

June 2009

From the Small Business Deputy Chair

The new 'Clarity in pricing' amendments to the *Trade Practice Act* took effect on 25 May. The amendments require businesses who use component pricing to also provide a single figure that reflects the total price to be paid. These measures should ensure fair competition between businesses when it comes to price representations, as well as assisting consumers to make informed decisions.

This edition of *ACCC Briefing* reports on several successful notifications of collective bargaining by small business groups across a range of different industries.

The *Small Business Update*, also attached, contains some recent policy developments in relation to small business issues.

Michael Schaper
Small Business Deputy Chair

NEW DEVELOPMENTS

Proposed monetary penalties for civil offences

Monetary penalties for civil offences under the proposed Australian Consumer Law would enhance the ACCC's ability to protect consumers through better and timelier outcomes.

The proposed powers include civil pecuniary penalties, banning orders, unfair contract terms, substantiation notices, representative actions and redress for non-parties

The introduction of civil pecuniary penalties for breaches of consumer protection provisions is an important and overdue reform. It will allow the ACCC to seek proportionate responses to breaches and to promote compliance with the law more effectively.

NR 048/09

Changes to component pricing

Amendments to s. 53C of the *Trade Practices Act 1974* (TPA), relating to component pricing, took effect in May this year. If a business chooses to advertise part of the price of a particular product or service, it must also

provide a single prominent figure that reflects the total price to be paid.

The new law will not only mean consumers have accurate price information, but also that businesses have a more level playing field on which to compete when it comes to price representations.

In addition to its industry-specific material, the ACCC has produced a general guide, *News for business—Component price advertising*, to explain the new provision and its application across all industries. This guide is available at no cost on the ACCC website, www.accc.gov.au.

NR 101/09

CONSUMER AND SMALL BUSINESS PROTECTION

Court dismisses appeal by former owners of Zamel's

The Federal Court dismissed an appeal made by Ascot Four, the former owners of the Zamel's jewellery chain, and ordered that they pay the ACCC's costs.

In August 2008 the court found that Ascot Four falsely represented that the purchase of 11 items advertised in a Zamel's Christmas catalogue would have resulted in a saving of the difference between the sale price and the strike-through price. In January 2009 the court ordered that a conviction be recorded on each of the 11 charges and that Ascot Four pay a penalty of \$380 000.

The Full Federal Court's judgment reinforces the ACCC's message to retailers who use two-price advertising—that the represented savings must be legitimate. The ACCC seeks truth in advertising and consumers have every right to expect it.

NR 124/09

Phone card sellers misled consumers

The Federal Court declared that international phone card seller Cardcall engaged in misleading or deceptive conduct after action by the ACCC.

The ACCC alleged that Cardcall engaged in misleading or deceptive conduct about its prepaid phone cards and vouchers by representing that no fees other than the timed call charges would apply when in fact service fees, connection and/or disconnection fees and surcharges applied. Cardcall also represented that a certain number of minutes was available when this

could, at best, only be achieved through one continuous call.

Cardcall was ordered to place a corrective notice in various foreign language newspapers and on its website, and agreed to produce a generic consumer guide to fees and charges on prepaid phone products.

Cardcall cooperated with the ACCC to bring about a speedy resolution of the action and consented to declarations, injunctions and other orders, and contributed to the ACCC's costs.

NR 119/09

Proceedings instituted for alleged misleading representations

The ACCC instituted proceedings in the Federal Court against Advanced Allergy Elimination over alleged representations by AAE that it can test for and accurately identify a substance to which a person is allergic, and that it can eliminate and successfully treat a person's allergy. The ACCC alleges AAE cannot test for and treat a person's allergies and that in making these representations AAE engaged in false and/or misleading conduct.

NR 114/09

Proceedings against dairy manufacturer

The ACCC instituted proceedings against Harvey Fresh (1994) alleging misrepresentations about the origins of some cheese products.

The ACCC alleges Harvey Fresh represented the place of origin of its blocks of matured cheese and semi-matured cheese as the south-west of Western Australia when it was actually produced in Victoria.

NR 112/09

Injunctions obtained over misleading job advertisements

The ACCC obtained Federal Court injunctions against IT business Zanak Technologies and its directors in relation to the promotion of employment in the IT industry.

