



Australian
Competition &
Consumer
Commission

ACCCOUNT

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

1 January to 31 March 2009



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23 Marcus Clarke Street, Canberra, Australian Capital Territory, 2601

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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.

During the past quarter, nine enforcement litigation proceedings were finalised. The Federal Court penalised Société Air France for its involvement with price fixing of fuel surcharges for international carriage of air cargo.

Nine enforcement litigation proceedings were commenced in the Federal Court of Australia. The ACCC commenced proceedings against AMC Holdings Pty Ltd and Teracomm Ltd for alleged misleading or deceptive conduct in the advertising of mobile premium services.

Using the Federal Court's Fast Track List, Justice Gordon declared that Tel.Pacific had engaged in false, misleading and deceptive conduct. Justice Gordon made injunctions restraining Tel.Pacific from engaging in similar conduct in the sale of phone cards. Tel.Pacific was required to make corrective advertising, put in place a compliance program and pay \$5000 towards the ACCC's costs. This matter was filed in the Federal Court's fast track system in Melbourne. The ACCC remains vigilant about consumer issues telecommunications, and this case serves as a warning to the telecommunications industry that it must raise its standards in the treatment of consumers or risk increased ACCC scrutiny and action.

The ACCC brought one appeal to the High Court of Australia, appealing the full Federal Court decision to reverse the finding of Justice Bennett that Channel Seven had contravened S 52 of the Trade Practices Act during broadcasts of *Today Tonight* in late 2003 and early 2004 in stories about a property investment program known as the 'Wildly Wealthy Women mentoring program'.

In the area of product safety, a consumer product safety standard to limit the migration of lead in children's toys was introduced on 22 January 2009. Lead is known to have adverse health effects, particularly for children.

The Product Recalls Australia website, www.recalls.gov.au, has been upgraded to allow, among other facilities, an enhanced reporting capacity.

In February 2009 the Minister for Climate Change and Water, Senator the Hon. Penny Wong, issued a public notice proposing to make water market rules and water charge (termination fee) rules. The minister has accepted advice and adopted the water market rules and rules for termination fees recommended by the ACCC.

The ACCC considered Baiada Poultry Pty Ltd's proposed acquisition of Bartter Entreprises Pty Ltd, which would see a merger of two of the three largest chicken suppliers in Australia. The ACCC opposed the acquisition, finding that it would be likely to result in a substantial lessening of competition, with effects on prices for the

fast food restaurants and their consumers. The ACCC is currently assessing a proposed undertaking aimed at addressing the ACCC's competition concerns.

The ACCC began proceedings against Telstra for allegedly breaching the standard access obligations, refusing access seeker requests for interconnection at seven key metropolitan exchanges and engaging in misleading or deceptive conduct.

1. Enforcement and compliance

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

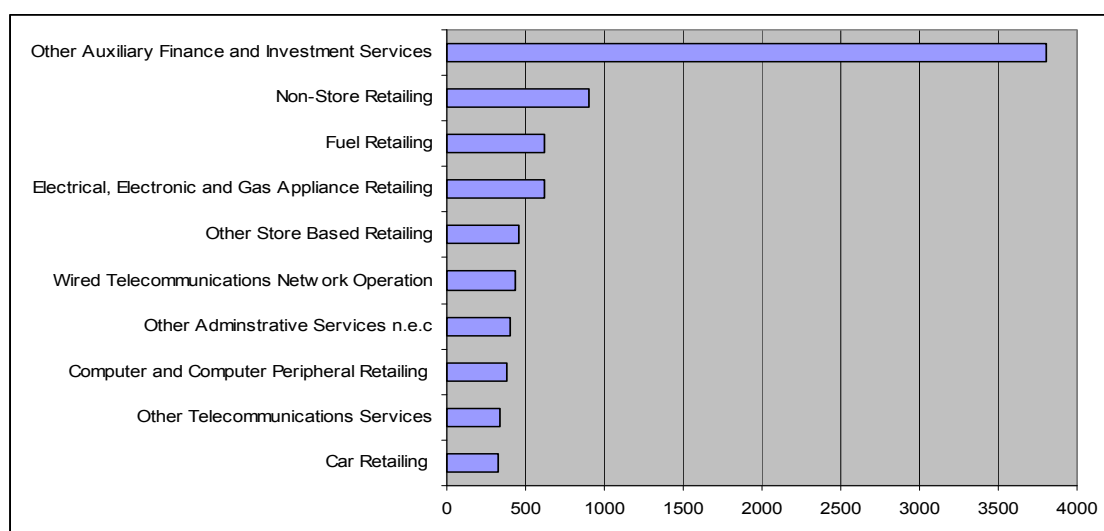
Responding to businesses and consumers

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

During the March 2009 quarter the ACCC Infocentre received 31 554 complaints and inquiries from businesses and consumers (email, 7483; telephone, 23 570; and correspondence, 501). Of these, 18 183 complaints and inquiries were entered into the ACCC's database.¹ Most of these complaints and inquiries were concerned with reporting scam-based activity, online retailers and warranties and refunds advice.

During the March quarter the Infocentre escalated 175 matters to regional offices for assessment. Matters under Part IV of the Trade Practices ACT were generally escalated to the regional office closest to the caller's location, while Part IVA and some complex Part V matters requiring further investigation were also escalated appropriately. Figure 1.1 lists the 10 most complained about industries during the March quarter:

Figure 1.1 Ten most complained about industries, 1 January to 31 March 2009



¹ Please note that the data contained in this report may vary quarterly or annually because of ongoing quality assurance and review processes.

The top category in the above chart (**Other auxiliary finance and investment services**) refers primarily to complaints received about advance fee and other financial fraud schemes.

Of the complaints and inquiries entered into the ACCC's database during the March quarter 78 per cent related to consumer protection matters, higher than the 2008 quarterly average of 75 per cent. Competition matters accounted for 3 per cent of contacts, lower than the quarterly average figure of 5 per cent reported in 2008. Other matters accounted for 19 per cent, down from the 20 per cent quarterly average for 2008.

Scam-related reports were the most common contacts received by the Infocentre in the March quarter, with *The Little Black Book of Scams* being the most popular ACCC publication. Warranties and refunds contacts rose, which accords with the usual pattern of complaints following increased retail activity over the Christmas holiday period.

The Infocentre workload continues to be significantly higher than in equivalent periods in previous years, with greater call and email numbers.

Enforcing for businesses and consumers

In undertaking its enforcement activity, the ACCC remains committed to conducting its work in an efficient and professional manner. As Australia's peak consumer protection and competition agency, the ACCC manages its enforcement processes to achieve effective outcomes and use of resources while serving the public interest.

Litigation commenced

Seven enforcement litigation proceedings were commenced in the Federal Court during the March 2009 quarter.

ACCC v Telwater Pty Ltd and another

Commenced | 23 January 2009 | QUD26/2009

Proceedings under Part IV for alleged resale price maintenance of marine craft.

ACCC v AMV Holdings Pty Ltd and another

Commenced | 23 January 2009 | NSD58/2009

Proceedings under Part V for alleged misleading or deceptive conduct relating to advertising mobile premium services.

ACCC v Teracomm Ltd

Commenced | 23 January 2009 | NSD59/2009

Proceedings under Part V for alleged misleading or deceptive conduct relating to advertising mobile premium services.

ACCC v Tel.Pacific Limited

Commenced | 3 February 2009 | VID65/2009

Proceedings under Part V for alleged misleading or deceptive conduct and false or misleading representations relating to pre-paid international phone cards.

ACCC v Cargolux Airlines International SA

Commenced | 10 February 2009 | NSD106/2009

Proceedings under Part IV for alleged price fixing relating to fuel surcharges applied to international carriage of air cargo.

ACCC v Société Air France and another

Commenced | 10 February 2009 | NSD105/2009

Proceedings under Part IV for alleged price fixing relating to fuel surcharges applied to international carriage of air cargo.

ACCC v Martinair Holland NV

Commenced | 10 February 2009 | QUD104/2009

Proceedings under Part IV for alleged price fixing relating to fuel surcharges applied to international carriage of air cargo.

Proceedings concluded

Nine enforcement litigation proceedings were finalised during the March 2009 quarter.

ACCC v White Top Taxis and others

Commenced | 8 August 2008 | concluded 13 February 2009 | 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.

Justice Finkelstein | Federal Court, Melbourne

Outcome | White Top Taxi to pay a penalty of \$30 000, costs and implement a trade practices law compliance program. Mssrs Powell, Bemrose and Mason to each pay a penalty of \$14 000 and costs. Mr Groves to pay a penalty of \$5000 and costs.

ACCC v Aziz Properties and Services Pty Ltd and another

Commenced | 18 December 2008 | concluded 19 February 2009 | VID1057/2008

Proceedings under Part V for alleged breach of the mandatory product safety standard for bunk beds.

Justice Finkelstein | Federal Court, Melbourne

Outcome | declarations, a range of probation orders, injunctions and costs

ACCC v Cargolux Airlines International SA

Commenced | 10 February 2009 | concluded 16 February 2009 | NSD106/2009

Proceedings under Part IV for price fixing relating to fuel surcharges applied to international carriage of air cargo.

Justice Lindgren | Federal Court, Sydney

Outcome | injunctions, \$5 million pecuniary penalty and \$100 000 costs.

ACCC v Société Air France and another

Commenced | 10 February 2009 | concluded 16 February 2009 | NSD105/2009

Proceedings under Part IV for price fixing relating to fuel surcharges applied to international carriage of air cargo.

Justice Lindgren | Federal Court, Sydney

Outcome | injunctions, \$6 million pecuniary penalty and \$200 000 costs.

ACCC v Martinair Holland NV

Commenced | 10 February 2009 | concluded 16 February 2009 | NSD104/2009

Proceedings under Part IV for price fixing relating to fuel surcharges applied to international carriage of air cargo.

Justice Lindgren | Federal Court, Sydney

Outcome | injunctions, \$5 million pecuniary penalty and \$100 000 costs.

ACCC v Gregory John Millar and another

Commenced | 15 August 2007 | concluded 24 February 2009 | WAD156/2007

Proceedings under Part V for misleading or deceptive conduct in the promotion of various industry exhibitions.

Justice Gilmour | Federal Court, Perth

Outcome | messrs Millar and Webb: Declarations, injunctions, attend a trade practices compliance seminar and pay costs. Mr Millar must also issue a public disclosure notice.

ACCC v Telwater Pty Ltd and another

Commenced | 21 January 2009 | concluded 05 March 2009 | QUD26/2009

Proceedings under Part IV for resale price maintenance of marine craft.

Justice Spender | Federal Court, Brisbane

Outcome | declarations, injunctions, penalties (\$210 000 for Telwater, \$28 000 for Mr Phelan) and costs.

ACCC v Charishma Seneviratne and another

Commenced | 20 August 2008 | concluded 27 March 2009 | TAD34/2008

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

Justice Marshall | Federal Court, Hobart

Outcome | court declared by consent that the Safeties Nature Nappy product included parts that are not biodegradable—that is, parts that are not chemically capable of being broken down by the biological activity of living micro-organisms—which was inconsistent with claims of 100 per cent biodegradability made on the packaging of the nappy product in promotional leaflets and the media and on the first respondent's internet site.

Charishma Seneviratne (27 March 2009) | declarations, injunctions and costs.

