC also accepted three court enforceable undertakings from three manufacturers found to have supplied products that did not comply with mandatory standards.

Merger activity continued at a high level. During the September quarter, the ACCC completed reviews on a number of major transactions including the Westpac Limited proposed acquisition of St George Bank Limited, National Foods proposed acquisition of Dairy Farmers and Flinders Ports proposed joint venture with DP World Pty Ltd.

On 1 July 2008 the AER became the economic regulator for covered gas transmission and distribution pipelines. The AER assumed responsibility for the regulation of transmission pipelines from the ACCC and the regulation of distribution pipelines in all jurisdictions except WA from state regulators. The AER released two guidelines to support the transition from the former legislative framework to the National Gas Law.

On 30 July 2008 the ACCC released its final decision to accept the ARTC interstate rail access undertaking. ARTC’s undertaking sets out the principles and processes under which ARTC, as an infrastructure provider of rail, will be obliged to provide access to businesses wishing to run trains on ARTC’s interstate rail network. The undertaking applies for a period of 10 years.

As part of its functions relating to water markets the Minister for Climate Change and Water, Senator the Hon. Penny Wong, wrote to the ACCC requesting advice on the water market rules and water charge rules. As a result the ACCC released a number of discussion papers throughout the September quarter seeking submissions from stakeholders on the water market rules and water charge rules.

In the area of legislative amendments, the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, The Hon. Chris Bowen MP, introduced the Trade Practices Amendment (Clarity in pricing) Bill 2008 in parliament in September 2008. In addition, the Trade Practices Legislation Amendment Bill 2008 was passed by the House of Representatives on 1 September 2008; however, the bill is awaiting further consideration in the House after a number of amendments in the bill were rejected by the Senate on 16 September 2008.

1. Enforcement and compliance

Maintaining and enhancing compliance with the *Trade Practices Act 1974* 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.

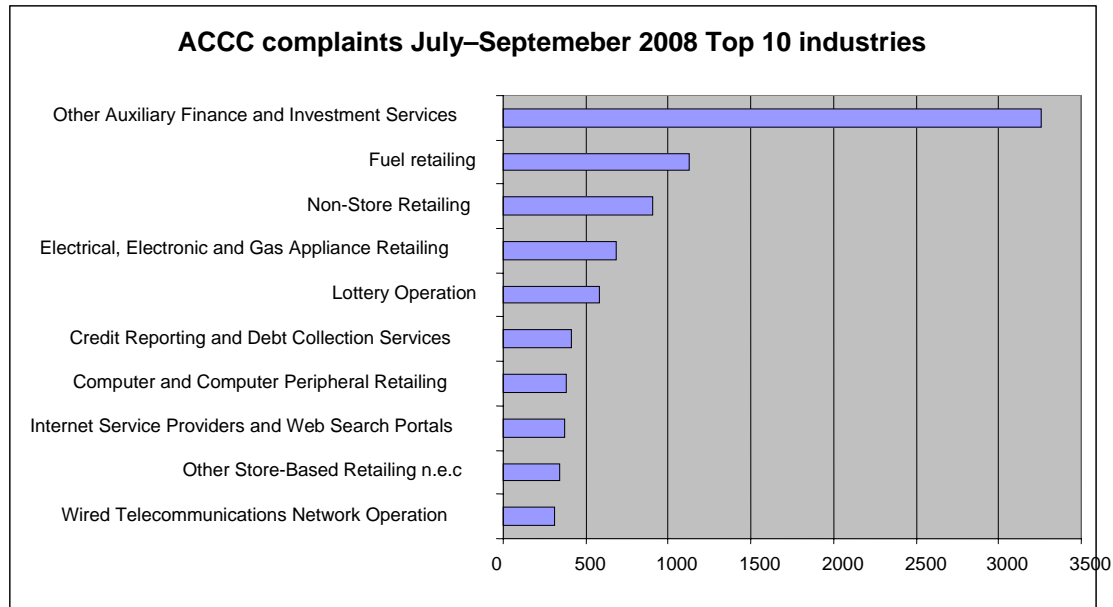
During the September 2008 quarter, the ACCC Infocentre received 35 734 complaints and inquiries from businesses and consumers (email: 8954, telephone: 26 082, letter correspondence 698). Of these complaints and inquiries, 21 362 were entered into the ACCC's database.

The major drivers for these higher contact levels were concerns expressed about fuel pricing, the reporting of scam based activity and the stream of inquiries about the GROCERYchoice website.

July contact levels were influenced by complaints about eBay and PayPal, with a further 348 matters recorded during the month.

On Thursday, 31 July 2008 the Infocentre hosted a debt collection phone-in day, a joint venture between the ACCC and ASIC. The purpose of the day was to gather information about potentially unlawful conduct by debt collectors or creditors. There were 143 calls relating to debt collection issues received on the day: 136 complaints and 7 inquiries.

The following chart illustrates the 10 industries attracting the most complaints during the quarter.



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

Seventy-eight per cent of the complaints and inquiries entered into the ACCC's database related to consumer protection matters, which was higher than the 2007 quarterly average of 54 per cent. Competition matters accounted for 4 per cent of contacts, which was the same quarterly average figure reported in 2007. Other matters accounted for 18 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

Eighteen enforcement litigation proceedings were commenced in the Federal Court during the September 2008 quarter.

ACCC v Seal-A-Fridge Pty Ltd and Anor **Commenced 4 July 2008 | QUD184/2008**

Proceedings under parts IVA and IVB for alleged unconscionable conduct towards its franchisees and failure to comply with the Franchising Code of Conduct in the mobile refrigeration seal replacement industry.

ACCC v Oobi Baby Pty Ltd & Anor

Commenced 16 July 2008 | **VID550/2008**

Proceedings under Part IV for alleged resale price maintenance of children's clothing and toys.

ACCC v Australian Co-operative Foods Limited

Commenced 16-Jul-2008 | **VID540/2008**

Proceedings under Part V for alleged misrepresentations about the type and the nutritional attributes of Parmesan-style cheese.

ACCC v All Trades Services Pty Ltd

Commenced 17 July 2008 | **NSD1119/2008**

Proceedings under Part V for alleged misleading representations in relation to the provision of marketing and job finding subscription services.

ACCC v Rural Network Pty Ltd & Anor

Commenced 22 July 2008 | **QUD214/2008**

Alleged breach of terms of the s. 87B undertaking given to the ACCC on 4 March 2008 including failing to make specified refunds and undertake trade practices training. The original proceedings alleged misleading or deceptive conduct in relation to the promotion of an introduction agency.

ACCC v Farzad Nooravi & Anor

Commenced 23 July 2008 | **QUD215/2008**

Proceedings under Part V for alleged misleading representations that three artists whose work they promoted and sold were of Australian Aboriginal descent when they are not.

ACCC v White Top Taxis Ltd & Ors

Commenced 8 August 2008 | **VID629/2008**

Proceedings under the Victorian Competition Code for allegedly making or arriving at a series of arrangements or understandings in contravention of s. 45(2)(a)(i) of the code.

ACCC v Richard Alexander Roberson

Commenced 15 August 2008 | **NSD1290/2008**

Alleged breach of a s. 87B undertaking. The undertaking was accepted by the ACCC on 2 April 2008 and was offered by Mr Roberson to address concerns that representations made by Mr Roberson were likely to mislead consumers as to the availability, terms and conditions of employment opportunities he claimed existed.

ACCC v LED Technologies Pty Ltd & Anor

Commenced 19 August 2008 | **VID653/2008**

Proceedings under Part V for alleged misleading or deceptive conduct and false or misleading representations that housing and lenses on certain LED products were made from polycarbonate when in fact they were made from acrylic.

ACCC v TMG Asia Pacific Pty Ltd

Commenced 19 August 2008 | **NSD1310/2008**

Proceedings under Part V for alleged false, misleading and deceptive conduct regarding television advertisements promoting mobile premium subscription quiz services.

ACCC v Narnia Investments Pty Ltd

Commenced 20 August 2008 | **TAD33/2008**

Proceedings under Part V for alleged misrepresentations regarding a consumer's termination and refund rights in relation to a hair replacement contract.

ACCC v SeNevens International Ltd

Commenced 20 August 2008 | **TAD34/2008**

Proceedings under Part V for alleged false, misleading and deceptive conduct relating to promotion of disposable Safeties Nature Nappy products.

ACCC v Clarus Telecom Pty Ltd

Commenced 28 August 2008 | **VID678/2008**

proceedings under Part V for alleged misleading or deceptive conduct by representing via telemarketers that the company and the services they provide are affiliated or provided on behalf of Telstra Corporation Ltd.

ACCC v Binert Kloosterman & Anor

Commenced 4 September 2008 | **NSD1391/2008**

Proceedings under Part V for alleged false, misleading and deceptive representations made on the website www.designerbrandoutlet.com including representations that items of genuine designer label women's clothing were available for purchase when either no items were supplied or the items of clothing supplied were counterfeit copies.

ACCC v Ingles Group (Qld) Pty Ltd

Commenced 8 September 2008 | **QUD284/2008**

Proceedings under Part V for alleged misleading or deceptive representations made to residents and potential purchasers as to the status of the council approval and otherwise to the progress of the construction of the golf course at a residential golf course community.

ACCC v Cement Australia Pty Ltd & Ors

Commenced: 15 September 2008 | **QUD295/2008**

Proceedings under Part IV for allegedly taking advantage of market power for the purpose of preventing entry and competitive conduct in the relevant concrete-grade flyash market.

ACCC & Anor v Link Solutions Pty Ltd & Ors
Commenced 17 September 2008 | **NSD1473/2008**

Proceedings against 28 parties, including telecommunications companies and their related companies, finance companies and individuals, alleging exclusive dealing and misleading and deceptive conduct.

ACCC v Narnia Investments Pty Ltd
Commenced 17 September 2008 | **TAD39/2008**

Criminal proceedings for allegedly knowingly providing false and misleading information to the ACCC in response to a section 155 notice.

Proceedings concluded

Nine enforcement litigation proceedings were finalised during the September 2008 quarter.

ACCC v Carrerabenz Diamond Industries Pty Ltd & Anor
Commenced 20 December 2005 | **concluded** 09 July 2008 | **QUD572/2005**

Criminal proceedings for alleged misleading two-price comparisons advertising diamond clearance sales where the diamonds in question had not previously been offered for sale to the general public at the higher 'Usual Price'.

Justice Logan | Federal Court, Brisbane

Outcome | convicted the corporate defendant Carrerabenz Diamond Industries Pty Ltd on all 27 charges and imposed a fine of \$220 000. Charges relating to the personal defendant were dismissed.

Braddon Ralph Webb

Commenced 16 June 2008 | **concluded** 29 July 2008 | **87/2008**

Supreme Court action under the Absconding Debtors Act in relation to payment of penalty and costs of over \$620 000 associated with contraventions of the Act arising from involvement with the Chaste Corporation and Mr Peter Foster. Interlocutory remedies included Mr Webb's arrest, the surrender of his passport, and the conduct of an examination as to his income and assets.

ACCC v Hercules Iron Pty Ltd

Commenced 06 May 2008 | **concluded** 08 August 2008 | **VID1186/2007**

Contempt proceedings for alleged breaches of the judgment of Justice Gordon dated 5 February 2008. The original proceedings relate to breaches of mandatory product safety standard (bunk beds) under Part V of the Act.

Justice Gordon | Federal Court, Melbourne

Outcome | declarations, fines and costs.

ACCC v Australian Co-operative Foods Limited

Commenced 16 July 2008 | **concluded** 29 August 2008 | **VID540/2008**

Proceedings under Part V for alleged misrepresentations about the type and the nutritional attributes of Parmesan-style cheese.

Justice Middleton | Federal Court, Melbourne

Outcome | declaration, injunction, corrective advertising, establish a trade practices compliance program, costs.

ACCC v Farzad Nooravi & Anor

Commenced 23 July 2008 | **concluded** 29 August 2008 | **QUD215/2008**

Proceedings under Part V for alleged misleading representations that three artists whose work they promoted and sold were of Australian Aboriginal descent when they are not.

Justice Logan | Federal Court, Brisbane

Outcome | declarations, injunctions, an order requiring the respondents to write to purchasers of artworks produced by any of the three non-Aboriginal artists advising them of the court proceedings, costs.

ACCC v Australian Tanning Association Inc & Ors

Commenced 11 June 2008 | **concluded** 29 August 2008 | **VID420/2008**

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

Justice Finkelstein | Federal Court, Melbourne

Outcome | declarations, injunctions, establish a trade practices compliance program, publicise the outcome of the proceeding in various forums (in-store and websites) and costs.

ACCC v Oobi Baby Pty Ltd & Anor

Commenced 16 July 2008 | **concluded** 1 September 2008 | **VID550/2008**

Proceedings under Part IV for alleged resale price maintenance of children's clothing and toys.

Justice Finkelstein | Federal Court, Melbourne

Outcome | declarations, injunctions, pecuniary penalty of \$40 000, publication of a corrective notice on its website www.oobi.com.au and to write to all its retail customers informing them of its resale price maintenance conduct, and costs. Alexandra Riggs to attend trade practices law compliance training.

ACCC v Rural Network Pty Ltd & Anor

Commenced 22 July 2008 | **concluded** 5 September 2008 | **QUD214/2008**

Alleged breach of terms of the s. 87B undertaking accepted by the ACCC on 4 March 2008 including failing to make specified refunds and undertake trade practices training. The original proceedings alleged misleading or deceptive conduct in relation to the promotion of an introduction agency.