The ACCC alleges that Zanak placed employment advertisements on various websites, including MyCareer, Seek and Gumtree, offering various jobs in the IT industry, when in fact Zanak was not offering job opportunities but rather 'IT training', for which applicants were required to pay up to \$4700.

The ACCC alleges that despite assurances from Zanak and its agents, there was no guarantee of a job at the end of training.

NR 115/09

Proceedings over alleged pyramid scheme

The ACCC instituted proceedings against Cosic Holdings Pty Ltd and its director for participation in the

alleged pyramid scheme known as Emerald Passport in breach of s. 65AAC of the TPA.

The ACCC alleges that the Emerald Passport scheme promoted income-earning opportunities associated with the sale of self-help products in circumstances where participants were induced to make an annual payment to Emerald Passport Inc. with the prospect that they would receive a payment for the introduction of others into the scheme.

The ACCC alleges that Cosic Holdings took part in the scheme by establishing or operating websites, printing promotional material, arranging internet advertising and receiving payments from other participants in the scheme.

NR 108/09

Undertakings over LED autolamps claims

LED Technologies and its director, Mr Anthony Ottobre, gave undertakings to the Federal Court over claims about a range of its LED autolamps.

After a complaint that LED Technologies was supplying the autolamps in packaging that stated that the lights were made from polycarbonate when they were made out of hardened acrylic, LED Technologies was notified of the ACCC's concerns. The company took some corrective steps and proposed to give undertakings; however, the ACCC did not consider the proposed undertakings suitable to address its concerns and instituted proceedings in the Federal Court.

NR 107/09

GAF's gaffe over appliances warranty cards

GAF Control (Sales) Pty Ltd, supplier of a range of products including small electrical appliances under brand names including Tiffany, Avanti, Sunair and Heller, admitted its warranty cards contained false and misleading statements about consumers' statutory warranty rights.

The ACCC was concerned that the warranty cards GAF supplied with its small electrical appliances could potentially lead a consumer to mistakenly believe they had no rights other than the express warranty rights described on the cards.

Although suppliers of products can provide their own express warranties that enlarge a consumers' warranty rights, they must not exclude or restrict consumers' statutory rights or mislead consumers about their statutory rights.

GAF provided the ACCC with a court enforceable undertaking that it will take corrective action, including replacing its warranty cards and instigating policies and procedures to help prevent repetition. It will place a notice on its website explaining the misrepresentations.

NR 103/09

Misleading 'free' offers leads Dodo to pay refunds

Customers of national mobile phone service provider Dodo Australia who signed up to its 'FREE \$29.90 Mobility Cap Plan', 'FREE Fuel' and 'Cash Offer' 24-month mobile cap plan offers will get refunds and have the monthly cost of their plans reduced after intervention by the ACCC.

The ACCC was concerned consumers were likely to have been misled or deceived by advertisements that represented consumers would receive free goods or a cash payment for free when they signed up to any one of the free offer plans.

An investigation revealed Dodo offered other, cheaper mobile cap plans that were comparable and that, in some cases, the monthly fee for those comparable mobile cap plans was up to \$30 per month lower. Dodo has given a court enforceable undertaking to the ACCC.

NR 102/09

Tobacconist stopped from masking anti-smoking messages

The ACCC has stopped Darwin tobacconist Mr Colin Thompson from covering health warnings, images and Quitline information on cigarette packets with stickers.

Mr Thompson placed stickers promoting his own services on the outer wrapper of about 3600 tobacco products—hiding all or most of the mandatory images and health warnings.

Mr Thompson provided a court enforceable undertaking to stop supplying tobacco products where the mandatory product information is obscured, comply with retail tobacco product consumer information standards and to prominently display in his shop for three months graphic posters of the three mandatory health warnings he had covered on packets sold.

NR 096/09

Refunds for Designer Brand Outlet consumers

The operators of the Designer Brand Outlet website, Mr Ben Kloosterman and Ms Lucy Shi, have reached a compensation settlement with the ACCC for the benefit of consumers.

The Federal Court found that Mr Kloosterman and Ms Shi had made false, misleading and deceptive representations on the www.designerbrandoutlet.com website. Representations included claims that items of genuine designer label women's clothing were for sale when either no items were supplied at all or were counterfeit.