Senevens International (3 December 2008) | declarations, injunctions, corrective advertising, establish trade practices compliance program and costs.

ACCC v Tel.Pacific Ltd

Commenced | 3 February 2009 | concluded 30 March 2009 | VID65/2009

Proceedings under Part V for alleged misleading or deceptive conduct and false or misleading representations relating to pre-paid international phone cards.

Justice Gordon | Federal Court, Melbourne

Outcome | declarations, injunctions, trade practices compliance program and costs.

Current Full Federal Court applications

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

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 was one current enforcement appeal to the High Court as at the end of the quarter:

ACCC v Channel Seven Brisbane Pty Ltd and others

Commenced | 27 September 2005

Misleading or deceptive conduct relating to the promotion of a 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 s. 52 of the Trade Practices Act during broadcasts of *Today Tonight* in late 2003 and early 2004, in stories about a property investment program known as the 'Wildly Wealthy Women mentoring program'. On 17 July 2008 the ACCC applied for special leave to appeal to the High Court (granted on 14 November 2008).

Status | matter heard by High Court on 10 March 2009. On 30 April 2009 the High Court found that *Today Tonight* had engaged in misleading and deceptive conduct. The High Court ordered that the declarations relating to the Channel Seven licensees made by Justice Bennet be reinstated and that Channel Seven pay the ACCC's costs for the Full Court and High court appeals.

Section 87B undertakings accepted

Seventeen s. 87B enforcement undertakings were accepted by the ACCC during the March 2009 quarter.

1. The Reject Shop (Aust) Pty Ltd

The Reject Shop (Aust) Pty Ltd provided court enforceable undertakings to the ACCC relating to the supply of an unsafe children's toy, the 'Knights playset', and a cosmetic product that did not have ingredients listed on the product container or located at the point of sale. The Reject Shop undertook to:

- ensure that its products comply with relevant mandatory consumer product safety and information standards
- publish a notice in *The Australian* newspaper regarding the excess lead in the Knights playset and offering consumers a full refund,
- establish, implement and maintain a trade practices law compliance program for three years, and provide reports about the program to the ACCC.

2. Natural Green Pty Ltd

Natural Green Pty Ltd provided court enforceable undertakings to the ACCC on the supply of:

- a cosmetic product, '24 hour time release cream with placenta and vitamin E', in Australia while using an 'Australia Made' logo on the product without the approval of the Australian Made Campaign Ltd (AMCL)
- this product without a list of ingredients as required by the Consumer Product Information Standards (Cosmetics) Regulations 1991.

Natural Green undertook that it will:

- not supply cosmetics products that do not comply with the cosmetics standard or applicable mandatory product safety standards
- not use or depict the Australian Made logo without certification from AMCL
implement a trade practices law training program
- maintain a corporate complaints handling system.

3. Natural Beauty Enterprise Pty Ltd

Natural Beauty Enterprise Pty Ltd provided court enforceable undertakings to the ACCC relating to the supply of:

- a cosmetic product, 'Pearl cream with vitamin E' in Australia while using an 'Australia Made' logo on the product without the approval of AMCL
- this product without a list of ingredients as required by the Consumer Product Information Standards (Cosmetics) Regulations 1991.

Natural Beauty Enterprise undertook that it will:

- not supply cosmetics products that do not comply with the cosmetics standard or applicable mandatory product safety standards
- not use or depict the Australian Made logo without certification from AMCL
- implement a trade practices law training program
- maintain a corporate complaints handling system.

4. Oceanic Diving Australia Pty Ltd

Oceanic Diving Australia Pty Ltd provided court enforceable undertakings to the ACCC relating to resale price maintenance of scuba-diving related equipment. Oceanic Diving undertook that it will:

- not induce or attempt to induce a reseller from advertising or selling Oceanic products at a price less than a price specified by Oceanic
- implement a trade practices law compliance program for three years
- arrange for an article to be published in a scuba-diving publication (likely to be in the March edition of *Dive!og Australasia*), informing readers about its contravention and the prohibition of resale price maintenance.

5. TPG Internet Pty Ltd

TPG Internet Pty Ltd provided court enforceable undertakings to the ACCC relating to its advertisement of its unlimited cap saver mobile telephone plan. TPG undertook:

- that for three years it will not advertise a mobile telephone plan that states that unlimited calls and text will be available for a specified price when certain calls and text are excluded or that additional charges will be applied for some calls and text, without including an appropriately prominent disclaimer that exceptions, terms and conditions apply
- it will publish a corrective notice on its website
- it will implement a trade practices law compliance program and will require that all relevant staff and management to take part in training.

6. Stamford Hotels Pty Ltd

Stamford Hotels Pty Ltd provided court enforceable undertakings to the ACCC relating to the supply of hotel accommodation, or in connection with the promotion by any means of the supply of hotel accommodation, that it will:

- not make any representation, either orally or in writing, to the effect that its advertising has ACCC approval when this is not the case
- send a letter of correction and apology to the affected guest
- publish a corrective notice in the reception area of the hotel, and
- implement a trade practices law compliance program.

7. Pacific Magazines Pty Ltd

Pacific Magazines Pty Ltd provided court enforceable undertakings to the ACCC relating to the supply of mobile premium content services. Pacific Magazines undertook that it will:

- ensure advertisements for mobile premium services published in their magazines targeted at young readers must clearly state that the service is a subscription service, the cost of the service and the eligibility of consumers to receive the benefit of the services.

8. ACP Magazines Ltd

ACP Magazines Ltd provided court enforceable undertakings to the ACCC relating to the supply of mobile premium content services. Pacific Magazines undertook that it will:

- ensure advertisements for mobile premium services published in their magazines targeted at young readers must clearly state that the service is a subscription service, the cost of the service and the eligibility of consumers to receive the benefit of the services.

9. Bunnings Group Ltd

Bunnings Group Ltd provided court enforceable undertakings to the ACCC relating to the supply of a rubber luggage strap known as the 'Quickties tie down strap'. Bunnings undertook that it will:

- review the product compliance component of its trade practices compliance program to ensure it is designed to minimise future breaches of section of the Trade Practices Act.

10. Service Station Supplies (Aust) Pty Ltd

Service Station Supplies (Aust) Pty Ltd provided court enforceable undertakings to the ACCC relating to the wholesale supply of certain SSA- and MGR-branded elastic luggage straps. Service Station Supplies (Aust) undertook that it will:

- establish and implement a trade practices compliance program designed to minimise the risk of future breaches of s. 65C of the Trade Practices Act.

11. Brilliant Signs Pty Ltd

Brilliant Signs Pty Ltd provided court enforceable undertakings to the ACCC relating to the wholesale supply of certain SSA-branded elastic luggage straps. Brilliant Signs undertook that it will:

- establish and implement a trade practices compliance program designed to minimise the risk of future breaches of s. 65C of the Trade Practices Act.

12. Mitre 10 Australia Ltd

Mitre 10 Australia Ltd provided court enforceable undertakings to the ACCC relating to the supply of 'Warrior bungee cord' elastic luggage straps. Mitre 10 undertook that it will:

- implement a trade practices compliance program designed to minimise the risk of future breaches of s. 65C of the Trade Practices Act.

13. Mark Hawkins, Merin Hawkins and Medalist (Victoria) Pty Ltd

Mark Hawkins, Merin Hawkins and Medalist (Victoria) Pty Ltd provided court enforceable undertakings to the ACCC relating to the wholesale supply of certain Megalist-branded elastic luggage straps. Mark Hawkins, Merin Hawkins and Medalist (Victoria) undertook to:

- establish and implement a trade practices compliance program designed to minimise the risk of future breaches of s. 65C of the Trade Practices Act.

14. JB Hi-Fi Pty Ltd

JB Hi-Fi Pty Ltd provided court enforceable undertakings to the ACCC relating to the supply of mobile phones that it will:

- refrain from making any representation to the effect that the mobile phones it supplies are new when this was not the case
- publish a corrective notice to be displayed in its Kotara Westfield store for eight weeks offering either a refund or a replacement to affected customers

- publish a corrective notice in *the Newcastle Post* newspaper for eight weeks offering either a refund or a replacement to affected customers
- extend its existing trade practices compliance program to cover mobile phones.

15. Kyberguard Pty Ltd t/a Soldsmart

Kyberguard Pty Ltd t/a Soldsmart provided court enforceable undertakings to the ACCC relating to the supply of certain ride-on car toys that it will:

- recall the products and offer a refund to all customers who purchased them
- establish and implement a trade practices compliance program
- maintain and continue to implement the trade practices compliance program
- ensure that all products sold by Soldsmart that are subject to a prescribed consumer product safety standard or information standard under the Trade Practices Act comply with the relevant standard
- ensure that any test reports for products advertised for sale by Soldsmart are not more than 12 months old, and are supplied by an Australian National Association of Testing Authorities-accredited testing agency or equivalent overseas agency.

16. Timbermate Products Pty Ltd

Timbermate Products Pty Ltd provided court enforceable undertakings to the ACCC relating to the supply of a rubber luggage strap known as 'Quickties tie down strap'. Timbermate Products undertook to:

- establish and implement a trade practices compliance program designed to minimise the risk of future breaches of s. 65C of the Trade Practices Act.

17. Sontax Australia (1988) Pty Ltd

Sontax Australia (1988) Pty Ltd provided court enforceable undertakings to the ACCC relating to the supply of Sontax-branded elastic luggage straps that it will:

- establish and implement a trade practices compliance program designed to minimise the risk of future breaches of s. 65C of the Trade Practices Act.

2. Communicating with business and consumers

The ACCC's commitment to strong liaison, outreach and advocacy programs continues to be demonstrated by the wide range of activities we undertook. 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 and education activities

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

During the March 2009 quarter, the ACCC, as part of its outreach program:

- attended 86 meetings with government and industry representatives, small business operators and consumer groups nationally
- participated in four small business and franchising expos and field days
- conducted 28 presentations to small business operators, industry associations and consumer groups at forums such as the Franchising and business opportunities expo (Sydney); the Getting started in business expo (Darwin); Australian Taxation Office seminars on tax basics (Adelaide); and the 'You and your suppliers, competitors and customers—your rights and obligations under the Trade Practices Act' presentation (Hobart).

The Australasian Consumer Fraud Taskforce's annual scams education and awareness campaign took place this quarter, running from 2 to 8 March. The campaign raises awareness about the increasing dangers of scams and the steps consumers can take to protect themselves. The ACCC is an active participant in this ACFT and some key ACCC activities undertaken during the campaign included:

- Conducting a consumer fraud forum in Melbourne on 2 March to launch ACFT's 2009 campaign, and to examine the prevalence and types of scams in the global environment and ways for consumers to protect themselves from scammers.
- Distributing campaign materials to over 90 government, private and community partners.
- Placing interactive material on the ACCC's SCAMwatch website.

The ACCC was also involved in the following areas:

Warranties and refunds

Consumer and business complaints and inquiries to the ACCC Infocentre indicate that many people are unaware of the extent of their rights and obligations relating to warranties and refunds. The ACCC has released a new edition of *Warranties and refunds: a guide for consumers and business*, which addresses warranty and refund issues relevant to consumers and businesses (including manufacturers and importers). The publication includes information on remedies in the event of a breach of a statutory condition or warranty, how to negotiate with a business when seeking a remedy and business obligations.