Justice Spender | Federal Court, Brisbane

Outcome | declarations, order that the refunds be made payable to the ACCC within seven days, order that specific information regarding the previous court action be sent to all new customers of both Rural Network and any other corporation offering introduction agency services of which Ms Nolo (aka Viney, McDonald) is a director, or is otherwise involved in the management for the next 12 months.

ACCC v GM Holden Ltd

Commenced 16 January 2008 | **concluded** 18 September 2008 | **WAD16/2008**
Proceedings under Part V for alleged misleading and deceptive conduct and false representations concerning 'green' claims made in the advertising of Saab vehicles by GM Holden.

Justice Siopis | Federal Court, Perth

Outcome | declarations, costs.

Current Full Federal Court applications

Two enforcement matters are currently under appeal to the Full Federal Court:

Prouds Jewellers Pty Limited | NSD607/2008

Commenced | 8 December 2006

Status | On 30 April 2008 the ACCC appealed against part of the judgment of Justice Moore dated 10 April 2008. On 22 May 2008 Prouds filed a cross-appeal.

Ascot Four Pty Ltd | SAD141/2008

Commenced | 20 December 2006

Status | On 18 September 2008 Ascot Four Pty Ltd appealed against the whole of the judgment of Justice Mansfield of the Federal Court dated 21 August 2008.

Current Supreme Court applications

There are no current enforcement Supreme Court applications.

Current High Court applications

There are two current enforcement applications for special leave to appeal to the High Court.

Baxter Healthcare Pty Ltd and others

Commenced | 1 November 2002

proceedings under Part IV for alleged misuse of market power, exclusive dealing in the supply of medical products to certain Australian state and territory health purchasing authorities.

Status | On 11 September 2008 Baxter Healthcare Pty Ltd filed an Application for Special Leave to Appeal to the High Court against the whole of the judgment of the Full Federal Court on 14 August 2008.

Channel Seven Brisbane Pty Ltd & Ors v ACCC

Commenced | 27 September 2005

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

background | On 12 October 2007 Justice Bennett of the Federal Court, Sydney made declarations and ordered injunctions, a publication order and costs. On 23 June 2008 the full federal court reversed the finding by Justice Bennett that Channel Seven had contravened section 52 of the 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'.

Status | On 17 July 2008 ACCC filed an Application for Special Leave to Appeal to the High Court against the judgment of the Full Federal Court on 23 June 2008.

Section 87B undertakings accepted

The ACCC accepted 15 enforcement s. 87B undertakings during the September 2008 quarter. Undertakings were received from:

1. Vision Group Holdings Limited

Vision Group Holdings Limited has provided court enforceable undertakings that it will:

- refrain from engaging in the potentially contravening conduct
- not in future, enter into any agreement that would restrict the supply of goods or services to particular persons or classes of persons in particular circumstances or on particular conditions in breach of s. 45 of the Act
- implement a trade practices law compliance program for Vision Group employees and other persons involved in its business.

2. Cotton Dreams Pty Ltd

Cotton Dreams Pty Ltd has provided court enforceable undertakings that it will:

- refrain from selling any children's nightwear products that are not compliant
- destroy all non-compliant garments returned by consumers and in stock
- implement a trade practices law compliance program.

3. Lincraft Australia Pty Ltd

Lincraft Australia Pty Ltd has provided court enforceable undertakings that it will:

- refrain from selling any children's nightwear products that are not compliant
- destroy all non-compliant garments returned by consumers and in stock

- conduct an independent review of its existing trade practices compliance program and upgrade it accordingly.

4. Fairfax Digital Australia and New Zealand Pty Ltd

Fairfax Digital Australia and New Zealand Pty Ltd has provided court enforceable undertakings that it will:

- not publish any advertisement or promotional information on websites representing that Domain mobile phone services are free, in circumstances where consumers may incur charges or fees when using those services
- cause a corrective notice to be published on the Domain homepage
- update its trade practices law compliance program to ensure it will continue to meet its obligations under the Act.

5. Busby Distribution Pty Ltd, trading as Aldo Australia

Busby Distribution Pty Ltd has provided court enforceable undertakings that it will:

- ensure sunglasses it supplies that are subject to a mandatory safety and/or information standard prescribed under the Act comply with the relevant standard
- obtain compliance certificates, or otherwise seek assurance, from Busby’s suppliers or through engaging independent testing from an accredited testing agency that sunglasses supplied to Busby comply with any applicable mandatory safety and/or information standard prescribed under the Act
- put in place procedures to ensure display and sales stock of sunglasses are appropriately labelled
- implement a trade practices compliance program to minimise the risk of future breaches of Part V of the Act.

6. Living Momentum Pty Ltd

Living Momentum Pty Ltd has provided court enforceable undertakings that it will:

- for a period of three years, ensure that goods supplied by Living Momentum that are subject to a prescribed safety and/or information standard under the Act comply with the relevant standard
- publish an information notice on its website
- display an information notice at the point of sale in its store for a period of no less than three months
- contact its customers who purchased the products to offer them the option to repair and modify the bunk bed, or be refunded the cost of the bunk bed and report on this obligation to the ACCC

- establish and implement and maintain a trade practices compliance program for 3 years.

7. EziBuy Pty Ltd

EziBuy Pty Ltd has provided court enforceable undertakings that it:

- will ensure all future advertising for all of its product range will accurately describe the composition, quality or standard of the product range
- has placed corrective advertising on its websites and in its catalogues
- has offered refunds to customers
- has implemented a trade practices corporate compliance program for Ezibuy employees.

8. Cotton On Clothing Pty Ltd

Cotton On Clothing Pty Ltd has provided court enforceable undertakings that it will:

- not represent their products contain wool or sheepskin unless those products do in fact contain the represented materials
- display a corrective notice at the main service counter of each of its Australian retail outlets advising consumers of the incorrect ‘Lambskin’ labelling
- offer a refund of the purchase price to all Cotton On Clothing customers who purchased a ‘Lambskin’ labelled Home Boot who advise Cotton On Clothing staff they believe they had been misled by the ‘Lambskin’ labelling
- develop and implement a trade practices compliance program which includes trade practices law compliance training for relevant staff and a corporate complaints-handling system to ensure similar potential breaches of the Act do not occur in the future.

9. Austrimi Seafoods Pty Ltd

Austrimi Seafoods Pty Ltd has provided court enforceable undertakings that it will:

- not supply the product in its current packaging
- not use the name ‘Kalamari’ in relation to the product
- not supply seafood products in packaging and/or with labelling that conveys an overall impression that the product consists mainly of, or includes a not insubstantial proportion of, a particular seafood ingredient when this is not the case
- place a corrective notice on its website

- use its best endeavours to have its retail customers place corrective notices at point of sale for a period of 28 days
- implement a compliance program.

10. V8 Supercars Australia Pty Ltd

V8 Supercars Australia Pty Ltd has provided court enforceable undertakings that it will:

- ensure any future claims about ‘green marketing’ will be considered by a solicitor with experience in trade practices law before being made
- ensure any future claims about trees being planted to offset carbon emissions will include an explanation about the period of time before those emissions would be offset
- place an acknowledgement of the ACCC’s concerns on its website for a period of no less than two months.

11. Raktos Distribution Services Pty Limited & Ors

Raktos Distribution Services Pty Limited has provided court enforceable undertakings that it will:

- refrain from supplying tobacco products which do not comply with the tobacco regulations which are in force at any particular time
- remove non-complying tobacco products from sale and offer a full refund of the purchase price or replacement tobacco products to retailers who bought non-complying tobacco products from Raktos or its directors
- implement and maintain a trade practices law compliance program.

12. Farzad Nooravi and Ms Homa Nooravi

Farzad Nooravi and Ms Homa Nooravi have provided court enforceable undertakings that they will implement a trade practices compliance program.

13. GM Holden Ltd

GM Holden Ltd has provided court enforceable undertakings that it will:

- refrain from republishing the ‘Saab Green Claims’ advertisements
- retrain all its Saab marketing staff in relation to misleading and deceptive conduct in the context of ‘green’ marketing claims to make them aware of their responsibilities under the Act, and
- have the training reviewed by an independent third party and have the reviewer provide a report to the ACCC about the training.

14. Graeme Angus Ingles & Ingles Group (Qld) Pty Ltd

Graeme Angus Ingles & Ingles Group (Qld) Pty Ltd have provided court enforceable undertakings that it will:

- place corrective notices in the *Gold Coast Bulletin* newspaper and its websites
- on a quarterly basis, place a notice on its websites advising of the progress of the construction of the golf course
- on a quarterly basis, mail out a notice to residents of the estate advising of the progress of the construction of the golf course
- establish, implement and maintain a trade practices compliance program for five years to minimise the risk of future breaches of Part V of the Act.

15. Global Web Enterprises & Brendon Nicholas

Brendon Nicholas has provided court enforceable undertakings that he will:

- not cause to be republished, or otherwise be involved in the republication by any persons, of the cash for organs website, solicit any person to make a payment for membership and represent that persons can lawfully buy or sell organs through the use of the website
- not represent that the site is in any way affiliated with medical professionals and represent via a website that a person has provided a testimonial in relation to the goods or services when that is not the case
- attend a trade practices compliance seminar within six weeks of commencing or joining the operations of any new business, trading via a website or joining the operations of any new training company, and within six months of this undertaking coming into effect complete 20 hours of volunteer work with a registered health charity.

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 to monitor emerging trade practices issues and educate relevant stakeholders.

During the September 2008 quarter, the ACCC attended 70 meetings with government and industry representatives, small business operators and consumer groups nationally; participated in seven franchising expos and field days; and conducted 37 presentations to small business operators, industry associations and consumer groups—for example at forums such as the Australia Post Business Forum (Melbourne), Franchising Expo (Brisbane), the Real Estate Institute of Tasmania's Annual Conference (Hobart) and a meeting of the Corporate Environmental Managers' Group (Sydney).

The ACCC frequently works with other regulatory agencies to assist consumers and business in a range of areas. The ACCC and the Australian Securities and Investments Commission (ASIC) remain concerned about ongoing reports of harassment and coercion, and other problems relating to debt collection practices despite the existence of the *Debt collection guideline: for collectors and creditors* and industry efforts to enhance compliance. During this quarter, the ACCC worked with ASIC to focus on issues of consumer concern relating to debt collection practices. Their activities are described below.

In a separate initiative, the ACCC also worked with the South Australian Office of Consumer and Business Affairs to educate staff at more than 30 rug and carpet stores about their fair trading obligations in relation to comparative ('two price') advertising.

The ACCC was also involved in the following areas:

Consumers

The debt collection phone-in day

The ACCC and ASIC jointly held a debt collection phone-in day on Thursday 31 July 2008. The phone-in was the first step of a process to capture intelligence about current concerns relating to debt collection practices being experienced by consumers and to identify whether problematic patterns of conduct exist.

A strong response from consumers was received on the day and preliminary analysis indicates at least some concerning patterns of conduct. The majority of calls received during the period related to conduct by third party collectors acting as agent or assignees. The dominant category of complaints involved allegations of harassment and coercion. Other significant complaint categories included:

- disputes about the debt
- difficulty accessing information about the alleged debt
- multiple collectors
- incorrect identification of debtors
- difficulties associated with negotiating payment plans

A significant number of calls involved inquiries of a general nature where debtors sought clarification of their rights and responsibilities under consumer protection laws. A number of these callers were provided with copies of the joint ASIC – ACCC consumer guide *Dealing with debt: your rights and responsibilities*.

The debt collection forum

Following the phone-in day, a joint ACCC and ASIC debt collection forum was held on Friday, 5 September 2008. The forum was a constructive and open discussion of the major issues affecting both consumers and the industry, with a view to achieving outcomes that will minimise consumer detriment from debt collection practices, in particular the assignment of debt.

The program included keynote presentations and panel discussion sessions to capture the different views and experiences of over 90 delegates. Representatives of consumers, creditors, industry, dispute resolution schemes, and regulators participated in the event. Key issues identified during the forum included:

- recognition of increasing trends towards debt assignment and financial hardship
- the nature of assigned debt, obligations of assignors and assignees, best practice principles for the sale of debts and complaint trends
- responses to financial hardship
- the importance of access to external dispute resolution

The ACCC and ASIC are assessing the complaints received during the phone in and the input provided by delegates at the forum. Matters that require enforcement activity will be identified and both agencies will continue to work closely with all stakeholders to develop effective mechanisms to ensure compliance with the *Debt collection guideline: for collectors and creditors* and consumer protection law.

Mobile premium services

In August the ACCC published information to educate consumers about mobile premium phone services. The ACCC in conjunction with Australian Communications and Media Authority (ACMA) developed a fact sheet: *Your consumer rights; mobile phone premium services*. The fact sheet advises

consumers to be wary before signing up to premium services. The ACCC also updated its website to provide consumers with online advice on dealing with mobile premium services.