As part of a settlement, Mr Kloosterman and Ms Shi have paid money to the ACCC for consumer refunds. Only consumers who provided the ACCC with admissible affidavits for the proceedings are eligible.

NR 088/09

Hair replacement consumer compensated

Following criminal proceedings, Mr Simon Charles Clarke and his company Narnia Investments Pty Ltd were convicted and fined a total of \$7000 after pleading guilty to providing false or misleading information in response to an information notice issued by the ACCC under s. 155 of the TPA.

In separate civil proceedings taken by the ACCC, Mr Clarke and Advanced Hair Studio (a business controlled by Narnia) were found to have contravened s. 52 by misrepresenting to a vulnerable consumer that he did not have the right to terminate his \$15 500 hair replacement contract and to obtain a refund of his deposit.

Injunctions restraining Narnia and Mr Clarke were imposed by the court and Mr Clarke was ordered to attend trade practices law compliance training. Narnia and Mr Clarke also provided court enforceable undertakings to the ACCC that require them to pay the consumer the \$5000 balance owing of \$10 000 damages and to refund the consumer's \$1800 deposit in addition to paying the ACCC's costs.

NR 087/09

Misleading savings claims by entertainment products trader

Online retailer Kogan Technologies, which sells Kogan-brand home entertainment products, modified its advertising after the ACCC raised concerns that representations on its website and in the *Herald Sun* may mislead consumers about savings.

Kogan Technologies' newspaper advertisement and website used price comparisons such as **Now \$X (Save Y%)** and **Save over \$X**, despite having never offered the products at the higher price. The savings were based on an estimated average price a consumer might pay for a product with similar specifications from another manufacturer.

Kogan provided court enforceable undertakings that it will not advertise its goods at a discount unless that product has been advertised for sale or sold in reasonable quantities at the higher price for a reasonable amount of time and not make representations regarding savings unless it clearly states the basis on which those savings are calculated.

NR 084/09

Phone retailer offers consumer redress for misrepresentations

Some M2 Telecommunications customers will be offered a replacement mobile phone or refund following an ACCC investigation. M2 Telecommunications said that it was not required to provide refunds and that phone manufacturers were responsible for all warranty claims.

The ACCC was concerned that consumers may have been misled because express warranties offered by

mobile phone manufacturers are in addition to, and not in the place of, the statutory rights available to consumers under the TPA. Statutory rights entitle consumers to a refund from a retailer in particular situations and cannot be excluded.

M2 Telecommunications also represented that the software of a particular carrier will not impact on a customer's ability to use the phone on any other compatible Australian network and that particular phones were compatible with all 3G networks, whereas they were not compatible with Telstra's Next G network. The ACCC was concerned that consumers may have been misled or deceived about the performance of their phones.

NR 080/09

Blemish in cosmetic labelling

Australian cosmetics manufacturer Natural Products of Australia will publish corrective notices in national newspapers and magazines following action by the ACCC about incorrect labelling on Natural Instinct and Organic Instinct hair and skin care products.

Natural Instinct did not list chemical ingredients on a number of its products and listed other ingredients by incorrect names. Natural Instinct also did not list ingredients from biggest to smallest as required by the applicable mandatory standard.

The ACCC also held concerns about statements that the products were 'made with/from 100% pure oils and certified organic herbs' when a number of the products contained relatively insignificant amounts of herbs and oils. Natural Instinct amended its packaging in response to this concern.

The ACCC acknowledged it is likely that some of the conduct was initiated by the previous management of Natural Instinct and accepted a number of court enforceable undertakings from the current management, including relabelling its products and implementing a trade practices compliance program.

NR 078/09

ACCC acts on Coca-Cola myth-busting

The ACCC accepted court enforceable undertakings from Coca-Cola South Pacific about statements published as part of its 'myth-busting' campaign, which the ACCC believed had the potential to mislead consumers.

Coca-Cola published an advertisement featuring actress Kerry Armstrong called *Kerry Armstrong on Motherhood and Myth-busting*. The advertisement referred to a number of 'myths' about Coca-Cola, including that it 'makes you fat', 'rots your teeth' and is 'packed with caffeine'.

A further advertisement said, about the first advertisement, '...we felt it was time to state the facts and to help you understand the truth behind Coca-Cola.'