As part of its focus on warranties and refunds, the ACCC has identified a number of particularly prevalent issues and has provided traders in those industries with information on their warranty and refund obligations and copies of the revised publication.

Scams

During the March quarter SCAMwatch radar alerts warning consumers and small business about emerging matters associated with the downturn in the Australian economy were regularly issued. Topics included:

- Victorian bushfire appeal scam
- Australian Government stimulus package scams
- Global financial crisis—another excuse for a scam!
- Losing money is a sure bet with sports arbitrage schemes

The ACCC also recognises that scammers will target the increasing number of redundancy package recipients with offers of business or franchise opportunities. In response to this risk, the ACCC is working to ensure that, where significant redundancies in particular occur, information is made available to retrenched workers to highlight:

- the value of due diligence
- the need to carefully consider any business opportunity before making a financial commitment
- that some of the warning signs may indicate that the opportunity may be 'too good to be true'.

Clarity in pricing

During this quarter the ACCC liaised extensively with small business and industry groups on the clarity in pricing amendments to s. 53C of the Trade Practices Act, which will come into effect on 25 May 2009. As well as developing specific guidance for the motor vehicle, travel and tourism industries, the ACCC has also developed general guidance for industry to ensure its compliance with the new legislative requirements.

Changes to s. 53C mean that businesses must ensure clarity in prices when using component pricing. Component pricing is where businesses represent the cost of goods or services to consumers in, or as the sum of, multiple component parts. Where no total figure or sum is given, such practices may mean consumers are unaware of the total price they will be required to pay to obtain that a good or service. This means that consumers could potentially be left with the impression that the goods or services are being offered at a lower price than what they actually are.

The rules for component pricing are contained in the recent amendments to s. 53C of the Trade Practices Act. Under these amendments, if businesses choose to use component pricing in their advertising, they must also provide consumers with a single (total) price for goods or services—as it is able to be quantified at the time they make a price representation. This total price must also be stated in a **prominent** way, which is at least as prominent as the most prominent component.

The s. 53C amendments will apply to all price representations by trade or commerce entities to consumers. The ACCC recognises that these changes may potentially impact significantly on the advertising practices of a number of industries, and has developed a compliance strategy that includes guidance for business generally, for industries that may be particularly affected and for consumers.

Codes of conduct

The ACCC administers prescribed industry codes of conduct—currently the Franchising Code of Conduct, the Oilcode and the Horticulture Code of Conduct—and assists industry stakeholders in developing effective national voluntary industry codes of conduct.

Mandatory codes

Franchising Code

The Franchising Code regulates conduct between franchisors and franchisees. Following inquiries into franchising held in both South Australia and Western Australia in late 2007, the Parliamentary Joint Committee on Corporations and Financial Services resolved to hold an inquiry into the Franchising Code. The committee's final report, which was released on 1 December 2008, contained recommendations for amendments to the Franchising Code; the Australian Government has not yet responded to these recommendations.

During the March 2009 quarter, the ACCC:

- met with the Franchise Council of Australia to discuss joint education initiatives for both current and prospective franchisees and franchisors
- discussed issues surrounding franchises under administration with insolvency experts
- continued to educate industry participants about their rights and responsibilities under the Franchising Code and the ACCC's enforcement role by participating in educational seminars (e.g. at the Sydney franchising and business opportunity expo and three Australian Defence Force transition seminars, and to various law firms)

- continued to expand the Franchising Code information network, conducting mail-out updates on ACCC litigation and enforcement activities and copies of articles written by the ACCC on the code.

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.

The Department of Resources, Energy and Tourism (RET) is currently reviewing the Oilcode in conjunction with industry, the ACCC, the Department of the Treasury and other key stakeholders (commenced in March 2008).

During the March 2009 quarter, the ACCC continued to:

- liaise with RET on the Oilcode review and proposed Oilcode amendments, particularly on:
 - disclosure mirroring the Franchising Code of Conduct
 - terminal gate pricing
 - the dispute resolution scheme.

Horticulture Code

The Horticulture Code regulates 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.

On 31 July 2008 the ACCC provided the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs (the Hon. Chris Bowen) with the grocery inquiry report, which also considered the effectiveness of the Horticulture Code. Implementation issues arising from recommendations in the ACCC report are currently being considered by the Horticulture Code Committee. The committee has consulted widely with the stakeholders about potential issues and will report its findings to the minister.

During the March 2009 quarter, the ACCC:

- attended a Horticulture Code Committee meeting to discuss ACCC recommendations to amend the Horticulture Code made in the grocery inquiry report
- liaised with the Department of Agriculture, Fisheries and Forestry, discussing in particular the recommended amendments to the Horticulture Code, their potential impact on the horticulture industry and the ACCC's enforcement role
- provided both online and print guidance and information to Horticulture Code stakeholders
- revised its online Horticulture Code questions and answers to make them easier for growers and traders to understand.

Product safety

The ACCC's Product Safety Branch develops and reviews mandatory standards and bans, and informs ACCC staff, suppliers and consumers about compliance with them.

Product safety reform and liaison activities

The ACCC is preparing to lead national efforts to coordinate product safety reforms that will be implemented later this year.

During the March quarter, the ACCC:

- Significantly contributed to coordinating the work of the implementation working group, which comprises federal, state and territory agencies, in developing the Intergovernmental Agreement for Australian Consumer Law and its associated memorandum of understanding.
- Furthered the development of initiatives identified in recommendations made in the Productivity Commission Research Report for product safety reforms, including initial scoping for and structuring of the proposed information clearinghouse, recalls review and one-stop shop websites.
- Provided input to drafting instructions for legislative reform of the product safety provisions of the Trade Practices Act, including the reasonably foreseeable use threshold, the supply of consumer goods and mandatory reporting.
- Continued to liaise with state and territory fair trading and/or consumer affairs agencies on the following Standing Committee of Officials of Consumer Affairs projects:
 - product safety harmonisation model
 - coordinating national standards and bans.
- Met with Standards Australia to discuss aligning priorities for the development of standards in the future as well as the continuing development of horizontal standards for certain industry sectors.
- Met with e-Bay further develop 'pop-up' information on mandatory standard topics.
- Contributed to the development of Victoria Kidsafe's strategic plan.
- Consulted with the Research Centre for Injury Studies on the national product safety reform process.
- Met with the Australian Local Government Association about product safety concerns associated with the use of portable pools and possibly using local government to distribute information about product safety issues.
- Consulted with federal, state and territory regulators on the updating of the Product Recalls Australia website (www.recalls.gov.au).
- Liaised with International Product Safety Caucus members about the proposed review of the recalls system and the development of the clearinghouse website and mandatory reporting initiatives.
- Liaised with the United States Consumer Product Safety Commission on the US proposal to introduce tracking labels on children's products for recall purposes.

Mandatory product safety and information standards

Development of new mandatory standards and bans

Lead in toys

A new consumer product safety standard limiting the migration of lead and certain elements in children's toys was introduced on 22 January 2009. The mandatory standard adopts the safety requirements of Australian/New Zealand Standard (AS/NZ) International Organization for Standardization (ISO) 8124–3: 2003, *Safety of toys (safety requirements)—migration of certain elements requirements*, and parts of AS 8124–7: 2003, *Safety of toys—finger paints—requirements and test methods*, by setting maximum limits for accessible lead and certain elements in children's toys.

The standard takes effect from 1 January 2010, which provides reasonable time for suppliers to source certified products where necessary and to ensure that all their stock complies with the standard.

The interim Trade Practices Act ban on lead in children's toys has been made permanent to maintain current requirements until the new standard takes effect.

Treadmills

A regulation impact statement (RIS) making the case for a possible mandatory safety standard for treadmills was agreed by the Office of Best Practice Regulation (in the Department of Finance and Deregulation) and regulations are currently being drafted.

The new regulations will require treadmills to carry warning labels about the risk of injury to small children present when the treadmill is being used. Children who have touched the moving conveyor of a treadmill in use have received significant friction burns.

Toothpaste containing diethylene glycol

A permanent ban on toothpaste containing more than 0.25 per cent by weight of diethylene glycol (DEG) came into effect on 12 March 2009. This permanent ban extends an interim ban on these products.

Emerging issues

Magnets in children's toys

A RIS process is currently examining the case for a possible mandatory safety standard for small magnets in toys. If ingested, these small, strong magnets can draw together in the digestive tract, causing significant injuries.

Other issues

The ACCC chaired a Consumer Protection Advisory Committee working party to consider the safety of loose fill (cellulosic) home insulation. Regulation of the safe installation of these materials will be considered when powers to regulate services are included in the Trade Practices Act.

Investigations are continuing into the safety issues associated with the use of mobility scooters and portable domestic water storage vessels that do not have secure fitted lids.

Reviews of mandatory standards

The review of mandatory standards is progressing, with the standards relating to aquatic toys and flotation aids completed. New standards are expected to be introduced shortly. Reviews of the mandatory standards for vehicle jacks and portable ramps for motor vehicles are close to completion.

The review of the mandatory standard for bicycle helmets is progressing, with a regulation impact statement to be circulated in the near future.

Product safety enforcement and compliance outcomes

The range of product safety enforcement and compliance outcomes achieved by the ACCC during the March quarter is highlighted by the following matters:

- The ACCC obtained declarations and final orders by consent in the Federal Court, Melbourne against Aziz Properties and Services Pty Ltd, trading as Infinity Megastore, and its sole officeholder, Dr Rodney Aziz. The company supplied bunk beds, from its showroom and online, that did not comply with the mandatory safety standard and could pose a serious potential risk to users from entrapment and fall through hazards. The parties had failed to comply with previous interlocutory orders to recall the bunk beds. As well as making a range of probation orders, the court ordered injunctions against the company and Dr Aziz to restrain repetition of the conduct. They were also ordered to pay the ACCC's costs of the proceedings, fixed at \$35 000.
- The Reject Shop provided court enforceable undertakings to the ACCC after selling a children's toy product that exceeded permissible lead levels and a cosmetic product that did not comply with the mandatory product information standard. The Reject Shop conducted a voluntary recall of the Knights Playset toy and offered full refunds to customers. The company also supplied stickers listing the ingredients of the Universal Wipes moist tissue product to its outlets to place on the product.
- Two small cosmetic manufacturing companies, Natural Beauty Enterprise Pty Ltd and Natural Green Pty Ltd, admitted supplying cosmetic products that were not labelled with ingredient lists in accordance with the mandatory information standard. Both companies provided court enforceable undertakings to the ACCC and published corrective advertisements.
- An internet toy trader, Kyberguard, provided court enforceable undertakings to the ACCC after selling toy cars through www.soldsmart.com.au that failed to meet the mandatory standard for toys for children up to and including 36 months of age. Small parts of the toys broke off during testing and could be a choking hazard. Kyberguard conducted a voluntary recall of the products and offered refunds to consumers. Kyberguard also provided undertakings that it would ensure that any test reports for products advertised for sale are not more than 12 months old, and are supplied by an Australian National Association of Testing Authorities-accredited testing agency.
- The ACCC accepted court enforceable undertakings from two companies, Timbermate Products Pty Ltd and Sontax Australia Pty Ltd, which supplied elastic

luggage straps that did not have mandatory warning labels permanently attached as required by the mandatory standard. Both companies implemented a voluntary trade recall of the products and published warning notices in major daily newspapers.