SCAMwatch radar alerts

The ACCC issued several SCAMwatch radar alerts during the period, warning Australians about the following scams:

- Beijing Olympic Games tickets scams
- inheritance scam in your letterbox
- ‘death threat’ SMS scam
- airline ticketing scam emails which may cause computer viruses
- fake rental properties and shared accommodation listings
- casino survey telemarketing scam
- telemarketing calls promising ‘free’ holidays

Engagement and advice

The ACCC continues to work with a range of government and private sector groups on different initiatives aimed at enhancing the fair trading environment and ensuring consumers understand their rights. During the September quarter, this included the Australasian Consumer Fraud Taskforce (which the ACCC chairs), the Consumers Federation of Australia, Department of Resources, Energy and Tourism, Standards Australia and ACMA

Businesses

This quarter, the ACCC:

- Assessed 24 compliance program review reports, accepted 18 trade practices training confirmations and finalised 15 trade practices compliance program matters
- Worked with the Council of Small Business Organisations Australia to develop an online survey to gauge small business understanding of, and experience relating to, unconscionable conduct. The responses to the survey will inform future ACCC education and guidance materials on the topic
- Presented to a range of industry groups (including ‘The Executive Connection’) on the topic of cartels—what they are, how to recognise them and the penalties for involvement. Additional presentations to local and territory government organisations focused on the effect of cartel conduct on the procurement process.
- Worked with business enterprise centres in a number of states to develop seminars to educate potential franchisees and small business people about their rights and obligations under the Trade Practices Act. Members of the ACCC’s Outreach team also gave presentations at the Australian Defence Force’s transition seminars on the same topic.

- Attended meetings with organisations concerned with and involved in the development of the new standard for organic and biodynamic Products and the Therapeutic Goods Advertising Code Council (TGACC).
- Produced revised editions of small business publications *Small business and the TPA* and *Small business and unconscionable conduct*, as well as one edition of each of the ACCC's online publications *ACCC briefing* and *ACCC infolink*.

Codes of conduct

Mandatory codes

The ACCC is currently responsible for administering three prescribed industry codes of conduct.

Trade Practices (Industry Codes—Franchising) Regulations 1998

The purpose of this code, which came into effect on 1 July 1998, is to regulate the conduct between franchisors and franchisees. On 1 March 2008 the Australian Government implemented a number of amendments to the Franchising Code. These amendments aim to increase the transparency, quality and timeliness of disclosure to existing and prospective franchisees.

During the September 2008 quarter, the ACCC:

- provided a detailed submission to the Parliament of Australia Joint Committee on Corporations and Financial Services inquiry into the Franchising Code of Conduct
- continued to work with industry associations such as the Franchise Council of Australia, the Franchisees Association of Australia and the Australian Retailers Association regarding joint educational activities
- worked to educate industry participants about their rights and responsibilities under the Franchising Code by engaging with the franchising sector in educational seminars
- produced an article for *Business Franchise* magazine about rights and obligations under the Franchising Code, the role of the ACCC and important steps to consider before entering into a franchise agreement
- continued our engagement with Griffith University on a joint research project to identify the main causes of conflict in franchise systems and to provide a framework for addressing such conflict before it occurs.

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 1974*.

During the September 2008 quarter, the ACCC:

- provided a detailed submission to the Oilcode review being conducted by Resources, Industry and Tourism. In its submission, the ACCC commented on:
 - its Oilcode compliance activities
 - fuel reselling businesses
 - terminal gate pricing (TGP) arrangements
 - the dispute resolution scheme
- continued to work with industry stakeholders, such as petroleum retailers, distributors and industry associations, to increase their awareness of the requirements of the Oilcode. This included maintaining the Oilcode Information Network free subscription service as well as the ACCC's Oilcode-specific webpage.

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 September 2008 quarter, the ACCC met with the Department of Agriculture, Fisheries and Forestry to discuss the recommendations within the ACCC's *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries* that relate to the Horticulture Code. The recommendations of the report included:

- the inclusion of retailers, exporters and processors
- the inclusion of transactions entered into under agreements made before 15 December 2006
- that a merchant be required to provide a grower with either a price or price formula before delivery
- allowing agents and growers to engage in pooling and price averaging.

Voluntary industry codes of conduct

Effective voluntary industry codes serve the purpose of fostering more effective compliance with the *Trade Practices Act 1974*. During the September quarter the ACCC provided guidance to industry and/or government regarding national voluntary industry codes of conduct such as the Indigenous Australian Art Commercial Code of Conduct and the Medicines Australia Code of Conduct.

The ACCC has also provided comment on the Australian Association of National Advertisers *Regulating self proclaimed 'green' claims: discussion paper*, which proposes, among other things, an industry code of conduct.

Product safety

The ACCC is responsible for developing, reviewing and enforcing Trade Practices Act product safety and information standards and product bans. The Product Safety branch develops and reviews mandatory standards and bans. It also provides guidance to staff and suppliers on these standards and bans, including supplier and consumer education and compliance activities.

The ACCC receives product recall notifications and enters the recalls on the Product Recalls Australia website. It also provides advice to suppliers on correct recall procedures and monitors emerging safety issues, including the investigation of injury reports.

Liaison activities

During the quarter, the ACCC:

- attended and presented at the 2008 National Toy Summit hosted by the Queensland Attorney General and Department of Justice. The summit provided an opportunity for industry, testing agencies, regulators and safety/consumer groups to discuss and develop strategies to improve toy safety.
- continued to liaise with Customs on a variety of product safety issues relating to the enforcement of the prohibited imports regulations.
- met with cosmetic industry stakeholders regarding the Productivity Commission's review of chemicals and plastics regulation.
- continued to liaise with state and territory fair trading/consumer affairs agencies regarding the following Standing Committee of Officials of Consumer Affairs projects:
 - product safety framework
 - product safety system/overarching review
 - harmonisation of standards and bans.

Mandatory product safety and information standards

Reduced fire risk cigarettes

The Trade Practices (Consumer Product Safety Standard) (Reduced Fire Risk Cigarettes) Regulations 2008 became law when they were registered on the Federal Register of Legislative Instruments on 22 September 2008 imposing new reduced fire risk requirements on cigarettes manufactured or imported from March 2010. The standard was developed with the aim of reducing the risk of death or injury caused by fires which result when smouldering cigarettes inadvertently come into contact with flammable materials.

Lead in toys

In response to major world wide recalls of toys having excess levels of lead, a Trade Practices Act ban on toys with a lead migration level greater than 90 parts per million was introduced on 19 September 2007 for a period of 18 months.

This ban was designed to provide adequate consumer protection in the interim while a standard is being developed.

Border protection is already in place, with a Customs (Prohibited Imports) Regulation dealing with levels of lead migration from toys.

A draft regulation impact statement proposing a new mandatory standard prescribing maximum levels of lead migration in toys was circulated for public and stakeholder comment, and technical details are now being finalised.

Reviews of mandatory standards

Reviews of mandatory standards for trolley jacks and vehicle support stands have been completed with revised mandatory standards introduced on 15 August 2008. The revised standards were updated to include AS/NZS 2615:2004 and AS/NZS 2538:2004.

Reviews of mandatory standards for flotation aids and aquatic toys, vehicle jacks, and portable ramps for motor vehicles are continuing. A review of the mandatory standard for bunk beds has commenced.

Product safety enforcement/compliance outcomes

- Following ACCC action, the Federal Court declared that Hercules Iron Pty Ltd and its director, Tom Hatz, were guilty of contempt by failing to comply with court orders prohibiting supply of bunk beds that did not meet the mandatory product safety standard. A fine of \$10 000 on each of the company and Mr Hatz was imposed and plus orders that the parties pay the ACCC's legal costs on an indemnity basis.
- The ACCC accepted court enforceable undertakings from Living Momentum Pty Ltd, a Western Australian importer and retailer of bedroom furniture, for the supply of non-compliant bunk beds. The bunk beds failed to meet a number of performance and marking requirements of the mandatory standard. The company published a recall/information notice in a Western Australian newspaper, on its website and in-store. It also undertook to contact customers who had been supplied the bunk beds and to establish and implement a trade practices law compliance program.
- Busby Distribution Pty Ltd, trading as Aldo Australia, provided court enforceable undertakings for the supply of sunglasses that failed to comply with the prescribed mandatory standard. In addition to sunglasses that failed the labelling requirements, Aldo reviewed its range of products and advised that it had sold 21 models of sunglasses that failed the performance requirements of the standard. Aldo conducted a voluntary product safety recall. The company also undertook to supply compliant sunglasses, to institute procedures ensuring that display and sales stock are appropriately labelled and to implement a trade practices law compliance program.
- Online trader, Xport Investments Pty Ltd issued a prompt national voluntary recall of two models of child restraint systems for use in motor vehicles after the ACCC raised concerns that the systems may not comply with the prescribed consumer product safety standard. Some 24 models of

the Baby Shield child restraint were sold through online auction websites or through eBay.

- Refunds or replacement tobacco products were offered to retailers as part of a court enforceable undertaking provided to the ACCC by Raktos Distribution Services Pty Limited. Raktos, which imports and distributes tobacco products and accessories, supplied Captain Black brand cigars and loose tobacco products that did not comply with the tobacco labelling requirements prescribed in the regulations. Raktos undertook to refrain from supplying non-compliant products and to implement and maintain a trade practices law compliance program.

Product safety investigations of emerging issues

Investigations are continuing into the safety issues associated with formaldehyde in timber, phthalates in toys and other children's products, risks associated with the inhalation of baby oil containing hydrocarbons, the link between talcum powder and ovarian cancer and disposable protective clothing.

Consumer awareness materials—domestic treadmills

Analysis of emergency room hospital presentations over recent years indicates there have been a significant number of serious friction burn injuries to young children from contact with operating domestic treadmills. More than 100 serious burn injuries resulting from treadmills have been identified in New South Wales, Victoria and Queensland.

The ACCC, in consultation with state fair Trading agencies, is currently preparing consumer awareness materials alerting parents and carers to the dangers of allowing young children near moving treadmills.

A hazard alert brochure on burn injuries from treadmills is expected to be launched within the next few weeks. The ACCC will also examine the case for regulation requiring appropriate hazard warning to be affixed to domestic treadmills.

Product Recalls Australia (PRA)

The PRA website provides consumers and state and territory regulators with up-to-date information on all Australian safety-related recalls. During this quarter some 216 new recalls were entered on the database, comprising recalls of 42 consumer products, 14 food products, 120 therapeutic goods and 40 motor vehicles.

The ACCC also devoted resources to answering inquiries about the trade withdrawals of Chinese manufactured products containing melamine.

Recall audits

As part of monitoring the effectiveness of consumer product recalls, the ACCC undertook five onsite supplier recall assessment visits of high profile recalls during the quarter.

3. Mergers

The ACCC's outputs of ensuring compliance with competition laws, fostering competitive market structures and informed behaviour are supported through its assessment of mergers, acquisitions, and asset sales under s. 50 of the Act.

A total of 106 reviews (including confidential and public merger reviews) were conducted by the ACCC between 1 July and 30 September 2008. Of these, 97 merger proposals were not opposed and a further three were not opposed subject to court enforceable undertakings. The ACCC expressed concerns following one confidential review and accepted a variation to an earlier undertaking. No decision was made on five reviews because either the proposal was withdrawn, or a view could not be formed on a confidential basis.

Merger reviews undertaken in the September 2008 quarter

	Confidential	Public	Total
Total reviews undertaken 1 July 08 to 30 Sept 08	58	49	107
This total can be broken down into the following categories			
Not opposed	56	41	97
Finished—no decision (including withdrawn) ¹	1	4	5
Opposed outright	0	0	0
Confidential review—ACCC concerns expressed	1	0	1
Resolved through undertakings ²	0	3	3
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 September 2008 quarter. This does not include the five matters where no decisions were made.

Time taken to undertake merger reviews	Number of reviews	Percentage of mergers
Two or fewer weeks	57	56 per cent
Four or fewer weeks	85	84 per cent
Six or fewer weeks	90	89 per cent
Eight or fewer weeks	96	95 per cent
More than eight weeks	5	5 per cent

Statements of issues

Five statements of issues were released during the September quarter:

- Metcash Trading Limited—proposed acquisition of Symbion Pharmacy Services Pty Limited; and proposed joint venture between Metcash Trading Limited and Sigma Pharmaceuticals Limited
- Parmalat SpA and Murray Goulburn Co-operative Co Ltd—proposed acquisition of Australian Co-operative Foods Limited (Dairy Farmers)
- Medibank Private Limited—proposed acquisition of Australian Health Management Group Limited
- Westpac Banking Corporation—proposed acquisition of St George Bank Limited
- BHP Billiton Ltd—proposed acquisition of Rio Tinto Ltd.

Public competition assessments

To support the aim of fostering informed markets 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 which have important precedence value.

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

- Woolworths Limited proposed acquisition of Karabar Supabarn
- National Foods Limited and Warrnambool Cheese and Butter Factory Company Holdings Limited—proposed acquisition of Australian Co-operative Foods Limited (Dairy Farmers)
- Westpac Banking Corporation—proposed acquisition of St George Bank Limited
- Flinders Ports Pty Ltd—proposed joint venture with DP World (SA) Pty Ltd.

Section 87B undertakings

Three s. 87B undertakings were accepted on matters reviewed within the September quarter:

- National Foods Limited and Warrnambool Cheese and Butter Factory Company Holdings Limited—proposed acquisition of Australian Co-operative Foods Limited (Dairy Farmers)
- Flinders Ports Pty Ltd—proposed joint venture with DP World (SA) Pty Ltd
- Tasmanian Government and Aurora Energy—acquisition of the Tamar Valley Power Station.

One variation to an existing s. 87B undertaking were made during the September quarter:

- Video Ezy Australasia Pty Ltd.

Major matters

Major matters considered during the September 2008 quarter included:

- Westpac Limited proposed acquisition of St George Bank Limited
- National Foods proposed acquisition of Dairy Farmers
- Flinders Ports proposed joint venture with DP World Pty Ltd
- Aurora Energy – acquisition of the Tamar Valley Power Station Project.