The ACCC believes the advertisements had the potential to mislead consumers by representing that Coca-Cola cannot contribute to weight gain, obesity or tooth decay, and that a responsible parent can include Coca-Cola in a family diet without any regard whatsoever to these potential effects.

The company will publish corrective notices in newspapers and on its website.

NR 070/09

'Made in Australia' mistake repeated

For the second time Black & Decker supplied a sanding product incorrectly labelled as 'Made in Australia'.

The packaging on some of its Powerfile sanding belts was labelled 'Made in Australia'; when in fact, although the material to make the belts was originally sourced from Australia, it was later sourced from Germany.

In 2006 Black & Decker represented certain sanding sheets were 'Made in Australia' when they were made in India. Despite quality control processes put in place to resolve these previous concerns, the company failed to detect the change to the sourcing of the materials used in the manufacture of the sanding belts.

As well as promptly removing the belts from sale, Black & Decker extended the court enforceable undertaking provided to the ACCC in 2006 with a number of variations, including conducting an audit of its domestic suppliers to identify the source of all the materials used in the manufacture of its products.

NR 068/09

Phone card advertising misled consumers

The Federal Court made declarations and orders by consent against Tel.Pacific for misleading and deceiving consumers over its international prepaid phone card products.

The ACCC alleged Tel.Pacific misrepresented the nature, benefits and value of certain prepaid phone cards by representing that the cards would provide callers with a specific amount of call time when this was not realistically achievable because of undisclosed fees and charges. The ACCC also alleged Tel.Pacific represented that no fees, other than timed call charges, would apply to certain phone card products when that was not the case.

Companies using complex pricing models that require consumers to undertake significant inquiries to understand what they are purchasing, as pre-paid phone card suppliers do, run a high risk of contravening the TPA.

NR 067/09

Event promoters guilty of misleading conduct

The Federal Court declared that Australian Corporate Exhibition's Mr Gregory John Millar and the company's national events manager, Mr John Raymond Webb, engaged in misleading or deceptive conduct in

contravention of the TPA during the promotion of a number of exhibitions during 2005 and 2006.

The court found misleading conduct about critical aspects of the exhibitions, such as the number of other exhibitors who were to participate and visitor numbers, and that the exhibitions were endorsed or supported by leading political figures.

NR 044/09

JB Hi-Fi store sold used mobile phones as new

The ACCC accepted court enforceable undertakings from the JB Hi-Fi Group that it engaged in false, misleading or deceptive conduct when a JB Hi-Fi store at Kotara, New South Wales sold used mobile phones as new

JB Hi-Fi was cooperative in resolving the matter and claimed that a procedural error meant returned phones were accidentally mixed with existing stock when they should have been returned to the supplier.

The company has undertaken not to make any representations that the mobile phones it supplies are new when this is not the case, to publish corrective notices and to extend its existing trade practices compliance program to include mobile phones. Refunds will also be offered to customers who purchased new mobile phones at JB Hi-Fi Kotara between January and August 2008 and later found they were not new.

NR 041/09

CODES OF CONDUCT

Undertaking over agency transactions

The ACCC accepted court enforceable undertakings from LaManna Bananas after it acknowledged that, acting as growers' agents, it occasionally sold products between its companies, as part of its distribution of produce across national markets.

The ACCC raised concerns that these transactions were not at arm's length and that the companies may not, in every case, have properly obtained growers' consent as required under the Horticulture Code of Conduct.

LaManna Banana will advise potentially affected growers of the ACCC's concerns and will establish a special process to deal with any growers who raise concerns about sales of their produce. LaManna will also report to the ACCC on any grower's complaint that it could not resolve under that process.

NR 118/09

PRODUCT SAFETY

Bunk beds fail to meet standards

Mr Sanjay Goel, trading as Pacific ImpExp Services, gave court enforceable undertakings to the ACCC over two of his bunk-bed models supplied through eBay that

failed to comply with the mandatory product safety standard.

Following a voluntary recall of the bunk beds last year, and despite the ACCC's advice and views, Mr Goel then supplied further non-compliant bunk beds.

The ACCC continues to monitor compliance with mandatory product safety and information standards, and emphasises that eBay traders are also required to ensure their goods comply with the relevant standards.

NR 120/09

National attack on dodgy cots

IGC Dorel Australia agreed to voluntarily recall Kensington cots that have faulty drop sides.