Administrative outcomes which resulted from investigations of potentially hazardous products included:

- Repositioning of warning labels more prominently on packaging of Playgro playmats was agreed to by Playgro after a child was injured
- Painting pegs (for hanging children's artwork) were voluntarily recalled because their component small parts could pose a choking hazard for children. The ACCC wrote to suppliers regarding the risks associated with detachable small parts.

Consumer awareness and industry materials

Education strategies for consumers and guidance strategies for suppliers have been developed and included in compliance strategies for baby bath aids, child car restraints, disposable cigarette lighters, folding cots, luggage straps, toys for children under three and elastic luggage straps. These strategies generally include developing consumer alerts, website hot topics and other material, mandatory standards guides for suppliers and/or bulletins and web materials, along with enforcement-related media releases.

A bulletin informing suppliers about new mandatory standards for folding cots and lead in children's toys, and which also provides an interpretation of labelling requirements for foam toys, was distributed at the Australian Toy Association Fair held in Melbourne from 20 to 23 March 2009.

A draft guide on choosing and using product test companies was sent to stakeholders for comment. The need for such a guide was identified at the 2008 Toy Summit. Feedback was positive and the guide will be published later this year.

An Easter 'Do-it-yourself' media campaign was developed to warn consumers of injuries that can result from using ladders, elastic luggage straps and vehicle jacks, ramps and stands that do not meet mandatory and voluntary standards or are not in proper working order. Consumers were also warned of the dangers of inappropriate use of these goods.

Product Recalls Australia

The Product Recalls Australia (PRA) website (www.recalls.gov.au), which provides consumers and state and territory regulators with up-to-date information on all Australian safety-related recalls, has been significantly improved.

Significant differences between the former recalls website and the new one include:

- An email subscription service notifying users with overnight alerts about categories of interest to them. Currently interested persons generally become aware of recalls either by visiting the website or reading newspaper advertisements.
- Customised feeds via really simple syndication (RSS) that update every five minutes.

- Simplified search methods and options (e.g. quicker, more extensive keyword and category searches) mean that users can now more easily search for recalls.
- Secure and confidential online submission of a new electronic form.
- New graphical design and user interface.
- Home page hot topics that alert users to significant recalls and emerging issues.

Earlier notification through the online system allows recall details to be published online more quickly than previously. The new notification and information distribution systems mean that suppliers, regulators, consumers and other stakeholders can act more quickly to minimise risks. All those in the supply chain are able to identify the specific product subject to recall more quickly. Consumers can quickly determine whether they have purchased the recalled goods and, if so, will immediately know what the corrective action to take.

During March 2009 quarter, 166 new recalls were entered on the database—40 consumer products, 12 food products, 81 therapeutic goods and 33 motor vehicles.

3. Mergers

The Australian Competition and Consumer Commission'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 *Trade Practices Act 1974*.

Merger reviews undertaken in the March 2009 quarter

The ACCC conduct 92 reviews (including confidential and public merger reviews) between 1 January and 31 March 2009; of these, 81 merger proposals were not opposed. The ACCC opposed one review publicly and expressed concern following four confidential review proposals. No undertakings or variations to existing undertakings were accepted during the quarter. No decision was made in six reviews because either the proposal was withdrawn or a view could not be formed on a confidential basis.

Time taken to assess mergers

	Confidenti al	Public	Total
Total reviews undertaken 1 Jan 09 to 31 Mar 09	42	50	92
This total can be broken down into the following categories:			
Not opposed	34	47	81
Finished—no decision (including withdrawn) ¹	4	2	6
Opposed outright	0	1	1
Confidential review—ACCC concerns expressed	4	0	4
Resolved through undertakings ²		0	0
Variation to undertaking accepted	0	0	0

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 breaks down the time taken by the ACCC to assess merger proposals completed during the March 2009 quarter. This does not include the six matters where no decisions were made. While there appears to have been an increase in the proportion of mergers investigations taking longer than eight weeks, this is because 12 reviews of completed acquisitions were finalised in this quarter, including seven Metcash acquisitions of food wholesalers.

Reviews of completed mergers are not subject to the same time frames as reviews of proposed mergers for several reasons, including that it often takes longer to obtain parties' submissions because time is no longer an imperative. Excluding the investigations of completed acquisitions, 10 per cent of merger investigations took longer than eight weeks, in keeping with previous years.

Time taken to undertake merger reviews	Number of reviews	Percentage of mergers
Two weeks or less	34	39
Four weeks or less	55	63
Six weeks or less	63	72
Eight weeks or less	65	76
More than eight weeks	21	24

Statement of issues

One statement of issues was released during the March quarter:

A Gange Pty Ltd—proposed acquisition of West Suburban Taxis Pty Ltd—11 March 2009.

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 public competition assessments outlining how decisions are reached on matters of particular public interest or that have important precedence value.

The ACCC issued three public competition assessments during this quarter:

- Chinalco (Aluminium Corporation of China)—proposed acquisition of interests in Rio Tinto Ltd—25 March 2009
- P & M Quality Smallgoods Pty Ltd (Primo)—proposed acquisition of Hans Continental Smallgoods Pty Ltd—13 March 2009
- Baiada Poultry Pty Ltd—proposed acquisition of Bartter Enterprises Pty Ltd—27 February 2009.

Section 87B undertakings

No s. 87B undertakings or variations to existing undertakings were accepted in the March quarter.

Major matters

Major matters decided upon during the March 2009 quarter included:

- Baiada Poultry's proposed acquisition of Bartter Enterprises
- Chinalco's proposed acquisition of interests in Rio Tinto
- P & M Quality Smallgoods Pty Ltd (Primo)—proposed acquisition of Hans
- Medibank Private Limited—proposed merger with Health Services Australia Group.

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

Baiada Poultry Pty Ltd—proposed acquisition of Bartter Enterprises Pty Ltd

Result | on 11 February 2009 the ACCC decided to oppose the proposed acquisition.

Summary | Baiada Poultry proposed to acquire Bartter Enterprises. The ACCC formed the view that the proposed acquisition was likely to substantially lessen competition in markets for the wholesale supply of processed chicken meat.

The ACCC investigation indicated that three large national chicken processors—Baiada, Bartter and Ingham—are currently supplying the vast majority of processed chicken to large volume buyers and are each other's closest competitors.

Fast-food restaurants (quick service restaurants) comprise a large group of customers heavily reliant upon the three national processors for the supply of high volumes of processed chicken meat. The ACCC concluded that the smaller processors in the market face high barriers to expansion and are unlikely to be capable of imposing an effective competitive constraint upon the merged entity.

Therefore, the ACCC concluded that the proposed acquisition would be likely to result in a substantial lessening of competition, with effects on prices for the fast-food restaurants and their consumers.

Subsequent to the ACCC's decision, and without admission, Baiada offered a proposed undertaking under s. 87B of the Trade Practices Act to address the ACCC's competition concerns.

Under the proposed undertaking, Baiada, upon acquiring Bartter, will simultaneously divest all assets currently owned by Bartter in Victoria to La Ionica Poultry. The assets to be divested include Bartter's Geelong processing plant, associated breeding farms and hatcheries, and Bartter's North Melbourne feed mill. If accepted by the ACCC, the proposed undertaking commits Baiada to divesting certain assets as a condition of the proposed acquisition proceeding.

La Ionica currently operates a chicken processing facility in Thomastown, Victoria that uses a unique chemical-free processing method. La Ionica is a major supplier of whole dressed birds to customers, predominately located in Victoria.

The ACCC is currently conducting market inquiries on the proposed undertaking to determine whether the proposed undertaking is likely to address the ACCC's competition concerns.

Chinalco (Aluminium Corporation of China)—proposed acquisition of interests in Rio Tinto plc and Rio Tinto Ltd

Result | on 25 March 2009 the ACCC decided not to oppose the proposed acquisition.

Summary | Chinalco proposed to acquire interests relating to Rio Tinto's iron ore, bauxite, alumina, aluminium and copper assets, as well as a potential increased equity interest of up to 18 per cent in the Rio Tinto parent entity.

The ACCC noted the potential overlap between Rio Tinto's Australian bauxite and alumina operations and Chinalco's interest, via its subsidiary Chalco, in the potential development of a bauxite mine and alumina refinery (and associated infrastructure) in Australia. The ACCC also considered whether the proposed transaction would have competitive implications for iron ore.

The ACCC considered the proposed acquisition in the context of:

- regional markets for the supply of bauxite
- national markets for the supply of smelter-grade alumina and primary aluminium
- the global seaborne supply of iron ore lump
- the global seaborne supply of iron ore fines
- the national (Australian) supply of iron ore lump
- the national (Australian) supply of iron ore fines.

The ACCC found that the direct competitive overlap of Rio Tinto's and Chinalco's operations in Australian markets for the supply of bauxite, copper and alumina was limited, and that the proposed acquisition would be unlikely to result in a substantial lessening of competition in these markets.

On the likely effect on competition from the proposed acquisition on iron ore, the ACCC considered the potential for vertical integration between Rio Tinto's Australian iron ore operations and Chinese steel-makers, based on the assumption that Chinalco and various steel-makers are subsidiaries of the same parent entity and may have common commercial interests. The ACCC examined whether such vertical integration could provide Chinalco with the ability to control or influence Rio Tinto to decrease global iron ore prices below competitive levels to the benefit of Chinese steel-makers.

On the basis of information provided to the ACCC during its review and the ACCC's recent detailed investigation of the proposed acquisition of Rio Tinto by BHP Billiton, the ACCC concluded that Chinalco and Rio Tinto would be unlikely to be able to unilaterally decrease global iron ore prices below competitive levels. Given this conclusion, it was not necessary for the ACCC to reach a determinative view on the extent to which Chinalco could control and influence Rio Tinto.

Therefore, the ACCC concluded the proposed acquisition was unlikely to substantially lessen competition under s. 50 of the Trade Practices Act.

On 25 March 2009 a public competition assessment was released on the ACCC website.

P & M Quality Smallgoods Pty Ltd (Primo)—proposed acquisition of Hans Continental Smallgoods Pty Ltd

Result | on 18 February 2009 the ACCC decided not to oppose the proposed acquisition.

Summary | Primo proposed to acquire certain assets of Hans Continental Smallgoods from Japan Tobacco Inc. The assets acquired included the majority of the smallgoods operation and brands, including certain inventory and equipment located at the Blacktown manufacturing facility. The acquisition did not include the Hans Fresh business (which supplies fresh pork), the Blacktown manufacturing facility or the Swickers (Qld) abattoir and associated pig-growing operations.

The ACCC considered the proposed acquisition in the context of a national market for the manufacture and supply of smallgoods.

The ACCC considered that large-scale national manufacturers of smallgoods competed vigorously to supply smallgoods to large customers, including supermarkets, large distributors and other large national customers. The proposed acquisition would reduce the number of large-scale manufacturers capable of competitively supplying these customers from three to two.

However, the ACCC found that because of its financial position, without the proposed acquisition it was likely that the Hans business would shut down, would not be sold as a going concern or as a whole. Further the ACCC concluded that if the assets were sold following the closure of Hans, while some assets may remain in the industry, it was unlikely that this would provide an actual or potential competitive constraint.

Therefore, comparing the proposed acquisition with the likely outcome without the acquisition—namely, a shut-down of the Hans business and subsequent sale of its assets—the ACCC formed the view that the proposed acquisition of Hans Continental Smallgoods Pty Ltd by P & M Quality Smallgoods Pty Ltd would not be likely to result in a substantial lessening of competition in any market in contravention of s. 50 of the Trade Practices Act.