ACCC's merger analysis of these matters is set out below:

Westpac Limited proposed acquisition of St George Limited

summary | On 13 August 2008 the ACCC decided not to oppose the proposed acquisition and released a public competition assessment.

The ACCC published a statement of issues on 23 July 2008 which identified the aggregation of the BT (Westpac) and Asgard (St George) wrap platforms as a preliminary competition concern. All other areas of aggregation arising from the transaction were noted as unlikely to raise concerns.

After a comprehensive review the ACCC formed the view that the proposed acquisition was unlikely to substantially lessen competition in the relevant markets, namely:

- national markets for the supply of deposit/term products, home loans, personal loans, credit cards, hybrid personal loans and equipment finance
- local markets for the supply of transaction accounts, SME banking and agribusiness banking (with national price competition)
- markets for the supply of corporate and institutional banking services
- markets for the supply of insurance products
- markets for the supply of:
 - wholesale funds management

- multi-manager investments
- retail (wrap and master trust) platforms
- financial advice from licensed financial planners
- non-advisory stockbroking services.

In retail banking markets, the ACCC concluded that the level of aggregation arising from this transaction was relatively limited and a number of competitors—the other three majors, regional banks, credit unions and building societies, and other niche players—would pose a constraint on the merged entity. While the ACCC considered barriers to national entry to be high, and appeared to be even more significant for branch-centric products, St George was not found to be a particularly vigorous and effective competitor.

In the market for the supply of retail platforms, the ACCC found that a number of strong competitors—including other wrap platforms and a number of master trust platforms—remain post-acquisition. The ACCC further considers that the highly dynamic and technology driven nature of this market means that new competitive threats are likely to emerge in any case.

In all other relevant markets, the ACCC found that there will remain a number of strong competitors post-acquisition.

National Foods proposed acquisition of Dairy Farmers

summary | On 24 July 2008 the ACCC decided not to oppose the proposed acquisition after accepting court enforceable undertakings. The ACCC formed the view that without the divestiture undertakings, the proposed acquisition was likely to raise competition concerns in the New South Wales and South Australian markets for the wholesale of fresh white milk and flavoured milk and in the central New South Wales and South Australian markets for the acquisition of raw milk.

The ACCC considered that these concerns were likely to arise because, post acquisition, the merged entity was likely to be the only significant seller or acquirer of these products in the relevant state or regional markets, and barriers to entry were considered to be high.

The ACCC considered that divestiture undertakings offered by National Foods would alleviate these concerns. National Foods offered to divest milk processing and distribution assets for fresh white and flavoured milk in New South Wales and South Australia and brands in these states. The ACCC considered that the divestiture undertakings would create a viable stand-alone competitor able to compete for private label contracts and the provision of branded fresh white and flavoured milks in New South Wales and South Australia and that this would constrain the merger/joint venture parties in their pricing decisions in the acquisition of raw milk.

Flinders Ports proposed joint venture with DP World Pty Ltd

summary | On 10 September 2008 the ACCC announced it would not intervene in the proposed joint venture between Flinders Ports Holdings Pty Ltd and DP World (SA) Pty Ltd, after accepting court enforceable undertakings from Flinders Ports.

Under the proposed joint venture, Flinders Ports and DP World (SA) would become shareholders in an entity called Adelaide Container Terminals (ACT), which would be granted a right to conduct container stevedoring at the container terminal until 30 April 2039.

Flinders Ports is responsible for the development, management and operation of Port Adelaide. DP World (SA) is the incumbent container stevedoring operator of the container terminal under an operating agreement with Flinders Ports until 30 April 2014.

Following market inquiries and through a statement of issues released in relation to the proposed joint venture, the ACCC was concerned that Flinders Ports, through its dual role as port manager and co-owner of the incumbent container stevedore, would have the incentive and ability to prevent prospective container stevedores from developing another terminal at Port Adelaide to serve growth in container traffic in the future.

Post-transaction, Flinders Ports would be responsible for allocating the necessary land and licences for container stevedoring at Port Adelaide to parties that are also its potential competitors, giving rise to a potential conflict of interest with respect to future competition at the port.

The ACCC took into account submissions that suggested container traffic may not grow to a level to support the development of a second container terminal at Port Adelaide for some years. However, the ACCC's investigation indicated that new entry was still likely to occur within the 30-year term of the joint venture, and that in the absence of the undertakings, Flinders Ports would have the ability and incentive to prevent competition during this period. Flinders Ports offered the s. 87B undertaking to address the ACCC's concerns.

The ACCC concluded that the undertaking adequately addresses its competition concerns that the proposed joint venture would increase barriers to entry in the market for the supply of container stevedoring services at Port Adelaide.

Therefore, the ACCC concluded that the proposed acquisition, subject to the court enforceable undertaking, would be unlikely to substantially lessen competition in the relevant markets.

A public competition assessment for this matter was subsequently issued on the ACCC's website.

Aurora Energy—acquisition of the Tamar Valley Power Station Project

summary | On 19 August 2008 the ACCC commenced an informal review of the Tasmanian Government's acquisition of the Tamar Valley Power Station (TVPS) Project from Babcock and Brown Power. The ACCC conducted a two week review which included limited market inquiries.

On 15 September 2008 the ACCC accepted a s. 87B undertaking from Aurora Energy regarding the acquisition of the Tamar Valley Power Station Project and other related assets. The undertaking requires the parties to hold the assets separate for an interim period so that the ACCC is able to conduct a full competition assessment of the proposal. The proposed date for the announcement of the ACCC's findings is scheduled for 12 November 2008.

4. Adjudication

Authorisations

During the September 2008 quarter, the ACCC received 10 new authorisation applications (excluding gas and electricity applications).

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

Matters finalised

Job Futures Limited—A91084 and A91085

summary | On 25 March 2008 Job Futures lodged two applications for authorisation. Job Futures sought 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 subcontract 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 which include agreements as to the price that will be tendered and the price paid for services provided by members to Job Futures and agreements as to the territories in which members and Job Futures will tender to deliver services.

On 18 September 2008 the ACCC issued a final determination granting authorisation to Job Futures for both applications.

Under application A91084, the ACCC granted authorisation to Job Futures until 30 June 2015 for the following conduct:

- To make and give effect to contracts or arrangements (agreements) with members of Job Futures (members). The agreements may contain provisions:
 - requiring members to remain as members and not tender or deliver services on their own behalf for at least two full contract terms (being no more than a six-year period)
 - requiring members that wish to cease being members and tender or deliver services on their own behalf after the initial six year period to give Job Futures Ltd notice no later than 18 months before the end of that six year term.
- Where a member gives notice of its intention to cease being a member and tender or deliver services on its own behalf:
 - Job Futures is entitled to restrict an exiting member's access to information during the remaining contract period other than that required for the member to deliver its contracted service

- Job Futures is entitled to allocate up to 30 per cent of the exiting member’s contracted services to another member, provided that this does not reduce the exiting member’s remaining business share in an Employment Services Area (ESA) to an amount less than it specified in the initial tender process as its minimum bid in that ESA.
- Further the agreements may contain provisions that:
 - prohibit Job Futures tendering for new contracts against a member in a territory where that member has historically provided programs in that territory.

Under application A91085, the ACCC granted authorisation to Job Futures until 30 June 2015 to make and give effect to contracts or arrangements with members of Job Futures. The agreements may contain provisions:

- for the development of cooperative tendering arrangements for government contracts to provide services that assist unemployed and disadvantaged people to gain work
- Job Futures to tender on behalf of members for government contracts to allow members to provide services to assist unemployed and disadvantaged people to gain work
- for the price that will be tendered by Job Futures on behalf of its members
- for the price paid for the services provided by members
- for the territories in which Job Futures will tender and in which its members will deliver services.

Myer Pty Ltd—A91091

summary | Myer sought revocation of authorisation A40082 and its substitution by a new authorisation to allow it 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.

On 3 September 2008 the ACCC released a determination granting authorisation to the arrangements until 30 September 2013.

Insurance Council of Australia Limited—A91086

summary | The Insurance Council of Australia sought authorisation for an agreement between its members (both present and future) to voluntarily adopt a common definition of ‘inland flood’.

In its draft determination the ACCC considered that the Insurance Council’s proposed common definition was not likely to deliver benefits to the public which would outweigh its likely anti-competitive detriment. However, the ACCC considered that with the imposition of conditions, it was more likely that the net public benefit test could be met and, accordingly, proposed to grant conditional authorisation to the Insurance Council and its members.

Following the draft determination, however, and having regard to the additional materials provided to it by consumer groups, ASIC and the National Insurance Brokers Association following the draft decision, the ACCC could no longer be

satisfied that the imposition of conditions would alleviate its concerns. In particular the ACCC noted that the potential for the proposed common definition to introduce new concepts and to increase consumer confusion is not a concern which can be addressed by the imposition of conditions.

On 3 September 2008 the ACCC released a determination denying authorisation to the Insurance Council's proposal.

International Air Transport Association—A91083

summary | The International Air Transport Association (IATA) applied for authorisation of the contracts, arrangements or understandings constituting the IATA Passenger Tariff Coordination Conferences and a new system adopted through resolutions of the conferences.

On 28 August 2008 the ACCC issued a final determination granting authorisation to IATA's new system until 31 July 2013 and granting authorisation to the current IATA Passenger Tariff Coordination System to provide a transition period until 31 March 2009.

Australian National Retailers Association Limited—A91093

summary | The Australian National Retailers Association Limited (ANRA) sought authorisation to conduct a pilot program, supported by the Victorian Government, which was to run for four weeks from 18 August 2008. Under the program, Woolworths, Coles and IGA retailers were to collectively impose a charge for lightweight plastic bags of 10 cents per bag. Other retailers, including FoodWorks, Target and Kmart, were also able to participate in the pilot program. The conduct was to occur in three locations in Victoria: Fountain Gate Shopping Centre in Narre Warren and surrounds; Wangaratta and surrounds; and Warrnambool and surrounds.

ANRA also sought authorisation to allow for 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.

At the time of lodging the application for authorisation, ANRA requested interim authorisation from 1 August 2008.

On 17 July 2008 the ACCC issued a draft determination proposing to grant authorisation in respect of ANRA's application until 30 November 2008. The ACCC also decided to grant interim authorisation from 1 August 2008.

On 13 August 2008 the ACCC issued a final determination granting authorisation in respect of a four-week pilot program involving a charge of 10 cents per plastic bag in three locations in Victoria. The pilot program began on 18 August 2008.

The Australian Medical Association (NSW) Limited—A91088

summary | The Australian Medical Association (NSW) Limited (AMA NSW) sought authorisation to collectively negotiate with NSW Health and public health organisations (PHOs) in New South Wales, the terms and conditions (including but not limited to remuneration) of visiting medical officer (VMO) contracts in the New South Wales public hospital system.

On 13 August 2008 the ACCC issued a final determination granting authorisation for a period of five years to AMA NSW to collectively negotiate with:

- NSW Health the standard terms and conditions, including rates of remuneration, of contracts for VMOs engaged in the New South Wales public hospital system
- PHOs in New South Wales (as set out in attachment A to the determination) on issues relevant to the engagement of VMOs by PHOs but excluding standard VMO contract terms and conditions and rates of remuneration.

Central Queensland Local Government Association—A91087

summary | The Central Queensland Local Government Association sought 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.

On 13 August 2008 the ACCC issued a final determination granting authorisation to the arrangements until 31 December 2018.

CEMEX Australia Pty Limited (formerly Rinker Australia)—A91082

summary | CEMEX Australia Pty Limited (formerly Rinker Australia, trading as Readymix) 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 of work, within the specified margin of the Western Australian fleet average, from CEMEX.

On 2 July 2008 the ACCC issued a determination granting authorisation to the arrangements until 30 June 2013.

Draft determinations issued (not otherwise appearing above)

CALMS Ltd—A91092

summary | CALMS Ltd is seeking authorisation for the use of a ‘not to exceed’ fee schedule (capped fee arrangement) for the provision of after hours primary medical care in the Australian Capital Territory.

On 11 September 2008 the ACCC issued a draft determination proposing to grant authorisation to CALMS Ltd for a period of three years.

The ACCC has sought comments on the draft determination, in particular, on the proposal to allow CALMS Ltd to increase fees by a reasonable level without the need for reauthorisation. The matter is under consideration.

Dairy Farmers Milk Co-operative Limited & Ors—A91089

summary | On 22 May 2008 Dairy Farmers Milk Co-operative Limited (DFMC) and Australian Co-operative Foods Limited (ACF) lodged application for authorisation A91089 with the ACCC. On 29 August 2008 the applicants amended their application for authorisation to account for amendments arising from agreements being entered into for the sale of ACF to National Foods Limited.

Broadly, the applicants have sought authorisation for the inclusion of the back-to-back milk purchasing and back-to-back pricing arrangements contained in clauses 4.4, 4.6.2 and 5.6 of the amended milk supply agreement. The policies are to apply to various agreements between ACF, DFMC and farmer members.

On 25 September the ACCC issued a draft determination proposing to grant authorisation for the inclusion of the back-to-back milk purchasing and back-to-back pricing arrangements contained in clauses 4.4, 4.6.2 and 5.6 of the amended MSA to apply to various contracts between ACF, DFMC and dairy farmers. Authorisation is proposed to be granted for five years.

The ACCC also granted interim authorisation to allow the applicants to offer, and enter into, revised farmer supply contracts that include agreed prices consistent with the back-to-back pricing policies.

The ACCC is currently seeking comments on the draft determination and the matter is under consideration.