A nationally adopted mandatory safety standard for household cots has specific requirements to ensure that the drop side of a cot works correctly and the filler bars remain in place with constant use. When the drop side fails, infants can easily fall out of the cot and suffer serious injuries to their head and limbs.

By July 2010 Australia will have a single national product safety law and harmonised product safety mandatory standards and bans across the country. The ACCC and state and territory consumer protection departments will work together to enforce these laws.

The ACCC is now leading a project with other agencies to identify the cause of this problem and to ensure that cots continue to meet mandatory safety standards and consumer expectations. This type of coordinated effort can now be expected across Australia in the detection of unsafe or non-compliant goods and in the execution of a range of actions in cooperation with or against suppliers.

NR 074/09

Bunk bed supplier failed safety standard

The ACCC obtained declarations and final orders by consent in the Federal Court against Aziz Properties and Services, trading as Infinity Megastore, after it supplied two models of bunk bed that the ACCC alleged failed to comply with the mandatory consumer product safety standard and could pose a serious potential risk to users from entrapment and fall through hazards.

In addition to making a range of probation orders, the court ordered injunctions against the company and Dr Aziz to restrain repetition of the offending conduct. The company and Dr Aziz, the sole officeholder, were ordered to pay the ACCC's costs of the proceeding fixed at \$35 000.

NR 039/09

Voluntary recall for children's toy cars

Kyberguard Pty Ltd, the parent company of www.soldsmart.com.au, conducted a voluntary recall of two toy cars sold through its website after a consumer complaint led to testing by the ACCC, which revealed the toys failed to meet the mandatory Australian

standard for toys when parts broke off during the testing process.

Kyberguard contacted each purchaser individually and offered refunds to all customers; the company has provided undertakings that it will implement a number of corrective measures to prevent such conduct in the future.

NR 038/09

RESTRICTIVE TRADE PRACTICES

Proceedings against bed salesman

The ACCC instituted civil proceedings alleging that the in-home sales methods employed by Craftmatic Australia in selling its adjustable beds were unfair, misleading and designed to unduly influence or pressure elderly customers. The ACCC alleges that certain sales and marketing methods employed by Craftmatic were unconscionable.

NR 077/09

Airlines' challenge to ACCC powers dismissed

The Federal Court dismissed the applications by Singapore Airlines, Singapore Airlines Cargo and Emirates challenging the validity of compulsory notices issued by the ACCC as part of an ongoing investigation into alleged international air cargo cartel activity.

The ability to compel production of documents and information in relation to cartel investigations is an essential part of protecting Australian consumers. Arguments that the ACCC cannot investigate cartels formed outside Australia affecting Australians, or that the market in which goods are carried to Australia is not one to which the TPA applies, are against the objects of the TPA and the welfare of Australians.

To date, proceedings against six other airlines have been concluded with joint submissions to the Federal Court, resulting in penalties totalling \$41 million.

None of those airlines contended that the TPA did not apply to their conduct.

NR 071/09

Boating manufacturer fined for resale price maintenance

The Federal Court imposed penalties on Telwater, Australia's largest manufacturer of aluminium boats, of more than \$200 000 for engaging in resale price maintenance and \$28 000 on one of its directors for being knowingly concerned in the conduct

The court declared that Telwater engaged resale price maintenance by making known to its dealers that they could not advertise boating packages below a specified price, referred to as the 'brochure price'.

The ACCC acknowledges the cooperation of Telwater in the resolution of the matter and in voluntarily stopping the conduct and initiating a trade practices law

compliance program when the ACCC first raised concerns about its conduct.

NR 051/09

Diving company admits to resale price maintenance

Oceanic Diving Australia, a wholesaler of scuba diving-related products, admitted to engaging in resale price maintenance after it emailed a number of dealers to advise them that they could not advertise certain Oceanic products below specified prices.

The ACCC accepted court enforceable undertakings from Oceanic that it will cease the behaviour, implement a compliance program and arrange for an article to be published in a scuba diving publication informing readers about its contravention and the prohibition of resale maintenance.

Under the TPA, wholesalers and suppliers cannot prevent or try to prevent retailers from advertising or selling their products below particular prices.

This prohibition is aimed at enabling retailers to compete on price so that consumers can purchase goods at lower prices.