Notably, this review was one of the first cases in a long time where a failing firm argument (more specifically, the fact that because of the business's imminent failure, the competition provided by Hans was likely to be lost either with or without the acquisition) was determinative of the clearance. On 13 March 2009 the ACCC released a public competition assessment providing details of its consideration on its website.

Medibank Private Limited—proposed merger with Health Services Australia Group

Result | on 24 February 2009 the ACCC decided not to oppose the proposed acquisition.

Summary | the ACCC considered the relevant markets to be:

The state or territory markets for the supply of private health insurance to consumers.

The market for the supply of health management services to consumers. Health Services Australia (HAS) provides services Australia-wide. The ACCC considered this

market on a national basis, but its conclusions would be unchanged if the market were instead considered on a regional basis, given the large number of regional providers.

The ACCC examined various theories of competitive harm (i.e. the means by which the proposed transaction may theoretically lessen competition) and concluded that the proposed transaction is not likely to result in a substantial lessening of competition in any relevant market.

Relating to health management services, the ACCC considered the proposed acquisition would not substantially lessen competition in this market, nor would it increase Medibank Private's ability or incentive to foreclose competition in private health insurance (PHI) consumer markets by restricting or limiting the supply of health management services. In particular:

- the extent to which PHI providers currently utilise health management services is limited, and HSA does not currently provide these services to other PHI providers
- a significant number of providers of health management services remain available to PHI providers and barriers to entry or expansion appear relatively low
- PHI providers competing with Medibank have established various health management services throughout Australia and are likely to be able to further develop those services.

The ACCC also considered whether HSA's provision of onshore health check services, which it provides to people applying to live, work, or study in Australia, or its provision of various services to certain Australian employees, would allow Medibank to lessen competition by influencing these patients decisions with respect to purchasing PHI from Medibank rather than competing providers. The ACCC concluded that this was unlikely given that:

- HSA is not the sole provider of these health check services
- international students and new migrants have a choice of PHI providers, and it appears they are generally more likely to be influenced in their choice of PHI by their educational institutions and migration agents than by the provider of their initial health check on arrival
- Australian residents have many other PHI options and sources of information about those options available to them.

4. Adjudication

Authorisations

During the March 2009 quarter, the ACCC received 18 new authorisation applications, excluding gas and electricity applications, covering 10 projects.

The total number of authorisation applications being considered by the ACCC on 31 March 2009, excluding gas and electricity applications, was 26, covering 14 projects.

Matters finalised

Air New Zealand Limited and Air Canada—A91097 and A91098

Summary | on 6 August 2008 Air New Zealand and Air Canada lodged applications for 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 proposed to pool and share the revenue from specified flights. The cooperation agreement also provided for the applicants to coordinate sales policies, including the ability to set specific fare levels or agree to implement occasional tactical fares to stimulate additional demand.

On 21 January 2009 the ACCC issued a final determination denying authorisation to the cooperation agreement.

Saint Vincent's Health Australia—A91099

Summary | on 8 August 2008 Saint Vincent's Health Australia, formerly the Sisters of Charity Health Service Limited, applied for revocation and substitution. In broad terms, SVHA sought authorisation for a network of Catholic health facilities, represented by the Catholic Negotiating Alliance (CNA) to:

- collectively bargain with health funds and the Repatriation Commission
- collectively bargain with suppliers of various goods and services
- share particular information for the purpose of benchmarking
- collectively boycott health funds and the Repatriation Commission if collective negotiations fail or if the health funds do not agree to participate in the information-sharing arrangements.

On 29 January 2009 the ACCC issued a final determination:

- granting authorisation to the proposed collective bargaining and information sharing arrangements for five years
- denying authorisation to the proposed collective boycott conduct.

Recruitment and Consulting Services Association Limited—A91102

Summary| on 25 September 2008 the Recruitment and Consulting Services Association Limited applied for authorisation under which it proposed to make a contract, arrangement or understanding by which participants agree to adhere to a code for professional practice, administered under 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.

On 21 January 2009 the ACCC issued a final determination granting authorisation for five years.

Construction, Forestry, Mining and Energy, Industrial Union of Employees, Queensland—A91103

Summary| on 6 October 2008 the Construction, Forestry, Mining and Energy, Industrial Union of Employees, Queensland (CFMEU) applied for authorisation for its owner-driver members to collectively negotiate with earthmoving contractors on the terms, prices and conditions of earthmoving services provided by owner-drivers to the earthmoving contractors in the commercial and civil construction sectors in south-east Queensland.

The CFMEU application seeks authorisation for its current and future owner-driver members in collective negotiations with current and future acquirers of earthmoving services.

On 26 March 2009 the ACCC issued a final determination granting authorisation for five years.

AgStewardship Australia Limited—A91105

Summary| on 31 October 2008 AgStewardship Australia Limited applied for authorisation on behalf of the proposed signatories of the industry waste reduction scheme to impose a four-cent levy per litre/kilogram on manufacturers and suppliers of agricultural and veterinary (AgVet) chemicals. The IWRS incorporates the drumMUSTER and ChemClear programs, by which unwanted, empty AgVet chemical containers are collected.

On 21 January 2009 the ACCC issued a final determination granting authorisation for five years.

David Jones Limited—A91113

Summary| on 24 November 2008 David Jones Limited applied for re-authorisation for retail brand management businesses operating within its stores to participate in certain promotions. The ACCC previously granted authorisation to these arrangements in 2003.

On 18 February 2009 the ACCC issued a final determination granting authorisation until 12 March 2014.

CS Energy Limited—A50027

Summary | on 3 February 2009 CS Energy applied for a minor variation to A50027, to allow CS Energy and Callide Power Management Pty Limited to jointly negotiate individual coal supply agreements with Anglo Coal until December 2011. Under the minor variation, CS Energy proposed to agree with Callide Power Management to jointly undertake negotiations with Anglo Coal for the extension of these agreements.

On 25 February 2009 the ACCC decided that the proposed variation was not minor and consequently the application was denied.

Draft determinations issued (not otherwise appearing above)

Australian College of Cosmetic Surgery—A91106

Summary | on 6 November 2008 the Australian College of Cosmetic Surgery (ACCS) applied for authorisation of its code of practice and parts of its bylaws. The code and relevant bylaws contain advertising guidelines and guidelines for informed consent as well as processes for dealing with complaints under the code.

On 20 February the ACCC issued a draft determination proposing to deny authorisation to the ACCS arrangements. A pre-decision conference about the draft determination was held on 30 March 2009.

On 15 March 2009 the ACCS revised its application. The ACCC is currently considering submissions responding to the draft determination and proposed revised code of practice and relevant bylaws.

Anglo Coal Australia Pty Ltd and others—A91107 to A91109

Summary | on 14 November 2008 eight users of the Dalrymple Bay Coal Terminal lodged applications seeking authorisation for a maximum six-month extension of the authorisation granted by the ACCC for the queue management system, which expired on 31 December 2008.

On 23 February 2009 the ACCC issued a draft determination proposing to deny authorisation. On 27 February 2009 the application was withdrawn by the parties.

Port Waratah Coal Services Limited and others—A91110 to A91112

Summary | on 19 November 2008 Port Waratah Coal Services Limited and the Newcastle Coal Infrastructure Group lodged applications for authorisation of arrangements concerning the Hunter Valley coal chain.

On 26 February 2009 the ACCC issued a draft determination proposing to grant conditional authorisation to the arrangements. The ACCC is currently considering submissions responding to the draft determination; a final determination in this matter will be issued in the June quarter.

Powercor Australia Limited—A91114 to A91116

Summary | on 15 December 2008 a group of Victorian electricity distribution network owners and operators applied for an authorisation proposing to require all civil contractors undertaking network electricity infrastructure works, whether employed by the applicants or third parties, to meet accreditation standards set by the applicants.

On 19 March 2009 the ACCC issued a draft determination proposing to grant authorisation to the arrangements. The ACCC issued a final determination granting authorisation to the arrangements on 23 April 2009.

Queensland Newsagents Federation—A91117

Summary | on 22 December 2008 the Queensland Newsagents Federation applied for authorisation on behalf of itself, the Newsagents Association of New South Wales and the Australian Capital Territory and the Victorian Newsagents Association to collectively negotiate on behalf of their members with newspaper and magazine publishers and distributors. The QNF is also seeking authorisation on behalf of newsagents or groups of newsagents who are not members of the associations but ask to join in any collective bargaining.

On 18 March 2009 the ACCC issued a draft determination proposing to grant conditional authorisation to the arrangements. A final determination granting authorisation to the arrangements was issued by the ACCC on 22 April 2009.

Cashcard Australia Limited and Bank of China (Australia) Limited—A91119

Summary | on 2 February 2009 Cashcard Australia and the Bank of China (Australia) applied for authorisation for an unincorporated joint venture to establish, market and promote a sub-network of automatic teller machines owned and developed by the applicants and any future members of the network. The applicants propose that members of the network will agree not to directly charge cardholders of other members of the network for transactions undertaken at any ATMs owned by the member. The application is also expressed so as to apply future parties to the proposed arrangements.

On 26 March 2009 the ACCC released a draft determination proposing to authorise the arrangements for five years.

Applications lodged (not otherwise appearing above)

Mortgage and Finance Association of Australia—A91118

Summary | on 21 January 2009 the Mortgage and Finance Association of Australia applied for re-authorisation of its disciplinary rules, which are part of the regime governing the conduct of MFAA members. On 30 March 2009 the MFAA amended its application for revocation and substitution.

The MFAA also made a request for interim authorisation. On 19 February 2009 the ACCC decided to grant interim authorisation for the MFAA to continue to give effect to those provisions of the disciplinary rules as currently authorised under A90880 while the ACCC considers and evaluates the merits of the application.

On 22 April 2009 the ACCC issued a draft determination proposing to grant authorisation to the MFAA's disciplinary rules for five years subject to the condition that the MFAA delete rule 4.7.1A.

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

Information Technology Contract and Recruitment Association—A91063

Summary| on 29 January 2009 the Information Technology Contract and Recruitment Association applied for minor variation. ITCRA seeks to alter its code of conduct provisions for contractor transitioning, which are found in clauses 7.1 and 7.2 and Schedule A.

In particular, it is proposed that only subclauses 7.1, 7.1.1 and 7.1.2 of the code of conduct would remain with slight amendments. It is proposed to remove subsections 7.1.3, 7.1.4, sections 7.2 and 7.3, and Schedule A.

The ACCC has consulted interested parties and the matter is under consideration.

Softwood Tasmania Joint Venture—A91120 to A91122

Summary| on 17 February 2009 the Softwood Tasmania Joint Venture (STJV) participants applied for authorisation of their joint venture operating agreement, management agreement and sales agency agreement. The agreements involve the participants jointly approving the appointment of the manager (Timberlands Pacific Pty Ltd) to manage the joint venture assets, agreeing that each would appoint the manager as their exclusive sales agent, establishing (and continuing to develop) common marketing plans and entering into joint sales agreements with customers.

The ACCC has consulted interested parties and the matter is under consideration.