Council of the Municipality of Ashfield & Ors—A91096

summary | The Inner Sydney Waste Management Group of Councils propose to jointly tender and contract for the services of a contractors or contractors deemed suitable to provide regional transfer, processing and disposal of food and garden organics and the marketing and sale of any material or products derived from that transfer or processing in the respective local government areas.

On 25 September 2008 the ACCC issued a determination proposing to grant authorisation to the arrangements until 31 January 2020.

The ACCC is currently seeking comments on the draft determination and the matter is under consideration.

Applications lodged (not otherwise appearing above)

Australian Dental Association Inc—A91094 and A91095

summary | On 18 July 2008 the Australian Dental Association Inc. (ADA) lodged applications for authorisation A91094 and A91095 with the ACCC for conduct that may be price fixing and may contain an exclusionary provision.

The ADA is seeking authorisation for the making of, or giving effect to contracts, arrangements or understandings relating to fees charged for dental services provided between two or more dentists and/or dental specialists who practice in a shared practice.

The agreements relate to the fees to be charged for dental services provided within shared practices operating as a team and share patient records, common facilities, a common trading name and common policies and procedures.

The ACCC is consulting with interested parties and the matter is under consideration.

Air New Zealand Limited & Air Canada—A91097 and A91098

summary | Air New Zealand and Air Canada are seeking authorisation to give effect to a cooperation agreement to jointly promote and sell direct flights between Sydney and Vancouver and Auckland and Vancouver.

The applicants propose to pool and share the revenue from specified flights. The cooperation agreement also provides for the applicants to harmonise sales policies, which includes the ability to set specific fare levels or agree to implement occasional tactical fares to stimulate additional demand.

The ACCC is consulting with interested parties and the matter is under consideration.

Sisters of Charity Health Care Service Limited—A91099

summary | Sisters of Charity Health Service Limited (SCHS) seeks authorisation for a network of Catholic private hospital operators, referred to as the revenue negotiation network, to:

- jointly negotiate hospital purchaser provider agreements (HPPAs) and other forms of revenue agreements (referred to as revenue contracts) with health funds, the Repatriation Commission and third party payers/compensable organisations (together referred to as funding organisations)
- exchange fee, cost, price and other information and agree that they will only contract with funding organisations that agree to this data sharing
- agree that non-price terms of revenue contracts be agreed among members of the revenue negotiation network and be negotiated through the revenue negotiation network
- agree that all terms of revenue contracts with the Repatriation Commission or with any health fund accounting for more than 20 per cent of health fund members with hospital cover in the state to which the relevant revenue contract relates be upon terms agreed to by a member of the revenue negotiation network and be negotiated only through the revenue negotiation network.

SCHS seeks authorisation for a network of healthcare facility operators, referred to as the joint purchasing network, to jointly negotiate the acquisition of goods and services from suppliers and agree that the negotiation of those acquisitions occur only through the joint purchasing network and upon terms agreed by members of the joint purchasing network.

SCHS seeks authorisation for a network of Catholic private hospital operators (together referred to as the partner hospitals) to jointly negotiate revenue contracts with funding organisations and agree that revenue contracts be upon terms agreed by the partner hospitals.

The ACCC is consulting with interested parties and the matter is under consideration.

Australian Medical Association Limited & Ors—A91100

summary | The Australian Medical Association Limited (AMA) and the AMA state/territory bodies in Victoria, South Australia, Western Australia, Northern Territory, Queensland and Tasmania, have sought authorisation to collectively negotiate with relevant state/territory health departments, the terms of contracts (including fees) for rural general practitioners providing services as visiting medical officers in public hospitals and health facilities in rural and remote areas of Australia (except for New South Wales).

The ACCC is consulting with interested parties and the matter is under consideration.

Lottery Agents Queensland Ltd—A91101

summary | Lottery Agents Queensland has sought re-authorisation to negotiate on behalf of its members the terms and conditions of agency agreements and arrangements with Golden Casket Lottery Corporation.

The authorisation previously granted to these arrangements in 2003 was due to expire on 25 September 2008. On 24 September 2008 the ACCC granted interim authorisation to the substitute arrangements while it considers the substantive application.

The ACCC has commenced consultation with interested parties and the matter is under consideration.

Australian Hotels Association—A90987

summary | The Australian Hotels Association Divisions in Victoria, Western Australia, South Australia, the Northern Territory and Tasmania seek to vary authorisation A90987 granted by the ACCC in 2006. The variation sought is to add the New South Wales Division of the AHA and its nominated targets, being Tabcorp Holdings Limited and Sky Channel Pty Ltd to the authorised arrangements.

An existing authorisation for New South Wales AHA members to collectively negotiate with their nominated targets expired in July 2008. In effect, the application for minor variation seeks to extend the existing authorisation to cover the previously authorised New South Wales arrangements.

The ACCC has begun consultation with interested parties and the matter is under consideration.

Australian Property Institute—A90545

summary | The Australian Property Institute has applied for a minor variation to authorisation A90545. Authorisation A90545 was granted by the Trade Practices Commission on 29 April 1994. The authorisation relates to the API's code of ethics and accompanying regulations, and certain clauses of its constitution and by-laws.

The minor variation relates to proposed changes to the API's rules of conduct. In particular, the proposed changes seek to clarify the rules that govern the conduct of Provisional Members and the requirements of other API members in respect of supervising Provisional Members.

The ACCC has commenced consultation with interested parties and the matter is under consideration.

Recruitment and Consulting Services Association Limited—A91102

summary | The Recruitment and Consulting Services Association Limited proposes to make a contract, arrangement or understanding by which participants agree to adhere to a code for professional practice administered in accordance with the RCSA's constitution and its disciplinary and dispute resolution procedures. Together, these provide a regime for the imposition upon members of sanctions that may include expulsion, suspension and/or fines, among other things.

At the time of application, the RCSA applied for interim authorisation. The ACCC is consulting with interested parties and the matter is under consideration.

Exclusive dealing notifications

During the quarter ending 30 September 2008 the ACCC received 134 new notifications involving 77 new exclusive dealing matters. Notifications of interest considered during the quarter include:

National Association of Speedway Racing Incorporated & Ors

summary | On The National Association of Speedway Racing Incorporated and the National Association of Speedway Racing Pty Ltd (together NASR) 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 proposed to offer and supply licences on condition that:

- the offeree only races at tracks and venues which 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.

On 27 August 2008 the ACCC issued notice under s. 93(3A) of the Act revoking notifications N93297 and N93298 for third line forcing conduct. The immunity afforded by these notifications ceased on 29 September 2008.

The ACCC decided not to take any further action at this time with respect to exclusive dealing notifications other than third line forcing (N93299 and N93300).

Under these notifications, NASR proposed to offer and supply speedway racing licences on condition that the offeree only participates or competes in speedway racing categories which NASR approves.

Co-operative Bulk Handling Limited

summary | On 11 June 2008 Co-operative Bulk Handling Limited (CBH) lodged exclusive dealing notification N93439 for conduct whereby it proposed to 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 consulted with interested parties in relation to CBH's proposal.

On 8 September 2008 the ACCC decided not to take any further action in relation to the notification at this time.

eBay International AG

summary | On 11 April 2008 eBay lodged exclusive dealing notification N93365 for conduct whereby eBay proposed to supply the services offered on the site www.ebay.com.au (including search, listing and transaction functions) to registered users of that 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 the exclusive dealing notification on 2 June 2008.

A pre decision conference was held on 30 June 2008 and on 3 July 2008, eBay withdrew the notification.

Collective bargaining notifications

The ACCC did not receive any valid notifications of collective bargaining during the September 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 September quarter 2008 the ACCC:

- made a record keeping rule which requires Telstra to keep records and report to the ACCC relating to access to Telstra exchange facilities
- published details of the take-up of broadband access services on Telstra's copper network in metropolitan, regional and rural areas
- decided to grant Telstra exemptions from its obligations to supply two declared services in parts of metropolitan Australia, subject to a number of conditions
- issued a final pricing principles and indicative prices for the local carriage services (LCS) and wholesale line rental (WLR) service for 2008–09
- issued a draft decision proposing to grant Telstra exemptions from its obligations to supply public switched telephone network originating access (PSTN OA) service in five CBD areas and parts of metropolitan Australia
- issued a draft decision proposing to reject Telstra application for exemption from its obligations to supply regulated fixed line services to Optus within Optus's hybrid fibre coaxial (HFC) cable network footprint
- issued a draft determination specifying model non-price terms and conditions for core telecommunications access services. The core services are domestic PSTN network originating access service; domestic PSTN terminating access service; LCS and unconditioned local loop service (ULLS)
- issued a note of warning to customers concerning the emergence of new smart-phone technology and possible hidden cost and highlighted the importance of upfront disclosure of all the fees and charges applied to a particular plan by carriers
- received a Federal Court decision on three judicial review applications commenced by Telstra against the ACCC, broadly upholding the ACCC's approach
- announced and commenced arbitration proceedings in four new access disputes and made three interim determinations
- issued the twentieth report under the enhanced accounting separation regime for Telstra

- delivered two communications related speeches.

Declarations

Part XIC of the *Trade Practices Act 1974* enables the ACCC to declare telecommunications services. Once declared, the access provider is obliged to supply the services to an access seeker upon request. The ACCC did not review or declare new telecommunications services during the quarter.

Telstra's exemption applications

Telstra LCS and WLR exemptions On 22 August 2008 the ACCC decided to grant Telstra exemptions from its obligations to supply two declared services in parts of metropolitan Australia, subject to a number of conditions. These conditions are to deal with impediments faced by some access seekers when seeking to use the ULLS such as capping of exchanges by Telstra, lengthy queues to enter into Telstra's exchange buildings and service disruptions when migrating from line sharing services (LSS) to ULLS.

Telstra PSTN OA On 5 September 2008 the ACCC issued a draft decision proposing to grant Telstra exemptions from its obligations to supply PSTN OA services in five CBD areas and parts of metropolitan Australia. This proposed exemption would be subject to a number of draft conditions. The draft decision relates only to wholesale voice services, not broadband services, which are not subject to access regulation.

Telstra's 'Optus HFC' exemption and transmission exemption

On 22 September 2008 the ACCC issued a draft decision proposing to reject Telstra's application for exemption from its obligations to supply regulated fixed line services to Optus within Optus's HFC cable network footprint. The ACCC is not satisfied that granting the HFC exemption would promote the long-term interest of end users. The ACCC believes that the singling out of a particular competitor would represent a discriminatory access policy which would be likely to discourage investment in the telecommunications industry. The ACCC also considers that Telstra's strong position in the payTV market, through its interest in Foxtel, would be likely to limit any possible benefits from granting

The ACCC also issued a draft decision that proposes to allow certain exemptions relating to the domestic transmission capacity service. Submissions on these drafts decisions are due on 13 October 2008.

Access pricing—undertakings and disputes

WLR and LCS pricing principles and indicative prices for 2008–09: On 6 August 2008 the ACCC issued final pricing principles and indicative prices for the local carriage service (LCS) and the wholesale line rental (WLR) service for 2008–09. The final indicative price for the LCS decreases from the previous period's 17.92c to 17.36c. This reflects an increase in Telstra's unit avoidable retail costs. The final indicative prices for the WLR service increases from \$23.12 to \$25.57 for residential services and from \$25.84 to \$26.93 for business services.

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 September quarter 4 new access disputes were notified to the ACCC:

- Macquarie Telecom Pty Ltd and Telstra Corporation Ltd (over access to the ULLS)
- Optus Network Pty Ltd and Telstra Corporation Ltd (over access to the ULLS)
- NEC Australia Pty Ltd and Telstra Corporation Ltd (over access to the LSS)
- Primus Telecommunications Pty Ltd and Telstra Corporation Ltd (over access to the ULLS)

These new access disputes are related to monthly rental, connection and other charges to be paid to Telstra by the access seekers. The access dispute notified by Optus relates to the terms and conditions on which Telstra supplies interconnection facilities to enable Optus to acquire the ULLS.

Interim determinations

During September quarter, the ACCC made three interim determinations:

- one in relation to a dispute over access to the LSS
- two in relation to disputes over access to the ULLS.

Final determinations

The ACCC did not make any final determinations in the September quarter.

Published determinations

The ACCC did not publish any determinations made in arbitrations concerning disputes over access to services during the September quarter.

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

	Total
Active disputes at 30 September 2008	36
Decisions subject to Federal Court review	18
New arbitrations commenced in September quarter	4
Interim determinations issued in September quarter	3
Final determinations issued in September quarter	0
Published determinations in September quarter	0

Reports

The ACCC issued the twentieth Telstra accounting separation report for the June 2008 quarter. This report concerns whether systematic discrimination could be occurring in the price or service quality offered to Telstra retail and wholesale, but it is not intended to detect all forms of potentially anti-competitive conduct. The report showed that there was a slight tightening of the imputed margin for competitors using the ULLS. It also noted that the level of service supplied to wholesale customers improved during the quarter, however, service levels for new wholesale connections requiring work at the customers' premises still need to improve further to be in line with retail service levels.

Australian Energy Regulator

Electricity decisions

Queensland distribution determination 2010 to 2015

On 7 July 2008 the AER released a paper setting out its proposed approach to the classification of Energex's and Ergon Energy's distribution services and the control mechanisms to apply to standard control services and alternative control services in their upcoming 2010–15 distribution determinations. This followed consultation with Energex and Ergon Energy on a framework and approach application.

On 27 August 2008 the AER published a framework and approach paper setting out its likely approach to the classification of Energex's and Ergon Energy's distribution services and its decision on the control mechanisms to apply to standard control services and alternative control services in the 2010–15 regulatory control period.