NR 017/09

Taxi company operated anti-competitive roster

The Federal Court found that an anti-competitive roster system has operated in the taxi industry in Shepparton for many years and has ordered total penalties of \$77 000.

The court declared by consent that three directors and a driver of White Top Taxis Limited gave effect to a series of anti-competitive rostering arrangements in contravention of the Competition Code of Victoria.

The roster had both a roster-on and roster-off purpose. The roster-on provision provided for a taxi to operate at a time of low demand and to ensure availability of a service; however, the roster-off provision had the purpose of limiting the number of taxis at higher demand times.

The court imposed a number of orders, including implementing a trade practices law compliance program and penalties totalling \$77 000, with an additional \$15 000 payable towards the ACCC's costs.

NR 031/09

MERGERS AND ACQUISITIONS

Vodafone and Hutchinson merger not opposed

The ACCC will not oppose the proposed merger of Vodafone and Hutchison's Australian mobile operations, after concluding that it is unlikely to substantially lessen competition in the relevant markets.

In reaching its decision, the ACCC considered evidence that showed that, in the absence of the merger, the parties would be unlikely to sustain the significant

investment in their mobile networks to provide competitive high-speed data services, such as mobile broadband.

A key consideration in the ACCC's investigation was whether increased concentration in the mobile sector would result in reduced pricing pressure for retail mobile telecommunications services. It considered evidence that suggested that, individually, without this merger, the parties would not sustain vigorous price competition in the longer term. Accordingly, the ACCC concluded that the proposed merger would not result in a substantial lessening of competition in the retail mobile telecommunications market.

NR 126/09

Market inquiries about Baiada Poultry acquisition

In February 2009 the ACCC announced its decision to oppose the proposed acquisition of Bartter Enterprises by Baiada Poultry, concluding it would be likely to substantially lessen competition in markets for supply of processed chicken.

To address these concerns, Baiada offered a proposed undertaking that, if successful in acquiring Bartter, it will simultaneously divest all assets currently owned by Bartter in Victoria to La Ionica Poultry.

The ACCC sought views from market participants to assist in its consideration of the proposed undertaking and to determine whether the proposed divestiture would be likely to alleviate the competition concerns.

NR 076/09

Primo acquisition of Hans not opposed

The ACCC will not oppose the proposed acquisition of certain assets of Hans Continental Smallgoods by P&M Quality Smallgoods (Primo) after the Hans business was placed into voluntary administration by its owner.

Following extensive inquiries with market participants, the ACCC concluded that unless acquired by Primo, Hans would be likely to cease trading imminently and would be liquidated by the administrator. The ACCC also found that an acquisition by Primo of Hans, when compared to the situation if Primo did not acquire Hans, would be unlikely to result in a substantial lessening of competition.

NR 032/09

AUTHORISATIONS AND NOTIFICATIONS

Collective bargaining authorised for lottery agents

The ACCC granted an authorisation allowing Victorian lottery agents to collectively negotiate the terms and conditions of their contracts with the two companies licensed to operate lotteries in Victoria, Tattersall's and Intralot.

Under the arrangements the Lottery Agents Association of Victoria will represent members who wish to participate in collective negotiations. Tattersall's and Intralot will remain free to choose whether to deal with the collective bargaining group or continue to negotiate with lottery agents individually.

NR 129/09

WA newsagents allowed to collectively bargain

The ACCC allowed a group of Western Australian newsagents to seek to collectively negotiate the terms and conditions of their contracts with West Australian Newspapers, publisher of *The West Australian*.

The ACCC considers the proposed arrangements will provide newsagents with greater input into their contracts, which may achieve more efficient and mutually beneficial commercial outcomes.

The proposed arrangements are voluntary, enabling any party to not participate in the arrangements if it does not consider the process to be in its best interests.

NR 123/09

Code of conduct granted conditional authorisation

The Mortgage and Finance Association of Australia (MFAA) was granted conditional authorisation to enable it to continue to give effect to its disciplinary rules. The rules allow the MFAA to enforce the professional standard of conduct set out in its code of practice and constitution to ensure that its members are compliant.

Authorisation was granted subject to a condition that the MFAA delete a rule that allows the MFAA's board to impose sanctions on a member regardless of any other action being taken by the MFAA Tribunal or at law. The ACCC considers this rule undermines the role of the MFAA Tribunal.