Tasmanian Farmers & Graziers Association—A90914

Summary| on 24 February 2009 the Tasmanian Farmers & Graziers Association applied for minor variation to A90914 for amendments to allow a TFGA-nominated employee or consultant to assist grower groups in their negotiations (currently only the TFGA Vegetable Council Executive Officer is authorised to assist grower groups in their negotiations).

A determination granting the minor variation was issued by the ACCC on 15 April 2009.

TOTE Tasmania Pty Ltd and others—A91123 and A91124

Summary| on 27 February 2009 TOTE Tasmania, ACTTAB and Racing and Wagering Western Australia applied for authorisation for:

- an agreement entered into between the applicants on 16 February 2009 relating to the formation of a joint venture with respect to the supply of fixed odds wagering services on sports, racing and other events and the appointment of Centrebet Pty Ltd to provide wagering and risk management services and ancillary services to the applicants
- an agreement entered into between the applicants, Centrebet Pty Ltd and Centrebet International Ltd (as guarantor) on 16 February 2009 under which Centrebet Pty Ltd agrees to provide the wagering and risk management services and ancillary services to the applicants.

The ACCC has consulted interested parties and the matter is under consideration.

TAB Agents' Association of New South Wales—A91125

Summary | on 4 March 2009 the TAB Agents' Association of New South Wales applied for authorisation for current and future members of the association to collectively negotiate with Tabcorp (or any entity that holds a licence to conduct off-course totalizator for the purposes of s. 12 of the Totalizator Act).

A draft determination proposing to grant authorisation was considered by the ACCC on 22 April 2009.

Lottery Agents Association of Victoria Inc—A91126

Summary | on 16 March 2009 the Lottery Agents Association of Victoria applied for authorisation on behalf of itself and its members to negotiate the terms and conditions of retailer agreements and arrangements with Tattersall's Sweeps Pty Ltd and Intralot Australia Pty Ltd.

The ACCC has consulted interested parties and the matter is under consideration.

Tabcorp Manager Pty Ltd—A91127 to A91132

Summary | on 30 March 2009 Tabcorp Manager Pty Ltd (Tabcorp) applied for authorisation to give effect to the agreements entered into between Tabcorp and ACTTAB Ltd on 20 March 2009 and between Tabcorp and Racing and Wagering Western Australia on 16 March 2009 for all provisions of the ACTTAB and RWWA 2009 agreements. The ACTTAB and RWWA agreements govern ACTTAB's and RWWA's participation in the SuperTAB Pool operated by Tabcorp.

The ACCC has consulted interested parties and the matter is under consideration.

Exclusive dealing notifications

During the March 2009 quarter the ACCC received 189 new notifications involving 86 new exclusive dealing matters. Notifications of interest considered during the quarter include:

Greater Southern Area Health Service and others—N93906 to N93913, N93916 and N93917

Summary | on 23 March 2009 12 third line forcing notifications were lodged for conduct whereby pathology services for private inpatients in New South Wales public hospitals must, unless it is not in the best interests of the patient, be supplied by pathology practitioners appointed by public health organisations, area health services and statutory health corporations that run public hospitals in New South Wales. Legal protection afforded by the notifications commenced on 6 April 2009.

The notified conduct was previously conditionally authorised by the Australian Competition Tribunal, following an application for review of a determination issued by the ACCC. The authorisation expired on 7 April 2009.

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

Collective bargaining notifications

The ACCC received five notifications of collective bargaining during the March quarter, involving three collective bargaining proposals.

E Dobson Pty Ltd and others—CB00067 to CB00069

Summary| on 23 February 2009 three collective bargaining notifications were lodged on behalf of a group of Wizard Home Loans Pty Limited franchisees. In the first instance the group proposes to collectively negotiate with Aussie (Aussie Centre Administration Pty Ltd and AHL Investments Pty Limited) the terms of an amended franchise agreement. If a franchisee is unwilling to enter into an amended franchise agreement, the group proposes to negotiate with GE Money Mortgages Pty Ltd (sole shareholder of Wizard) the terms on which existing Wizard franchise agreements will be terminated.

The ACCC sought submissions from interested parties before allowing the notifications to stand on 23 March 2009.

South Australian Farmers Federation—CB00070

Summary| on 27 February 2009 the South Australian Farmers Federation lodged a collective bargaining notification on behalf of 18 South Australian chicken-growers, collectively known as the Inghams SA Chicken Growers. Under the notification the parties propose to collectively negotiate the terms and conditions of their growing contracts with Inghams Enterprises Pty Ltd.

The ACCC sought submissions from interested parties before allowing the notifications to stand on 25 March 2009.

K E Viney Traffic and General Consultancy Pty Ltd—CB00071

Summary| on 30 March 2009 K E Viney Traffic and General Consultancy Pty Ltd lodged a collective bargaining notification on behalf of nine security and traffic management subcontractors in south-east Queensland. Under the notification the group proposes to collectively negotiate terms and conditions with Guardrite Security and Traffic Management Pty Ltd.

The ACCC sought submissions from interested parties before allowing the notification to stand on 24 April 2009.

5. Regulatory affairs

The Australian Competition and Consumer Commission 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. In the area of water, the ACCC is required to provide policy advice to the Minister for Climate Change and Water on rules under the *Water Act 2007* and to enforce the rules once they are in place.

Communications

In the March quarter 2009, the ACCC:

- submitted a written report to the government's expert panel on proposals received in response to the government's request for proposals for a national broadband network (NBN)
- issued a final report on review of domestic transmission capacity service declaration (DTCS)
- extended the deadline for submissions on the discussion paper on fixed line services declaration review until 27 March 2009
- commenced a declaration review for the digital data access service (DDAS) and the integrated services digital network (ISDN)
- proposed access arrangements for digital radio
- instituted proceeding against Telstra for alleged breach of standard access obligations
- delivered annual regulatory address at the Australian Telecommunications Users Group (ATUG) annual conference
- commenced arbitration of three new access disputes relating to uncondition local loop service (ULLS) and the mobile terminating access service (MTAS)
- participated in limited merits review and judicial review hearings relating to its decision on Telstra's exemption applications.

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.

DDAS and ISDN declarations—on 18 March 2009 the ACCC announced a public inquiry by issuing a discussion paper to review the DDAS and ISDN declarations in regional areas. The DDAS and ISDN declarations in regional areas are due to expire

on 30 June 2009 and the current review will decide whether the declarations should be extended, revoked, varied, allowed to expire or remade prior to this date.

The DTCS declaration review—on 19 March 2009 the ACCC issued its final declaration report for the (DTCS. In the report the ACCC has decided to vary the current declaration to exclude the capital–regional transmission routes and exchange service areas granted exemption in November 2008 as part of the ACCC’s decision on Telstra’s exemption applications. The ACCC has also decided to extend the varied declaration for five years, considering that it will promote regulatory certainty for access seekers and access providers.

Fixed services declaration review—on 20 February 2009 the ACCC extended the deadline for submissions on the discussion paper issued in November 2008. The extended deadline for submissions ended on 27 March 2009.

Telstra exemption applications

The ACCC did not have any exemption applications for consideration during the March 2009 quarter. However, the ACCC’s earlier decisions have been challenged by parties as follows:

- The local carriage service and the wholesale line rental service limited merits review and judicial review—on 22 August 2008 the ACCC decided to grant Telstra exemptions from the standard access obligations (SAOs) for the supply of LCS and WLR in 248 metropolitan exchange service areas (ESAs), subject to certain conditions and limitations.

On 12 September 2008 Chime appealed this decision to the Australian Competition Tribunal. The matter was heard on 5, 6, 10 and 12 November 2008. The Tribunal handed down its decision on 22 December 2008, setting aside the ACCC’s exemption orders.

On 13 January 2009 Telstra appealed the Tribunal’s decision to the Full Federal Court on judicial grounds. The FFC heard the review on 24 and 25 February 2009. On 11 March 2009 the FFC handed down its judgment, setting aside the Tribunal’s decision, and remitted Telstra’s exemption applications to the Tribunal for further consideration and determination according to law. The remittal was heard on 30 and 31 March 2009.

The ACCC and parties are awaiting the Tribunal’s decision.

- Public switched telephone network originating access (PSTN OA) limited merits review—on 29 October 2008 the ACCC decided to grant Telstra exemptions from SAOs in respect of the supply of PSTN OA services in 248 metropolitan ESAs and 17 central business district ESAs subject to certain conditions and limitations. This decision has been appealed to the Tribunal in a joint application by AAPT, Agile, Chime, Macquarie Telecom, PowerTel and Primus. The remittal was heard on 20 and 22 April 2009.

The ACCC and parties are awaiting the Tribunal’s decision.

- Optus HFC limited merits review—on 11 November 2008 the ACCC rejected Telstra’s application for exemption from SAOs for the supply of regulated fixed line services in areas that coincide with the Optus HFC network. Telstra appealed this

decision to the Tribunal on 1 December 2008. The matter was heard on 3 to 5 March 2009.

The ACCC and parties are awaiting the Tribunal's decision.

Access pricing—undertakings and disputes

Access arrangements for digital radio—on 19 March 2009 the ACCC commenced consultation on a proposed access arrangement for the transmission service necessary for digital radio services, which are due to begin in Adelaide, Brisbane, Melbourne, Perth and Sydney no later than 1 July 2009. The proposed undertaking is based on those previously submitted by eight multiplex licensees. The access undertaking will determine the terms and conditions on which the multiplex transmission licensees will provide the service to radio broadcasters. The licensees will be responsible for multiplexing the separate streams of content from individual broadcasters and transmitting a combined stream to end users in each licence area.

Submissions are due by 3 April 2009.

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 March quarter 2009 three new access disputes were notified to the ACCC: two relating to the MTAS and one relating to the ULLS. These access disputes are between:

- Optus Mobile Pty Ltd (access seeker)/Telstra Corporation Ltd (MTAS)
- Optus Networks Pty Ltd (access seeker)/Telstra Corporation Ltd (MTAS)
- Chime Communications Pty Ltd (access seeker)/Telstra Corporation Ltd (ULLS).

With these new notifications, the ACCC continues to arbitrate 37 access disputes. In addition, 15 are under judicial review.

Interim and final determinations

During March quarter 2009 the ACCC issued two interim determinations—one relating to a dispute over access to the ULLS between Chime Communications Pty Ltd and Telstra Corporation Ltd and the relating to a dispute over access to WLR/LCS between Digiplus Pty Ltd and Telstra Corporation Ltd.

The ACCC also extended the operation of eight interim determinations for disputes over access to the LSS for a further 12 months. The ACCC did not make any final determinations in the March 2009 quarter.

Published determinations

In the March 2009 quarter the ACCC did not publish any determinations made in arbitrations concerning disputes over access to services.

The following table summarises the determinations made in the March quarter 2009 and the active disputes as at 31 March 2009.

	Total
Active disputes at 31 March 2009	37
Decisions subject to Federal Court review	15
New arbitrations commenced in March quarter 2009	3
Interim determinations issued in March quarter 2009	2
Final determinations issued in March quarter 2009	0
Published determinations in March quarter 2009	0

Other developments

Proceedings against Telstra for alleged breach of standard access obligations—on 19 March 2009 the ACCC announced that it instituted proceedings in the Federal Court against Telstra Corporation Ltd for alleged contraventions of the Trade Practice Act and the *Telecommunication Act 1997* relating to its standard access obligations for the ULLS and LSS. The ACCC alleges that:

- Telstra refused access seeker requests for interconnection at seven key metropolitan exchanges by claiming that they were 'capped'
- Telstra breached the access regime in the Telecommunications Act that requires Telstra to provide access to its facilities
- Telstra engaged in misleading and deceptive conduct in contravention of s. 52 of the Trade Practices Act, by representing to access seekers individually and on lists of 'capped' exchanges published on the Telstra Wholesale website.