The framework and approach paper and submissions from Energex and Ergon Energy are available on the AER's website, www.aer.gov.au.

EnergyAustralia contingent project application—replacement of feeder cables 908 and 909

On 9 May 2008 EnergyAustralia lodged a contingent project application with the AER, requesting approval to amend its 2005 electricity transmission revenue determination to allow for the recovery of costs attributable to replacing feeder cables 908 and 909.

On 22 July 2008 the AER released its determination to approve a total forecast capital expenditure of \$133.6 million (\$2004) and amended EnergyAustralia's 2008–09 maximum allowed revenue to \$130.7 million (\$nominal) based on a revised X factor of –10.88 per cent.

A copy of the AER statement of reasons and report by CHC Associates is available on the AER's website, www.aer.gov.au.

Weighted average cost of capital issues paper

On 6 August 2008 the AER released an issues paper on its review of the WACC parameters for electricity transmission and distribution network service providers (TNSPs and DNSPs). The review is required by the National Electricity Rules and applies to the next regulatory control period for all TNSPs and DNSPs who submit a regulatory proposal after 31 March 2009, which is the date the AER must release its

final decision on the WACC review. The review covers all of the WACC parameters and the WACC-related issues of forecast inflation, and debt and equity raising costs. Submissions on the issues paper closed on 17 September 2008. The AER intends to release its draft decision on 9 December 2008. It is expected the outcomes of the review will also be relevant to future gas access arrangement reviews considered by the AER.

Transend Revenue Proposal Public Forum

On 6 August 2008 the Australian Energy Regulator (AER) held a public forum on the revenue proposal submitted by Transend.

AER board member Mr Andrew Reeves hosted the forum, with presentations from Transend, the Tasmanian Department of Infrastructure, Energy and Resources, Aurora Energy and the Major Employers Group. These presentations and the forum minutes are available on the AER's website, www.aer.gov.au.

New South Wales and Australian Capital Territory distribution determinations

In June 2008 the AER published EnergyAustralia, Integral Energy, Country Energy (New South Wales distribution network service providers) and ActewAGL's (ACT distribution network service provider) regulatory proposals for the period 1 July 2009 to 30 June 2014 for consultation. In addition, the AER published its proposed negotiable component criteria (NCC) for the New South Wales and Australian Capital Territory distribution service providers and proposed negotiated distribution service criteria (NDSC) for EnergyAustralia for consultation.

Submissions on the New South Wales and Australian Capital Territory regulatory proposals and the AER's proposed NCC and NDSC closed on 8 August 2008. Submissions were received from interested parties and issues raised will be considered by the AER in reaching its draft decision. The AER will make its draft decision on or before 30 November 2008.

Documents associated with submissions from interested parties, including the New South Wales and Australian Capital Territory regulatory proposals and the AER's proposed NCC and NDSC can be found on the AER's website.

TransGrid transmission determination

In June 2008 the AER published TransGrid's revenue proposal, proposed negotiating framework and proposed pricing methodology along with the AER's proposed negotiated transmission service criteria (NTSC) for TransGrid for the period 1 July 2009 to 30 June 2014 for consultation.

Submissions on TransGrid's revenue proposal, proposed negotiating framework and proposed pricing methodology and the AER's proposed NTSC closed on 8 August 2008. Submissions were received from interested parties and issues raised will be considered by the AER in reaching its draft decision. The AER will make its draft decision on or before 30 November 2008.

Documents associated with submissions from interested parties, including TransGrid's revenue proposal and its attachments, proposed negotiating framework and proposed pricing methodology and the AER's proposed NTSC can be found on the AER's website.

TNSP performance report for 2006-07

On 11 August 2008 the AER released its annual report detailing information from regulated TNSPs. The report aims to provide greater transparency about the financial and operational performance of those businesses.

The report provides information on each of the transmission businesses' revenue, profit, capital and operating expenditure and service standards for the 2006–07 financial year. The businesses covered in the report are Directlink, ElectraNet, EnergyAustralia, Murraylink, Powerlink, SP AusNet, Transend, TransGrid and VENCORP. The AER's 2006-07 and preceding electricity transmission regulatory reports can be found on the AER's website.

Transend transmission determination

In June 2008 the AER published Transend's revenue proposal, proposed negotiating framework and proposed pricing methodology along with the AER's proposed negotiated transmission service criteria (NTSC) for Transend for the period 1 July 2009 to 30 June 2014 for consultation.

Submissions on Transend's revenue proposal, proposed negotiating framework and proposed pricing methodology and the AER's proposed NTSC closed on 11 August 2008. Submissions were received from interested parties and issues raised will be considered by the AER in reaching its draft decision. The AER will make its draft decision on or before 30 November 2008.

Documents associated with submissions from interested parties, including Transend's revenue proposal and its attachments, proposed negotiating framework and proposed pricing methodology and the AER's proposed NTSC can be found on the AER's website.

DNSP annual information reporting requirements—issues paper

The AER has commenced consultation on the annual information reporting requirements for distribution network service providers (DNSPs). The AER proposes to collect information annually from DNSPs through the use of a regulatory information order (RIO) as governed by s. 28H of the National Electricity Law.

On 12 August 2008 the AER released an issues paper on the information reporting requirements of DNSPs to collect stakeholder feedback in preparation for publication of a draft RIO. The issues paper outlined the proposed annual information reporting requirements and included a set of information reporting templates.

Submissions on the issues paper closed on 22 September 2008. The AER will publish a draft RIO later in 2008 and will publish the final RIO early in 2009.

TNSP cost allocation methodologies

In accordance with clause 6A19.4 of the National Electricity Rules (NER), TNSPs submitted to the AER a cost allocation methodology outlining how they will allocate costs between the different categories of transmission services that they provide by 28 March 2008.

The AER approved all of the proposed cost allocation methodologies on 29 August 2008 and published its final decision on the cost allocation methodologies proposed by the TNSPs on 2 September 2008. Letters of approval were sent to each of the TNSPs. The approved cost allocation methodologies, McGrathNicol's reviews of

the cost allocation methodologies and the AER's final decision on the cost allocation methodologies are all available on the AER's website.

The AER is required to assess the proposed cost allocation methodologies and to approve/amend them six months after the methodologies are submitted (28 September 2008). The AER must assess the compliance of the cost allocation methodologies with the requirements of the NER and the AER's cost allocation guidelines.

Murraylink pass through application

On 4 July 2008 Murraylink submitted an application to pass through the costs of an insurance event. The costs cover the deductible amount of an insurance claim (\$250 000).

Staff notified interested parties of Murraylink's pass through application by an AER communications notice (sent 11 July 2008) and placed a copy of the application on the AER website. Interested parties were given 20 business days to make submissions to the AER on Murraylink's application. No submissions were received.

The AER assessed the claim on 29 August 2008 and found it to be in accordance with the Murraylink pass through rules. As such the AER allowed Murraylink to pass through \$250 000 to customers in the 2009–10 financial year. The letter of approval for the pass through application can be viewed on the AER's website.

Moranbah North Coal Mine NSP— classification of distribution service

On 12 May 2008 Moranbah North Coal Mine NSP submitted an application to the AER requesting that its distribution service not be classified by the AER and therefore not be subject to economic regulation under chapter 6 of the NER.

In August 2008 the AER released for public consultation a draft decision on the application made by Moranbah North Coal Mine NSP. The AER's draft decision was not to classify the distribution service provided by Moranbah North Coal Mine NSP. The AER did not receive any submissions in response to the draft decision.

In September 2008 the AER released a final decision not to classify the distribution service provided by Moranbah North Coal Mine NSP as either a direct control service or negotiated distribution service. As a consequence, Moranbah North Coal Mine NSP's distribution service will not be subject to economic regulation under chapter 6 of the NER.

Moranbah North Coal Mine NSP's application and the AER's draft and final decisions are available on the AER's website.

National Gas Law

National Gas Law Guidelines

On 1 July 2008 the AER became the economic regulator for covered gas transmission and distribution pipelines. The AER assumed responsibility for the regulation of transmission pipelines from the ACCC and for the regulation of distribution pipelines in all jurisdictions—except for Western Australia—from state regulators. On 16 July 2008 the AER released two guidelines to support the transition from the former legislative framework to the National Gas Law. Both guidelines are available on the AER's website, www.aer.gov.au.

The annual compliance guideline including a preliminary information order (*Draft annual compliance guideline*) and a discussion paper relevant for its proposed annual compliance process replaces the former ring-fencing reporting process undertaken by the ACCC for transmission services providers and by various state and territory regulators for distribution service providers.

The *Draft annual compliance guideline* is intended to provide information to service providers and interested parties in regard to the annual compliance process and how service providers report this compliance to the AER. It focuses on a service provider's requirements to report compliance on a number of issues with particular focus on a service provider's general duties and the structural and operational separation (ring-fencing) requirements under the NGL and NGR. Submissions for this preliminary consultation process closed on 15 August 2008.

In addition, the AER released the *Draft guideline for resolution of distribution and transmission pipeline access disputes under the National Gas Law and National Gas Rules* (draft access dispute guideline) and a discussion paper for comment. The draft access dispute guideline has been prepared to assist service providers and users or prospective users to understand how the AER will conduct an access dispute hearing under the NGL and National Gas Rules (NGR). The draft access dispute guideline replaces the ACCC's *Resolution of transmission pipeline access disputes under the Gas Code—draft guideline* relevant for access disputes for transmission pipelines dealt with under the previous Gas Pipelines Access Law and the National Third Party Access Code for Natural Pipeline Systems. Submissions close on 24 October 2008.

National Gas Law Guidelines and Processes

On 16 July 2008 the AER released its *Draft annual compliance guideline* and a discussion paper relevant for its proposed annual compliance process. The *Draft annual compliance guideline* is intended to provide information to service providers and interested parties on the annual compliance process and how service providers report this compliance to the AER.

The consultation period for the *Draft annual compliance guideline* closed on 15 August 2008. The AER is currently reviewing these submissions to incorporate any suggestions for improvements so it may finalise the *Final annual compliance guideline* in November 2008.

In addition, to support the annual compliance process the AER published a proposal to make an information order for the annual compliance process on 18 August 2008. This proposal reflects the preliminary order included as an attachment in the *Draft annual compliance guideline*. Consultation on the proposal to make the annual compliance ended on 9 September 2008. Submissions made on the preliminary order for the *Draft annual compliance guideline* consultation process as well as any submissions on the guideline will be considered by the AER in making a draft annual compliance order.

Consultation continues on the *Draft guideline for resolution of distribution and transmission pipeline access disputes under the National Gas Law and National Gas Rules* (draft access dispute guideline). Submissions close on 24 October 2008.

Draft access arrangement guideline

On 5 September 2008 the AER released the draft access arrangement guideline for public comment. The purpose of this order is to obtain information and

documentation from service providers of covered transmission or distribution pipelines to ascertain compliance with their general and specific duties under the National Gas Law. Submissions on the guideline close on 12 December 2008.

Annual Compliance Process

Submissions closed on 9 September 2008 on the proposal to make an information order for the annual compliance process. Submissions on the proposal to make an annual compliance order and the draft annual compliance guideline are currently being considered by the AER.

The AER expects to release a draft decision shortly about the annual compliance order.

Draft access dispute guideline

Consultation continued in September on the *Draft Guideline for the resolution of distribution and transmission pipeline access disputes under the National Gas Law and National Gas Rules* (draft access dispute guideline). Submissions close on 24 October 2008.

Gas Decisions

Amendment to the Central Ranges Network Access Arrangement

In July 2008 Central Ranges Pipeline Pty Ltd (CRP), proposed an amendment to its distribution access arrangement under rule 27(5) of the National Gas Rules (NGR).

On 15 August 2008 the AER approved one amendment to effect a variation in CRP's distribution tariffs and ancillary charges for 2008–09. The amendment is effective 1 September 2008. The AER did not approve a proposed administrative change regarding the notification date of the tariff variation. Details are available on the AER's website, www.aer.gov.au.

Price Monitoring

Fuel prices and fuel monitoring

The ACCC monitors retail prices of petrol, diesel and automotive liquid petroleum gas (LPG) in all capital cities and in around 110 country towns. Movements in international benchmark prices for refined petrol, diesel and LPG are monitored as well as international crude oil prices. The ACCC also closely follows developments in the petroleum industry.

In particular, the ACCC monitors Australian fuel price movements against movements in the relevant international benchmark prices. For example, the relevant international benchmark price for petrol is the spot price of Singapore Mogas 95 Unleaded, which is the price of refined petrol and not crude oil. Australian retail fuel prices are also influenced by fluctuations in the AUD/USD exchange rate.