NR 122/09

Possible benefit in collective bargaining by newsagents

The ACCC proposes to grant authorisation to the Australian Newsagents' Federation (ANF) to engage in collective negotiations on behalf of its members with certain publishers and distributors of newspapers and magazines.

The ACCC has previously authorised collective bargaining arrangements for newsagents on condition that bargaining groups are no larger than state level. The ACCC proposes to grant the ANF request for authorisation to form national collective bargaining groups to deal with magazine publishers and distributors. All interested parties will have an opportunity to put further submissions on this issue to the ACCC before a final decision is made.

Participation is voluntary for newsagents, as well as publishers and distributors of magazines and

newspapers. The ACCC has also proposed a number of conditions on the authorisation to set clear limits on the scope of the negotiations.

NR 113/09

AMS Mortgage Services to waive exit fees

The ACCC will permit a proposed third line forcing arrangement by AMS Mortgage Services to waive the deferred administration fee for early termination of Wizard-based home loans where a customer chooses to refinance with Aussie Home Loans.

Third line forcing is a type of prohibited exclusive dealing conduct. It involves the supply of goods or services on condition that the purchaser acquires goods or services from a particular third party. By lodging a notification with the ACCC, businesses may obtain protection from legal proceedings.

The fee waiver offer was required by Aussie as a condition of its recent acquisition of the Wizard home loans business. To the extent that the arrangement encourages other brokers or lenders to make similar offers, the ACCC considers that it may encourage competition in relation to AMS customers. Customers are not obligated to accept the AMS' offer and can choose to refinance with another broker or lender offering a product that better suits their needs.

NR 099/09

Civil contractors' accreditation scheme approved

The ACCC granted authorisation to a proposal for Victoria's electricity distributors to implement a common accreditation scheme for civil works contractors.

Victoria's electricity distribution businesses will require contractors doing network-related infrastructure work to be accredited to Australian and international standards and have key staff TAFE-trained.

The accreditation proposal was developed to address concerns about the level of safety and quality of electricity works to be connected to the network.

The ACCC considers the proposed scheme will cut the cost and time of ensuring work done by civil contractors is good enough to be connected to Victoria's electricity networks.

NR 093/09

Newsagents allowed to collectively bargain

Newsagents were granted authorisation to enable them to collectively negotiate certain terms and conditions of their contracts with major publishers and distributors of newspapers and magazines.

The Queensland Newsagents Federation, the Newsagents Association of New South Wales and the Australian Capital Territory and the Victorian Association for Newsagents will represent their members and other newsagents who wish to take part in collective negotiations.

The ACCC is satisfied that the proposed collective negotiations will result in a public benefit by potentially enabling participating newsagents to have greater input into terms and conditions than if they were to deal individually with publishers and distributors.

The ACCC considers that the associated public detriment is limited, particularly given the absence of collective boycott activity, the limited number of publishers that are targets of the proposed negotiations and the voluntary nature of the arrangements. Publishers and distributors remain free to choose whether or not to deal with the newsagent groups.

NR 086/09

Traffic management and security contractors to collectively bargain

The ACCC allowed nine traffic management and security contractors to seek to collectively negotiate the terms and conditions of their contracts with Guardrite Security and Traffic Management.

The ACCC considers the arrangements will provide the contractors greater opportunity to provide input into their terms and conditions, which may achieve more efficient and mutually beneficial commercial outcomes. The proposed collective bargaining is also likely to result in transaction cost savings.

The ACCC notes that the proposed collective bargaining arrangements are voluntary. This enables any party, including Guardrite, to not participate in the arrangements if it does not consider the process to be in their best interests.

NR 85/09

ATM sub-network fee-free agreement to be authorised

The ACCC issued a draft determination proposing to authorise an agreement between participants in a 'Feesmart'-branded sub-network not to charge each others' customers fees for ATM transactions.

Recent reforms to Australia's ATM system mean that customers can be charged directly by ATM operators for withdrawals. Instead of charging the cardholder a direct fee, Feesmart members will continue to charge each other a fee for transactions undertaken by their cardholders. Each will independently decide whether to pass this fee on to its cardholders.