Directions hearings are scheduled in the Federal Court on 17 April 2009.

Reports

The ACCC did not publish any communications-related reports during the March quarter 2009.

The ACCC submitted a written report to the government's expert panel on 12 January 2009, detailing its individual and comparative assessment of the five proposals received in response to the government's request for proposals for a NBN.

Australian Energy Regulator

Electricity matters

Release of final statement of approach—Priorities and objectives of electricity transmission network service provider performance reports

On 30 March 2009 the Australian Energy Regulator released its final statement of approach on the priorities and objectives of transmission network service provider (TNSP) performance reports.

The National Electricity Law (NEL) requires the AER to consult to determine the appropriate priorities and objectives to be addressed through the preparation of network service provider performance reports.

In December 2008 the AER released a discussion paper that proposed a set of priorities and objectives for electricity TNSP performance reports. The AER received five submissions on the discussion paper.

Draft decision—Victorian interval meter reassignment requirements

On 19 March 2009 the AER released its draft decision on the interval meter reassignment requirements for Victorian distribution network providers. These establish the customer notification and information requirements for Victorian distributors before they can reassign smaller customers (those consuming less than 20 MWh per annum of electricity) to a time of use network tariff, following the installation by the distributor of an interval meter under the advanced meter initiative rollout.

Submissions to the draft decision closed on 10 April 2009.

Final decision—Queensland and South Australia distribution network service provider cost allocation methods

On 17 March 2009 the AER published the cost allocation methods to be used by Ergon Energy and Energex in their regulatory proposals for 2010–15. The AER also notified ETSA Utilities of its final decision for its CAM on 3 February 2009.

The CAMs identify procedures to be followed by the distributors in preparing accounting statements for regulated parts of their businesses. Under the National Electricity Rules (NER), CAMs are required to be submitted by the distributors to the AER for approval.

The AER sought expert advice from accounting consultant, McGrathNicol Corporate Advisory, to assist in the assessment of the proposed CAMs. As a result of discussions between the AER, its consultant and the distributors, both Energex and Ergon Energy submitted revised CAMs in February 2009.

On 27 February 2009 the AER approved the revised CAMs, having determined that they were consistent with the AER's cost allocation guidelines and met the NER criteria for approval. The CAMs will remain in place over the next regulatory period, 2010–15. The AER also approved ETSA Utilities' proposed CAM on 30 January, having determined that it was consistent with the AER's cost allocation guidelines and NER requirements.

Supplementary draft decision—public lighting services for New South Wales distribution businesses

On 13 March 2009 the AER released its supplementary draft decision on the prices and price paths that will apply to public lighting (alternative control) services provided by the New South Wales electricity distribution businesses (Country Energy, EnergyAustralia and Integral Energy) for the regulatory control period from 2009–10 to 2013–14. The AER undertook a detailed analysis of the charging arrangements for public lighting proposed by the distribution businesses and has established a new regime to determine public lighting charges and prices.

The AER received a large number of submissions from local government councils on the its proposed changes for public lighting. The final decision has determined a charge for each public lighting customer that better reflects the condition of the assets. In addition, cost-reflective prices for new energy efficient lights have also been approved.

In making its final decision, the AER considered submissions from interested parties and advice from independent experts

Final decision—energy efficient public lighting charges (Victoria)

On 27 February 2009 the AER released its final decision on Victorian distributors' proposed operation, maintenance and replacement charges for energy-efficient lights.

A draft decision on charges for energy efficient lights was released by the Essential Services Commission of Victoria (ESCV) in November 2008. The submissions were used by the AER in making its final decision.

Public lighting charges in Victoria were regulated by the ESCV as an excluded service. From 1 January 2009 the AER assumed responsibility for the economic regulation of electricity distribution services in Victoria, including responsibility for regulating electricity distributors' public lighting charges.

Transfer of functions from Essential Services Commission of Victoria to AER

On 1 January 2009, the AER assumed responsibility for the economic regulation of Victorian electricity distribution network service providers (DNSPs).

This function was previously the responsibility of the ESCV. The new responsibilities are conferred upon the AER by the operation of the *National Electricity (Victoria) Act 2005* (NEVA) in accordance with the Trade Practices Act and the Australian Energy Market Agreement. The NEVA specifically confers economic regulatory functions, powers and duties on the AER. The AER will also assume responsibility for some related non-economic functions. These non-economic functions are to be specified in a Victorian order-in-council under s. 21 of the NEVA; they were previously the responsibility of the ESCV.

National Gas Law guidelines and processes

Access arrangement guideline

On 25 March 2009 the AER released the final *Access arrangement guideline*. The guideline has been prepared to assist service providers and other interested parties in the context of the AER's assessment of the access arrangement proposals for gas pipelines under the National Gas Law (NGL) and National Gas Rules (NGR), which commenced on 1 July 2008. The final guideline has been amended to reflect comments received during the consultation process on the draft.

Energy markets

High-price events in the national electricity market

In February 2009 the AER released five *Prices above \$5000/MWh* reports for spot prices above \$5000/MWh in January in South Australia (13, 19, 28 and 29 January), New South Wales (15 January), Victoria (28 and 29 January) and Tasmania (29 and 30 January).

The AER is conducting further inquiries into the events of 29 and 30 January, when several transmission line interruptions and extreme temperatures led to record demand. The AER has sought information from a number of parties to assess compliance with the NER and NER.

On 31 March the spot price in South Australia exceeded \$5000/MWh. As required under the NER, the AER will issue a *Prices above \$5000/MWh* report into the event.

Investigation report into the events of 4 November 2007

On 28 January 2009 the AER issued an investigation report into compliance with dispatch instructions by Braemar Power Project Pty Ltd (BPP) and the impacts of network congestion in Queensland on 4 November 2007.

This report completes the AER's investigation into these events and follows the AER's imposition of infringement penalties totalling \$60 000 on BPP in November 2008. The penalties related to the alleged failure of BPP's power station to ensure its offers to supply generation capacity into the National Electricity Market (NEM) accurately reflected its capability and its alleged failure to follow dispatch instructions issued by the market operator.

The report sets out the results of the AER investigation, including why the AER alleged BPP failed to follow dispatch instructions during the morning of 4 November 2007. The report also examines whether the conduct of other relevant generators affected by those events was in accordance with the NER.

Price monitoring

Airports

Under a direction by the Australian Government under s. 95ZF of the Trade Practices Act, the ACCC is required to formally monitor the prices, costs and profits for the supply of aeronautical services and facilities by Adelaide, Brisbane, Melbourne (Tullamarine), Perth and Sydney (Kingsford Smith) airports.

On 7 April 2008 the Minister for Competition Policy and Consumer Affairs, under s. 95ZF of the Trade Practices Act, directed the ACCC to also formally monitor the prices, costs and profits for the supply of car parking by the same five airports.

As well as its price monitoring role, under Part 7 of the *Airports Act 1996* the monitored airports are required to provide the ACCC with annual financial accounts, while Part 8 of the *Airports Act* provides for the ACCC to monitor their quality of service.

The ACCC provides an annual report to the minister presenting the results of this monitoring. The report is also made publicly available. The information contained within the report provides a transparency to airport operations, which assists users to assess industry performance.

The Airport monitoring report 2007–08; Price, financial performance and quality of service monitoring was released on 30 March 2009.

The report found that users of the monitored airports, on average, reported a decline in the quality of services and facilities provided by the airports for the third year in a row.

Brisbane airport was rated the highest among the monitored airports for the fifth year in a row, while Sydney airport was rated last for the third consecutive year. Adelaide airport remained in second place in 2007–08, followed by Perth and Melbourne airports.

The five monitored airports controlled aeronautical assets worth \$5.02 billion and reported combined aeronautical revenue of \$911 million in 2007–08. Passenger numbers increased at all of the monitored airports.

Aeronautical revenue per passenger (as an indicator of average prices) also increased at the airports, with the exception of Perth airport where it decreased slightly. Sydney airport had the highest number of passengers and highest average prices. Brisbane airport had the lowest average prices.

The ACCC observed that the average charges levied by the airports do not appear to be strongly related to the quality of service they provide. For example, airport users at Brisbane airport, which had the lowest average passenger charges, remained the most satisfied in

2007–08 while Sydney airport, with the highest average charges, was ranked last.

There was also a new focus on airport car-parking in the 2007–08 report. The report discussed factors that may affect the price of car-parking at airports. Although not conclusive, the ACCC considered that some results were consistent with airports having a monopoly position.

Charges for car-parking were roughly constant or increased slightly on average in 2007–08, though prices appear to have increased more significantly over the four years prior to 2007–08.

Milk

Removal of the dairy adjustment levy

On 23 February 2009 the Australian Government removed the dairy adjustment levy on fresh milk products. The eleven cents per litre levy was introduced in 2000 to fund a dairy industry deregulation adjustment package. On the removal of the levy, the government announced that it expected retailers to pass on the savings to consumers and that any complaint or suggestion of anti-competitive conduct would be considered by the ACCC.

In February 2009 the ACCC wrote to major supermarket chains seeking advice about their intentions regarding the removal of the levy. All advised the ACCC that they would be reducing the price of 'branded' fresh milk products from 23 February 2009 by the full amount of the levy. Various supermarkets had already reduced the price of their 'private label' milk products earlier than this date.

The ACCC has received a number of complaints from consumers about the removal of the levy. The majority of these relate to the price of milk not falling following the removal of the levy or the price of milk increasing shortly before the removal of the levy. The ACCC has contacted each relevant supermarket about these complaints and is finalising its investigations.

Rail

Australian Rail Track Corporation Ltd interstate rail access undertaking—application for variation withdrawn

The Australian Rail Track Corporation Ltd (ARTC) was established in 1998 to manage the interstate rail network.

In 2008 ARTC lodged a voluntary access undertaking application under Part IIIA of the Trade Practices Act with the ACCC to govern the terms and conditions of access by train operators for the interstate rail network. On 30 July 2008 the ACCC released its final decision to accept the ARTC undertaking. The undertaking came into operation on 20 August 2008 and will remain operative until 2018 (unless withdrawn earlier).

On 9 October 2008 ARTC applied to the ACCC for consent to vary the 2008 interstate undertaking. The variation application related to the indemnity and loss regime in clause 15 of the indicative access agreement of the undertaking so that the liability of either party to third parties for loss or damage is limited in certain circumstances.

The ACCC released its draft decision on 18 December 2008 to not allow the ARTC to vary its interstate access undertaking.

In summary, the ACCC held the preliminary view that the proposed variation was not justified as currently drafted because the proposed indemnity clause would prevent a rail operator (or ARTC) from being indemnified for loss arising out of a contract between a rail operator and a third party (or ARTC and a third party) in circumstances

where ARTC (or the operator) has breached the indicative access agreement and caused an incident that resulted in loss to that third party.

In addition, the ACCC formed the preliminary view that ARTC did not consult with train operators before applying to the ACCC for the variation as is required by the terms of the 2008 undertaking.