Petrol

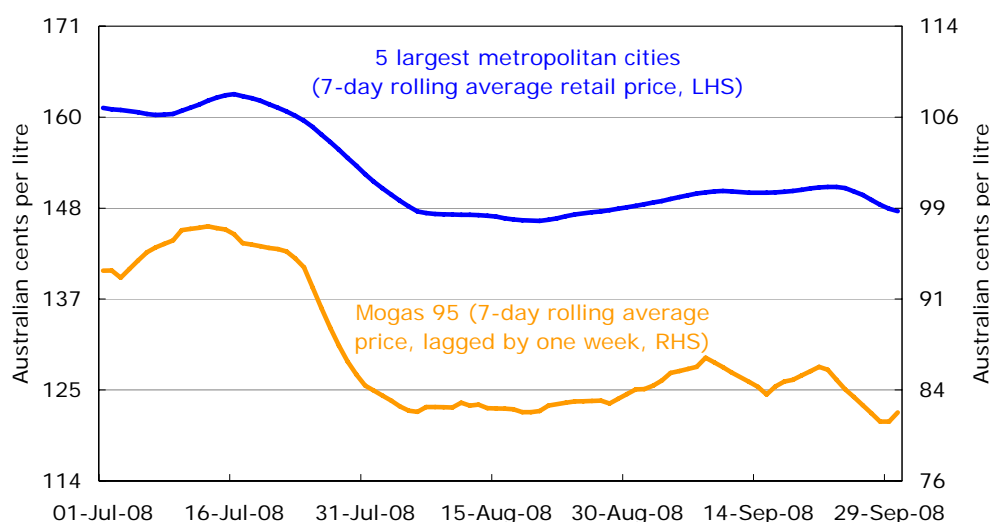
The ACCC examines movements in domestic retail petrol prices compared with movements in international benchmark prices. That is, the ACCC examines movements in the seven-day rolling average retail unleaded petrol prices in the five major metropolitan cities (Sydney, Melbourne, Brisbane, Adelaide and Perth) and seven-day rolling average prices for Singapore Mogas 95 Unleaded (lagged one week) in Australian cents per litre.

The chart below shows movements in these series over the period from 1 July to 30 September 2008. Retail prices are shown on the left hand side of the chart and Singapore Mogas prices are shown on the right hand side. It is important to remember that a comparison of these two series is indicative rather than an exact science, and that other factors can influence retail petrol prices in the short run. This caveat also applies to comparisons of movements between retail diesel and automotive LPG prices and their respective benchmarks.

As illustrated in the chart below, retail petrol prices broadly tracked movements in the benchmark. Retail unleaded petrol prices across the five major metropolitan cities reached record highs in mid-July 2008 at 162.5 cents per litre (cpl). This was an increase of around 26cpl on prices at the beginning of the year.

By the end of September 2008 retail prices were 147.8cpl, or 14.7cpl lower than in mid July 2008. Singapore Mogas 95 prices (on a seven day rolling average basis, lagged by one week) also peaked in mid July at 97.3cpl. By the end of September, the benchmark had decreased by about 15.6cpl.

**Chart: Movements in retail unleaded petrol prices and the benchmark—
1 July 2008 to 30 September 2008**

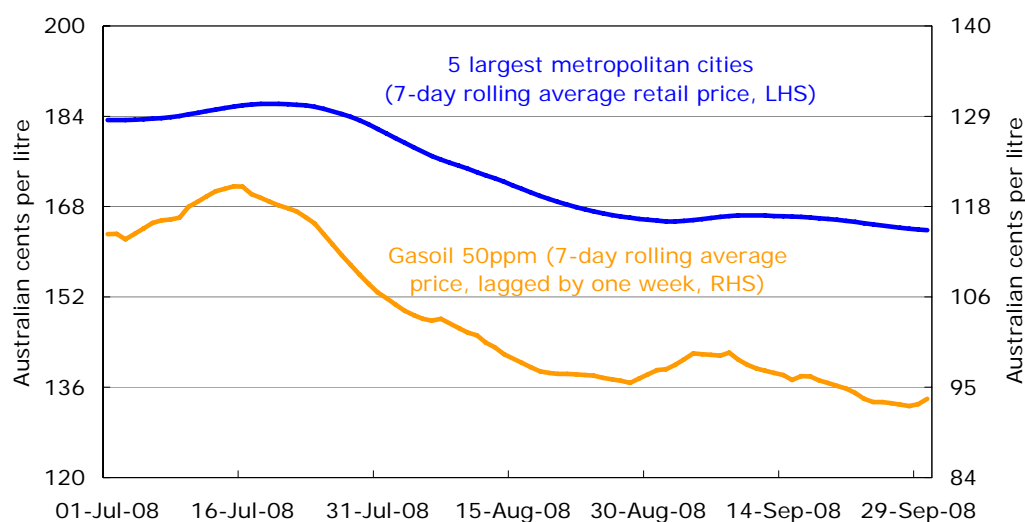


Diesel

The ACCC monitors the movement of diesel retail prices against the spot price of Singapore Gas Oil with 50 parts per million sulphur content. In the chart below, diesel retail prices are shown on the left hand side of the chart and Singapore Gas Oil prices are shown on the right hand side. The chart illustrates that retail prices broadly tracked movements in the benchmark over the September quarter.

On 18 July 2008 average retail diesel prices for the five major metropolitan cities peaked at 186.2cpl (around 37cpl higher than at the start of the year). By the end of September, retail prices were 163.8cpl or around 22cpl lower than in mid July 2008. Singapore Gas Oil 50 ppm prices (on a seven-day rolling average basis, lagged by one week) also peaked in mid July at 120.1cpl. By the end of September, the benchmark had decreased by around 25cpl.

Chart: Movements in diesel retail prices and the benchmark — 1 July to 30 September 2008

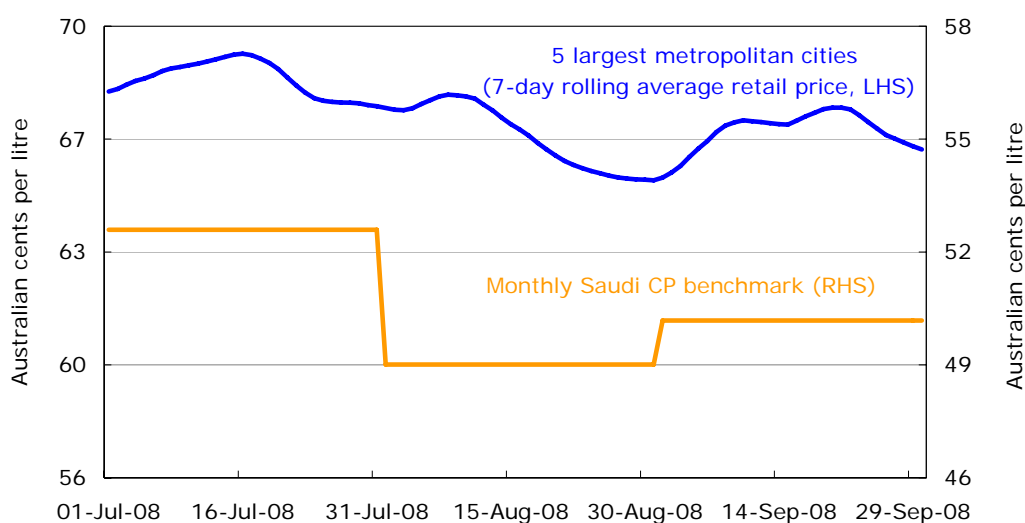


Automotive LPG

The ACCC monitors the movement of automotive LPG retail prices against the average price of Saudi Aramco contract prices for propane and butane, which are issued on the first day of the month. In the chart below, LPG retail prices are shown on the left-hand side of the chart and monthly Saudi CP benchmark prices are shown on the right-hand side. The chart illustrates that retail prices broadly tracked movements in the benchmark over the September quarter.

During the period 1 July to 30 September 2008 retail LPG prices were relatively stable, at around 67cpl. Average retail prices were 1.6cpl lower in September than average retail prices in July. The lower retail prices reflected a decline in the LPG benchmark price from 52.6cpl to 50.2cpl.

**Chart: Movements in automotive LPG retail prices and the benchmark —
1 July to 30 September 2008**



Grocery monitoring

On 6 August 2008 the GROCERYchoice website www.grocerychoice.gov.au was launched, aimed at improving transparency in the grocery market and helping consumers find the cheapest supermarket chain in their area.

Each month GROCERYchoice publishes the prices of typical ‘grocery baskets’ from supermarket chains located in 61 regions across Australia. Price information is obtained from an independent monthly survey of approximately 500 products from 600 supermarket outlets. Survey results are made available on the GROCERYchoice website on the first business day of the following month.

The latest survey shows that, on a total grocery basket, Woolworths supermarkets were the cheapest in 59 of the 61 regions. This is in contrast to the opening months of the survey where Coles Supermarkets had been cheapest in a majority of regions. Where present in a region, ALDI supermarkets were the cheapest for a basket of basic staple products.

Intellectual property – copyright proceedings

Since the amendments to the *Copyright Act 1968* took effect, the ACCC has been party to two proceedings before the Copyright Tribunal. The progress of these proceedings in the September 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 applicant, the Phonographic Performance Company of Australia (PPCA) has filed an amended reference which includes 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.

PPCA and Fitness Australia (the First Respondent) have filed their lay and expert evidence. The ACCC filed its expert evidence on 30 July 2008. The matter has been set down for a hearing in March 2009.

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 have filed lay and expert evidence. The matter is continuing.

Post

Assessment of price notification to increase reserved letter prices

On 18 July 2008 Australia Post provided the ACCC with a ‘locality notice’ informing the ACCC of its intention to increase the prices of the reserved postal services (i.e. services over which Australia Post has a statutory monopoly) as specified in its draft price notification.

The proposed price increases include an increase in the basic postage rate (BPR) by 5 cents from 50 to 55 cents, an increase in ordinary letter prices (large letters, seasonal greeting cards, etc.) an increase in small PreSort letter prices by an average of 2.5 cents (GST exclusive) and large PreSort letter prices by an average of 3.2 cents (GST exclusive). Australia Post also proposes to introduce a new letter category ‘acquisition mail.’

The ACCC assessed Australia Post’s proposal in detail. In this assessment, the ACCC modelled the revenue Australia Post would receive if the price increases were implemented compared with Australia Post’s costs of providing reserved services (including a return on capital). The results of the ACCC’s revised financial modelling indicated that reserved service revenues were expected to under recover Australia Post’s costs of providing reserved services in the 2008–09 financial year. On the basis of this assessment, the ACCC decided not to object to Australia Post’s proposed price increases.

While the ACCC did not object to the price increases in the price notification, it did consider that the duration of the proposal was too short and specified that future price notifications will need to be supported by a three-year forward-looking financial model and a price path for that period. The ACCC considered that such an approach would provide Australia Post with stronger incentives to reduce costs and improve productivity over time.

Australia Post increased the prices of its reserved postal services from 15 September 2008.

Rail

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.

ARTC subsequently submitted a revised undertaking that addressed the issues raised in the ACCC's draft decision.

On 30 July 2008 the ACCC released its final decision to accept the ARTC interstate rail access undertaking. ARTC's undertaking sets out the principles and processes under which ARTC, as an infrastructure provider of rail, will be obliged to provide access to businesses wishing to run trains on ARTC's interstate rail network. The undertaking applies for a period of 10 years.

Water

Consistent with Part 4 of the *Water Act 2007* (the Water Act), the Minister for Climate Change and Water, Senator the Hon. Penny Wong wrote to the ACCC requesting advice on the water market rules and water charge rules.

In preparing advice to the minister, the ACCC has released a number of discussion papers during the last quarter seeking submissions from stakeholders on the water market rules and water charge rules.

Water market rules

On 7 July 2008 the ACCC released a position 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 irrigation infrastructure operators holding a group water access entitlement on behalf of their member irrigators do not prevent or unreasonably delay trade.

Submissions responding to this paper were due on 15 August 2008.

Bulk water charge rules

Also on 7 July 2008 the ACCC released an issues paper seeking submissions on the development of bulk water charge rules.

Water charge rules applied consistently across the Murray-Darling Basin will facilitate 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.

Submissions responding to this paper closed on 18 August 2008.

Water charge rules for termination fees

On 15 August 2008 the ACCC released for public consultation a position paper on water charge rules for termination fees.

This position paper on termination fees directly addresses issues relating to fees or charges paid by water users to irrigation infrastructure operators for either terminating access or surrendering a water delivery right.

The position paper on water charge rules for termination fees was progressed independently of the remaining water charge rules in order to align timing with the development of advice on water market rules.

Submissions responding to this paper were due on 15 September 2008.

Water charge rules for charges payable to irrigation infrastructure operators and bulk water operators

On 30 September 2008 the ACCC released a position paper for public consultation on water charge rules for charges payable to irrigation infrastructure operators and bulk water operators.

Next Steps

To date, the ACCC's development of advice on water charge rules has progressed through separate consultation processes relating to rules for charges payable to irrigation infrastructure operators and rules relating to bulk water charges.

The two consultation processes were brought together as a result of changes that are to be made to the Act following the Intergovernmental Agreement on Murray-Darling Basin Reform agreed to on 3 July 2008.

This position paper presents the ACCC's preliminary positions on water charge rules for irrigation infrastructure operators (access charges) and bulk water operators within the Murray-Darling Basin.

Submissions on the position paper are due no later than 24 November 2008.

6. International activities

The ACCC's international activities support the work of 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. ACCC 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 September 2008 quarter, the ACCC:

- Presented at the International Co-operation Program on Competition Policy hosted by the OECD and Taiwan Fair Trade Commission providing capacity building in relation to competition issues in retailing.
- Held various meetings with Japanese government officials, including the Japanese Fair Trade Commission in Tokyo.
- Attended the International Civil Aviation Organisation Preparatory Symposium for the conference on Economics of Airports and Air Navigation Services in Montreal, Canada.
- Attended and presented at the Rencontres small business conference at the University of St Gallen in Switzerland.

- Hosted a visit from the Philip Collins, Chairman of the UK Office of Fair Trading, who held various meetings with ACCC representatives, attended the ACCC Regulatory Conference and presented at the ACCC's Trade Practices Forum.
- Participated in the Australian National University's conference on 'Comparative Experience in Competition Policy Reform: Australia, Japan and East Asia'.