The ACCC considers the proposed arrangement will be pro-competitive, helping to ensure that smaller financial institutions are not at a competitive disadvantage to the big banks as a result of reforms to the ATM system.

NR 065/09

Owner-drivers to collectively negotiate

The ACCC authorised owner-drivers to collectively negotiate the terms and conditions upon which they provide earthmoving services in the commercial and civil construction sectors in south-east Queensland.

Owner-drivers contract with earthmoving companies to pick up and deliver materials to and from construction sites. Most operate as small businesses and are engaged on a job-by-job basis.

The Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland (CFMEU Qld) will provide support services to facilitate the collective negotiations but will not conduct negotiations on behalf of the owner-drivers.

The ACCC considers that the associated public detriment is limited because participation in the collective negotiations is voluntary but to ensure this the ACCC has required CFMEU Qld to regularly inform it of the number of participating owner-drivers.

NR 063/09

Wizard franchisees to collectively bargain with Aussie

The ACCC did not object to the collective bargaining notifications lodged by a group of franchisees of Wizard Home Loans in relation to negotiating aspects of franchise agreements with Aussie Home Loans and GE Money.

The notifications were lodged following GE Money selling its Wizard brand and branch network to AHL Investments Pty Ltd (Aussie Home Loans).

The ACCC considers the collective negotiations are likely to result in transaction costs savings to the group and to enable the franchisees to better consider their options in the limited time available. Participation in the negotiations is voluntary for all parties involved.

NR 059/09

Code of practice to be denied authorisation

The ACCC issued a draft determination proposing to deny authorisation to a code of practice and bylaws developed by the Australasian College of Cosmetic Surgery that contain advertising guidelines and guidelines for informed consent, which college members are required to follow, as well as processes for dealing with complaints under the code and bylaws.

The ACCC considers codes that promote the provision of accurate and complete information to consumers and the ethical and professional conduct of members are likely to produce public benefits. However, the ACCC is concerned that a number of clauses in the college's code are not effective in this regard, and has encouraged the college to further develop the code to address these.

NR 034/09

REGULATED SERVICES

Proceedings instituted against Telstra

The ACCC instituted proceedings against Telstra Corporation for alleged contraventions of the TPA and the *Telecommunications Act 1997* (Telco Act) in

relation to its standard access obligations for the unconditioned local loop service (ULLS) and the line sharing service (LSS).

It is alleged that Telstra breached s. 152AR of the TPA by refusing access seeker requests for interconnection at seven key metropolitan exchanges by claiming that they were 'capped' and that there was no capacity on the main distribution frames when this was not the case. It is also alleged that Telstra contravened s. 52 by representing to access seekers individually and on lists of 'capped' exchanges published on its website.

NR 053/09

Telstra's ULLS undertaking rejected

The ACCC rejected Telstra's undertaking application for a \$30 monthly charge for the ULLS in metropolitan areas, which relates to the rental price Telstra charges competitors for access to the copper wire from the telephone exchange to a house or office. Following an extensive assessment of the undertaking, including Telstra's own cost model, the ACCC is not satisfied the \$30 charge for metropolitan areas is reasonable.

The ACCC believes that Telstra's proposed price is unlikely to promote competition in the broadband and telephony markets and may also discourage investment in telecommunications infrastructure. The ACCC also considers that a \$30 monthly charge would result in Telstra recovering more than is necessary to promote its legitimate business interest in providing this service. In 2006 the ACCC rejected a similar undertaking in which Telstra proposed a \$30 price for all areas in Australia.

Since 2004 Telstra has submitted four undertakings, three of which were rejected and the other withdrawn.

NR 090/09

ACCC issues report on airport performance

The ACCC issued its annual airport monitoring report, on the quality of service of the supply of aeronautical services and facilities at major airports, as well as aeronautical prices, costs and profits.

The ACCC's role in monitoring quality of service is intended to provide information that would not otherwise be available about airport quality. For example, the experiences of passengers waiting in the check-in lines at airport terminals and passing through security control points.

Brisbane airport has been rated the highest among the monitored airports for the fifth year in a row. Adelaide airport remained in second place, following significant improvements after the opening of its new terminal. Sydney airport was ranked last among the airports for the third consecutive year.

The full report will be made available on the ACCC website, www.accc.gov.au.

NR 064/09