The ACCC received a written notice from ARTC on 15 January 2009 withdrawing its application of 9 October 2008 to vary the undertaking. ARTC indicated in its withdrawal letter that it will undertake further consultation with rail operators about the wording of the variation.

In light of the withdrawal of the application, the ACCC did not issue a final decision on the variation application.

Water

The ACCC has policy development, implementation and enforcement responsibilities relating to water markets, water trading and water delivery services in the Murray–Darling Basin under the Water Act

The ACCC also has responsibilities relating to third party access to water-related infrastructure under Part IIIA of the Trades Practices Act.

The ACCC does not have a role in urban water supplies.

Ministerial release of water market rules and water charge (termination fee) rules

On 11 February 2009 the Minister for Climate Change and Water (the Hon. Penny Wong) issued a public notice proposing to make water market rules and water charge (termination fee) rules. The minister has accepted advice and adopted the water market rules and rules for termination fees recommended by the ACCC.

The minister is now seeking final submissions on the posted rules.

Water charge (water planning and management) rules

On 23 January 2009 the ACCC released a position paper for public consultation on water charge rules for water planning and management. This paper proposes a hybrid approach to developing rules to regulate water planning and management charges.

This approach consisted of water charge rules developed under s. 92 of the Water Act, which would require publication of information about charges, and model rules developed under s. 95 of the Act, which would establish a voluntary reporting framework for water planning and management activities, costs and charges.

Under this approach, the ACCC would prepare an annual report on water planning and management activities, costs and charges and the extent of cost recovery in Basin states.

This position was developed to improve the transparency and availability of information on water planning and management and assisting the development of water markets by sending clearer pricing signals to water users.

The ACCC requested that submissions be provided by 27 February 2009.

Water trading rules

The Water Act requires the preparation of a new strategic plan for the integrated and sustainable management of water resources in the Murray–Darling Basin (known as the ‘Basin Plan’).

The Murray–Darling Basin Authority (MDBA) is responsible for preparing the Basin Plan. The Basin Plan must include water trading rules for the trading or transfer of tradeable water rights relating to Murray–Darling Basin water resources.

In preparing these water trading rules, the MDBA is required to obtain and have regard to the advice of the ACCC.

On 6 March 2009 the ACCC released an issues paper on the development of water trading rules. The issues paper is the first step in developing the ACCC’s advice to the MDBA. The ACCC invited interested parties to make submissions on the issues raised in the paper and on water trading more generally.

The ACCC requires submissions in response to the issues paper to be provided by 1 May 2009.

Next steps

In the next quarter the ACCC expects that the minister will register the water charge (termination fee) rules and the water market rules.

Once these rules are registered, the ACCC will release guidelines to assist irrigators and operators to understand and comply with the water market rules and the water charge (termination fee) rules. The ACCC will also undertake an education program to explain the rules and help irrigators understand their rights and irrigation operators, their obligations.

By 30 June 2009 the ACCC expects to complete its final advice and draft rules on the water charge (infrastructure charges) rules and the water charge (water planning and management) rules.

6. International activities

The Australian Competition and Consumer Commission's international activities support its work by promoting international enforcement assistance and best practice regulation, and 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 coordinating and preparing contributions on issues of relevance to the ACCC
- coordinating information-sharing and enforcement assistance with counterpart agencies
- managing the ACCC's technical assistance activities with developing economies
- advising the ACCC of various global developments through research, analysis and reporting
- building and sustaining strong links with key international officials and organisations.

Bilateral meetings

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

- advocates the work of the ACCC
- promotes competition and consumer protection in the region
- assists the ACCC in obtaining 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 March 2009 quarter, the ACCC:

- attended the ICN effectiveness workshop in Brussels, Belgium
- attended a meeting of the International Mass Market Fraud Working Group held in Washington, United States of America (USA)
- participated in the Federal Trade Commission Fraud Forum held in Washington, USA
- participated in Organisation for Economic Cooperation and Development's Competition Committee and Global Competition Forum meetings held in Paris, France
- participated in International Consumer Product Health and Safety Organisation meetings held in Florida, USA
- participated in the International Competition Network mergers workshop held in Chinese Taipei

- participated in the American Bar Association's Spring Anti-trust Conference in Washington, USA.

Free trade agreements

The ACCC continues to actively participate in the free trade agreement negotiation rounds contributing to work on competition and consumer protection issues.

By participating in such negotiations, the ACCC goals are to promote competition in the region and to ensure that the FTAs are compatible with Australia's competition regulations, are practical in implementation and contain mechanisms to build cooperative arrangements between the relevant enforcement authorities.

Information requests

The ACCC continues to actively share information with its international counterpart agencies. During the March 2009 quarter, the ACCC received requests from Bhutan, Canada, Chile, China, Chinese Taipei, the European Commission, Hong Kong, Hungary, Japan, Mexico, New Zealand, Singapore, South Africa, Tanzania, the United Kingdom (UK) and the United States.

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 Brazil, European Commission, Germany, France, Japan, New Zealand, Singapore, the United Kingdom and the United States about merger inquiries, cartel investigations, mass-marketing fraud, regulatory functions 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 its expertise to assist in the development of other authorities. During the March quarter, the ACCC met with representatives of the following agencies:

- the European Commission, Directorate Generale Competition (on increased cooperation between the ACCC and DG Competition)
- the Quality-of-Life Policy Bureau, Cabinet Office, Japan (on food standards)
- the French Ministry of Economic, Finance and Employment, Directorate Generale Consumer (on upcoming Australian presidency of the International Consumer Protection Enforcement Network)
- the UK Office of Fair Trading (on improving ACCC understanding of British reforms)
- the New Zealand Commerce Commission (to discuss options for increased cooperation)
- the US Federal Trade Commission, the US Department of Justice and the US Small Business Administrator.

Capacity-building activities

ACCC involvement in technical assistance programs provides staff with valuable experience in training delivery. Predominantly the ACCC's capacity-building activities focus on exchanging information about best practice processes and guidelines between regulatory, competition and consumer protection authorities. One specific activity during this quarter was the conclusion of an AusAid-funded program with Papua New Guinea's Independent Competition and Consumer Commission.

Staff exchange

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

In February 2009 the ACCC concluded a four-month fellowship with the US Federal Trade Commission.

7. Reviews and inquiries

Legislative amendments

Australian consumer law

On 2 October 2008 the Council of Australian Governments agreed to the implementation of a new consumer policy framework, comprising a single national consumer law and enhanced enforcement arrangements for consumer protection regulators.

The new national consumer policy framework will be called the Australian consumer law. It will be implemented as part of an application law scheme, with the Australian Government as lead legislator and other jurisdictions applying the Australian consumer law as part of their own laws.

The national consumer law will be based on existing consumer protection provisions of the Trade Practices Act. In accordance with recommendations by the Productivity Commission, the national consumer law will also include:

- a provision regulating unfair terms in consumer contracts
- new enforcement powers and remedies, including civil pecuniary penalties, disqualification orders, substantiation notices, infringement notices, public warning powers and redress for non-parties
- a new national legislative and regulatory regime for product safety.

Where it is agreed the current provisions of the Trade Practices Act are inadequate, the Australian consumer law will include agreed new provisions based on best practice in state and territory consumer laws.

On 17 February 2009 the Minister for Competition Policy and Consumer Affairs announced the government's intention to fast-track certain amendments to the Trade Practices Act by introducing a Bill in the Australia Parliament in June 2009 that contains an unfair contract terms provision, civil pecuniary penalties, disqualification orders, substantiation notices, infringement notices, public warning powers and redress for non-parties.

The ACCC is currently a member of several working groups of the Standing Committee of Officials of Consumer Affairs that are developing these legislative reforms and a framework that will facilitate a consistent and cooperative approach to the enforcement of the new law by all consumer protection regulators.

Trade Practices Amendment (Cartel Conduct and Other Measures) Bill 2008

The Trade Practices Amendment (Cartel Conduct and other Measures) Bill 2008, which seeks to criminalise cartel conduct, was introduced in the Australian Parliament on 3 December 2008 and then was referred to the Senate Economics Committee.

The Bill includes provisions that:

- extend the ACCC's capacity to conduct search warrants
- set out a new regime to enhance confidentiality of cartel information provided to the ACCC
- enable the Australian Federal Police to seek telecommunications interception warrants for cartel offences on behalf of the ACCC.

The Senate committee released its report on 26 February 2009, recommending that the legislation be passed when it goes before the Senate during the winter parliamentary sitting.

Parliamentary inquiries

During the March 2009 quarter the ACCC appeared before three parliamentary inquiries:

- Inquiry into the Trade Practices Amendment (Cartel Conduct and Other Measures) Bill 2008
- Inquiry into aspects of bank mergers
- Inquiry into the Australian Investment Partnership Bill 2009 and the Australian Business Investment Partnership (Consequential Amendments) Bill 2009

Consultative committees

During the March 2009 quarter, the ACCC hosted a meeting of its Consumer Consultative Committee. The meeting, held ahead of the National Consumer Congress in Adelaide, included discussion of the potential impact of the global financial crisis on Australian consumers and mobile telephone premium services.

Upcoming committees include:

- Small Business Consultative Committee is on 22 May 2009
- Franchising Consultative Committee is on 29 May 2009

Appendix

Speeches

The chairman, commissioners and staff of the Australian Competition and Consumer Commission gave 27 addresses and presentations in March 2009 quarter. Significant presentations included:

- ACCC Chairman, Graeme Samuel
 - *Making phones fair: The Australian telecommunications industry and poor consumer practice*, Australian Telecommunications Users' Group, National conference, Sydney, 13 March 2008
- ACCC commissioners
 - Mr Joe Dimasi—Improving water trading outcomes in the Murray–Darling Basin, Fourth annual Water Symposium, Sydney, 20 February 2009
 - Mr Peter Kell (Deputy chair)—*Consumer protection: new challenges and opportunities*, National Consumer Congress 2009, Adelaide, 12 March 2009
 - Ms Sarah Court—*Cartels, consumer protection and the role of the regulator: proposed changes to the Trade Practices Act*, Thomson Reuters Competition and Trade Practices Summit, Sydney, 12 March 2009
 - Dr Michael Schaper (Deputy chair)—*Australia's competition enforcement regime: current issues, future challenges*, American Bar Association Anti-trust Law Spring Meeting, Washington DC, United States, 27 March 2009.

News releases

During the March quarter 2009 the ACCC issued 67 news releases, while the Australian Energy Regulator issued two news releases.

Publications

Publications released from 1 January to 31 March 2009

Corporate

ACCC ejournal, issues 55 to 56

ACCCCount—A report of the Australian Competition and Consumer Commission's activities, 1 October to 31 December 2008

For consumers

Warranties and refunds—a guide for consumers and business

For business

ACCC briefing, January 2009

ACCC reports

ACCC regulatory conference, conference proceedings, July 2008 (on CD)

Airport monitoring report 2007–08: price, financial performance and quality of service monitoring

Monitoring of the Australian petroleum industry—report of the ACCC into the prices, costs and profits of unleaded petrol in Australia

Report to the Australian Senate on anti-competitive and other practices by health funds and providers relating to private health insurance

Telstra's compliance with the price control arrangements, 1 July 2007 to 30 June 2008

Water charge rules for water planning and management charges, position paper—January 2009

Water market rules, final advice to the minister

Water trading rules, issues paper—March 2009