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 and are practical in implementation, and that free trade agreements 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 September 2008 quarter, the ACCC received requests from Canada, China, Georgia, Japan, Mexico, New Zealand, Romania, and the United States of America. Examples of shared information included the ACCC's activities regarding market inquiries, best practice processes for investigations, 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, the European Commission, Ireland, Japan, the Netherlands, New Zealand, the United Kingdom and the United States of America about merger inquiries, cartel investigations, mass marketing fraud, green claims and online internet businesses, 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:

- Met with representatives of the Indonesian authority, the KPPU, about a range of issues including a possible a cooperation program.
- Met with Japan embassy staff and a visiting Japanese fellow of the Australian National University to discuss issues related to hard-core cartels including bid-rigging and the role of leniency programs.

- ACCC assisted Japan's Centre for Competition Research attached to the Japan Fair Trade Commission (JFTC) in their project on cooperation agreements and the exchange of confidential information. One meeting was held in Tokyo with JFTC officials and another in Canberra with a visiting academic attached to the research project.
- Visit by New Zealand Competition Commission officials to discuss various developments in competition policy in our respective jurisdictions and opportunities for increased cooperation.
- Met with a delegation from the Thailand Senate Standing Committee on Human Rights, Right and Liberties and Consumer Protection to discuss the role of the ACCC in relation to consumer protection.
- Met with a delegation from Thailand Office of the National Telecommunications Commission to discuss issues relating to tariff regulation and accounting separation.
- Met with a Swedish parliamentary committee responsible for civil affairs including consumer protection to discuss the Australian consumer protection framework and roles and responsibilities of the ACCC.
- Met with ministerial officials from Kazakhstan to discuss the role and responsibilities of the ACCC.

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:

- discussions with Indonesian officials from the Commission for the Supervision of Business Competition to discuss a request for technical assistance
- discussions with staff from the Vietnam Competition Administration Department to examine options for a comprehensive capacity-building program.

Staff exchange

The ACCC and its counterpart agencies participate in staff exchanges or secondments to assist in developing an increased understanding of the respective jurisdiction and to facilitate cooperation between authorities.

- The ACCC and the Taiwan Fair Trade Commission commenced a three month reciprocal staff exchange in September.

7. Reviews and inquiries

Legislative amendments

Trade Practices Legislation Amendment Bill 2008

The Trade Practices Legislation Amendment Bill 2008, which contains a number of proposed amendments to s. 46 and other provisions of the *Trade Practices Act 1974*, is currently before parliament. The bill was passed by the House of Representatives on 1 September 2008. The bill is awaiting further consideration in the House after a number of amendments in the bill were rejected by the Senate on 16 September 2008. The relevant amendments contained in the bill, together with an indication of which amendments were passed by the Senate and which were rejected, are listed here:

- Amend s. 46(1AA) to replace the concept of ‘market share’ with ‘market power’ and insert the concept of ‘take advantage’ (rejected).
- Amend s. 46 to specify that recoupment is not required to be proved in predatory pricing cases under s. 46(1AA) (rejected).
- Amend s. 86(1A) to allow private actions under s. 46 to be taken in the Federal Magistrates Court (rejected).
- Amend s. 46 to clarify the meaning of ‘take advantage’ (accepted).
- Amend s. 51AC to repeal the monetary threshold (\$10 million) (accepted).
- Amend s. 10 to require that one deputy chairperson of the ACCC has a small business background (accepted).
- Extend s. 155 powers beyond interlocutory proceedings until substantive legal action has commenced (accepted).

Trade Practices Amendment (Clarity in Pricing) Bill 2008

The Trade Practices Amendment (Clarity in Pricing) Bill 2008 was introduced to parliament on 25 September 2008. The bill seeks to amend s. 53C of the *Trade Practices Act 1974* by requiring the specification of a single-figure price in relation to component price representations. Debate on the bill was adjourned to a later stage.

Water Amendment Bill 2008

On 25 September 2008 the Minister for Climate Change and Water, Senator the Hon. Penny Wong, tabled the Water Amendment Bill 2008 in parliament for consideration. The bill proposes the following amendments to the *Water Act 2007* that affect the functions of the ACCC:

- that the water market rules and the water charge rules provided for in the Water Act will apply to all water service providers that charge regulated water charges, and their transactions, not just those entities and transactions within the scope of the Commonwealth’s constitutional powers

- that the water charge rules will be able to provide that the ACCC determines or approves all regulated water charges in the Murray-Darling Basin, other than charges relating to urban water supply activities; and
- that Basin states can opt to extend the geographical application of the ACCC's regulatory role for water markets and water charges beyond the Basin. This 'opt in' provision is also available to Western Australia, Tasmania and the Northern Territory.

Parliamentary inquiries

There are a number of parliamentary committees, both in the Senate and in the House of Representatives, conducting inquiries into issues dealt with by the ACCC in its enforcement of the Trade Practices Act. During the September 2008 quarter, the ACCC made submissions to or appeared before six committees:

- On 7 August ACCC Chairman Graeme Samuel, Chief Executive Officer Brian Cassidy, Commissioner Stephen King and Executive General Manager of Regulatory Affairs Joe Dimasi appeared before the Senate Standing Committee on Economics inquiry into the National Fuelwatch (Empowering Consumers) Bill 2008 and National Fuelwatch (Empowering Consumers Consequential Amendments) Bill 2008.
- On 11 August 2008 Executive General Manager of Regulatory Affairs Joe Dimasi and senior staff appeared before the Senate Standing Committee on Economics inquiry into the Unit Pricing (Easy Comparison of Grocery Prices) Bill 2008.
- On 14 August 2008 the ACCC made a submission to the House of Representatives Standing Committee on Communications inquiry into international mobile roaming.
- On 19 September 2008 Mark Pearson, Executive General Manager of the Enforcement and Compliance Division, and senior staff appeared before the House of Representatives Standing Committee on Economics inquiry into competition in the banking and non-banking sector.
- On 9 September 2008 Nigel Ridgway, General Manager of the Compliance Strategies Branch appeared before the Standing Committee on Rural and Regional Affairs and Transport inquiry into meat marketing.
- On 10 September 2008 the ACCC made a submission to the Joint Committee on Corporations and Financial Services inquiry into the Franchising Code of Conduct.

Productivity Commission inquiries

Inquiry into retail tenancy

The Productivity Commission released its final report, *The market for retail tenancy leases in Australia*, on 27 August 2008. Recommendations made by the Productivity Commission in its report, relevant to the ACCC, include the following:

- Where practicable, the differences between various state, territory and commonwealth laws dealing with unconscionable conduct in retail lease agreements be identified and aligned. The Productivity Commission considers this would reduce costs related to disputes in the retail tenancy market.
- A voluntary code of conduct prescribed under the Trade Practices Act be established for shopping centre leases. The code should:
 - include provisions for standards of fair trading and transparency, lodgement of leases, information provisions and dispute resolution
 - avoid intrusions on normal commercial decision making in matters such as minimum lease terms, rent levels and availability of a new lease.

Reports to government

In the September quarter the ACCC submitted two reports to government:

- *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries* and
- *ACCC examination of fertiliser prices.*

Grocery inquiry report

The ACCC submitted a final report to the government on 31 July 2008. The grocery inquiry was the second public price inquiry pursuant to Part VIIA of the Act conducted by the ACCC since 1996.

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 grocery prices. The inquiry was held in accordance with Part VIIA of the Act. This is the second inquiry conducted by the ACCC under these provisions. The final report was due on 31 July 2008.

On 11 February 2008 the ACCC published an issues paper titled *ACCC inquiry into the competitiveness of retail prices for standard groceries*, which provides background to the inquiry, information on the consultation process and details on the issues on which the ACCC is seeking comment and puts forward a series of questions.

On 20 May 2008 the ACCC released a second issues paper on issues relating solely to the Horticulture Code of Conduct as part of its inquiry into grocery prices.

Issues raised in the inquiry related, but are not limited, to:

- changing grocery prices over time
- the structure of the retail industry and retailer competition
- reasons for increased production costs and the structure of upstream industries
- differences between regional and national operations
- consumer behaviour
- the impact of the Horticulture Code of Conduct on growers and traders.

ACCC Chairman Graeme Samuel and commissioners John Martin and Stephen King conducted the inquiry. Over 200 public submissions were received, as well as a number of confidential submissions. Hearings for the inquiry were held in all state and territory capitals and in Cairns (Queensland), Griffith (New South Wales), Shepparton (Victoria), Launceston (Tasmania), Port Lincoln (South Australia) and Bunbury (Western Australia).

On 5 August 2008 the federal government released the ACCC's grocery inquiry report. The ACCC found that grocery retailing is workably competitive, but there are a number of factors that currently limit the level of price competition. These include:

- high barriers to entry and expansion, particularly in relation to difficulties in finding new sites for development
- the limited incentives for Coles and Woolworths to compete aggressively on price
- limited price competition that Coles and Woolworths face from the independent sector. Independent supermarkets tend to focus on convenience and service. A key factor inhibiting price competition from independent retailers is the wholesale prices of packaged groceries supplied by Metcash.

The ACCC also found that any possible weakening in the level of competition in retailing is unlikely to have been a substantial contributor to food price inflation in Australia. The gross margins of Coles, Woolworths and Metcash have increased over the last five years. However, ACCC analysis indicates that these increases in gross margins could have only made a small contribution to overall food price inflation.

Accordingly, the ACCC made the following recommendations:

- Planning and zoning decisions by all levels of government in respect of developments which will provide an opportunity for a new supermarket to enter an area should have specific regard to whether the introduction of the new supermarket will increase competition in the area and, in particular, whether the proposed development will assist in allowing a supermarket not currently trading in the area to be established.
- Mandatory, nationally-consistent unit pricing be introduced for standard grocery items both on in-store price labels and in-print advertising, for significant supermarket stores.

- A range of changes to the Horticulture Code. The recommendations are aimed at making the code more workable given existing industry practice and ensuring that it applies fairly across industry participants.

The ACCC will investigate several issues stemming from the grocery inquiry, including in the areas of supply arrangements affecting independent supermarkets and suppliers, restrictive agreements in leases and greenfield site acquisitions.

Examination of fertiliser prices

On 8 February 2008 the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, the Hon. Chris Bowen MP, wrote to the ACCC requesting it to undertake an examination of fertiliser prices, particularly the reasons for recent dramatic increases in prices. A report outlining the findings of the ACCC in relation to fertilisers prices was provided to the minister on 31 July 2008. The government released the report on 22 August 2008.

The ACCC considered that its object in undertaking this fertiliser price examination was to:

- provide an overview of the fertiliser industry in Australia
- analyse price movements, including a comparison of domestic and international price movements
- examine the key factors underlying the increase in the price of fertilisers supplied in Australia.

The minister's request to the ACCC did not constitute a formal price inquiry under Part VIIA of the *Trade Practices Act 1974*, nor was it an allegation that there had been a contravention of the Act.

Accordingly, the ACCC had no formal information-gathering powers and instead relied on the cooperation and assistance of interested parties, including suppliers of fertilisers, industry associations and representative bodies of end user groups.

Key Findings

- Based on information submitted to the inquiry, domestic prices for di-ammonium phosphate (DAP) and urea at the wholesale and retail levels tracked international prices reasonably closely over time.
- Rising international fertiliser prices and improved weather conditions induced farmers to bring forward their orders for fertiliser from late 2007 to early 2008, causing an unexpected shortage. Suppliers were forced to ration available fertilisers among end users, giving preference to existing customers.
- The price comparisons undertaken by the ACCC between international and domestic prices for DAP and urea do not indicate any general price gouging conduct in the industry during the time of fertiliser shortage. Information given to the ACCC inquiry suggests that gouging, if it occurred at all, was limited.

- Allegations of suppliers refusing to supply fertilisers during the period of shortage were consistent with suppliers taking action to ration available stocks among customers.
- Imports continue to act as a competitive constraint on the industry.

Appendix

Speeches

The Chairman, commissioners and staff gave 36 addresses and presentations in the September 2008 quarter. Significant presentations included:

ACCC Chairman

- 21 August 2008, *Changing regulatory structures*, Mergermarket Australian M&A Forum

ACCC Commissioners

- Mr John Martin, 15 August 2008, *Compliance with the TPA in the private health insurance sector*, PHIO annual seminar
- Mr Stephen King, 15 July 2008, *The ACCC's role in coal chain logistics*, CEDA Queensland Export Infrastructure Conference

ACCC Staff

- Mr Michael Cosgrave, Group General Manager, Communications Group, 24 July 2008, *Regulation and the Australian broadband sector*, 3rd Annual Broadband Australia Conference
- Mr Joe Dimasi, Executive General Manager of Regulatory Affairs, The 6th Annual Australian Telecommunications Summit Access pricing—undertakings and disputes

News releases

During the September 2008 quarter, the ACCC issued 93 news releases and the AER issued seven news releases.

Publications

Publications released from 1 July to 30 September 2008

Corporate

ACCC *ejournal*, issues 50 to 51
ACCC update no. 24
ACCCCount April to June 2008

For consumers

Bunk beds: complying with the mandatory standard, fact sheet

Mobile phone premium services, fact sheet (ACCC and ACMA)

For small business

ACCC briefing, July 2008

Debt collection phone in day, poster

ACCC reports

ACCC examination of fertiliser prices

Issues paper, bulk water charge rules, July 2008

Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries

The water market rules, position paper, July 2008

Water charge rules for charges payable to irrigation infrastructure operators and bulk water operators, position paper—September 2008

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