



Australian
Competition &
Consumer
Commission

ACCCOUNT

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

1 April to 30 June 2009



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Australian Competition and Consumer Commission
23 Marcus Clarke Street, Canberra, Australian Capital Territory, 2601

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Contents

Overview	1
1. Enforcement and compliance	3
Complaints and inquiries	3
Enforcing for businesses and consumers	4
2. Communicating with business and consumers	16
Liaison and education activities	16
Codes of conduct	18
Product safety	20
3. Mergers	24
Merger reviews	24
Statements of issues	25
Public competition assessments	25
Section 87B undertakings	25
Major matters	26
4. Adjudication	30
Authorisations	30
5. Regulatory affairs	38
Communications	38
Access terms and conditions—undertakings and disputes	39
Other developments	41
Reports	41
Australian Energy Regulator	42
Water	47
Price monitoring	50
Fuel monitoring	52
6. International activities	55
7. Reviews and inquiries	58
Legislative matters	58
Parliamentary inquiries	59
Appendix	61

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 our functions in an efficient and professional manner. We manage our regulatory and enforcement processes to achieve effective outcomes maximising the use of ACCC resources.

In an important case—and a victory for the small business operators—the Federal Court declared that Melbourne retail landlord Dukemaster Pty Ltd had engaged in unconscionable conduct, misleading and deceptive conduct and had made false representations to four tenants during lease negotiations. The court also declared that Dukemaster's general manager of the Paramount Centre, Ms Patricia Wong, was involved in Dukemaster's contravening conduct. As part of the decision the court ordered compensation in excess of \$275 000 from Dukemaster and Ms Wong to the tenants for their loss and the damage suffered.

Coca-Cola South Pacific Pty Ltd's extensive 'myth-busting' advertising campaign resulted in the company having to publish corrective advertisements in newspapers across Australia. The ACCC was concerned that the advertisements contained misleading health messages to consumers, particularly to mothers who are often the decision-makers about family nutrition.

Proceedings also commenced during the April to June quarter against Cabcharge Australia Ltd under Part IV of the Trade Practices Act. Cabcharge allegedly engaged in conduct with the purpose and/or effect of substantially lessening competition in the taxi industry for the supply of taxi meters and EFTPOS non-cash payment processing services to taxis.

Scammers continue to come up with new ploys to take money from Australian businesses and consumers. During the June quarter, Scamwatch alerts were issued on tax bonus scams, sport investment schemes, phishing scams and fake department store gift cards.

The Australian Parliament has amended the Trade Practices Act by introducing new civil cartel prohibitions and, for the first time, a criminal cartel offence. Following the passage of the Bill, the ACCC signed a memorandum of understanding with the Commonwealth Department of Public Prosecutions (CDPP) and released guidelines about how it will approach cartel investigations.

The Australian Parliament is also considering proposed amendments to the *Trade Practices Act 1974* that would introduce new powers and remedies for consumer protection, including civil pecuniary penalties, infringement notices and substantiation notices. The proposed law will also include protection against unfair contract terms in consumer contracts. These proposed reforms will form part of the proposed Australian consumer law.

The Australian Energy Regulator's final decision on its industry-wide weighted average cost of capital review for regulated electricity networks was released in May. The decision includes the rate of return values and methods to be adopted in future electricity network pricing determinations by the AER. The WACC represents the cost of debt and equity required by an efficient benchmark electricity network business to supply regulated electricity services. The AER has necessarily taken a long-term perspective, but its decision reflected current market conditions as they may prevail during the period in which the revised WACC parameters apply.

After initially proposing to deny authorisation for the Australasian College of Cosmetic Surgery's code of practice, the ACCC has imposed strict conditions on the college to ensure its code operates effectively. The code contains advertising guidelines and guidelines for informed consent that college members will be required to follow, as well as processes to deal with complaints.

The ACCC continues to assess the competition effects of a wide variety of merger transactions in the Australian economy. During the June quarter, the ACCC reviewed mergers in industries ranging from telephony to chicken-growers and the hot water tank industry.

The ACCC made a public submission to the Australian Government's [National Broadband Network: Regulatory Reform for the 21st Century Broadband: discussion paper](#). The ACCC submission includes the conceptual framework attached to the ACCC report to the National Broadband Network expert panel.

The Minister for Climate Change and Water registered the water market rules and water charge termination rules in June 2009. To coincide with the commencement of the rules the ACCC released both general and comprehensive guides to assist irrigators, operators and professional advisers to better understand and comply with both sets of rules. In the next phase of developing its advice to the Murray–Darling Basin Authority, the ACCC will release a position paper on water trading rules in August 2009 for consultation.

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.

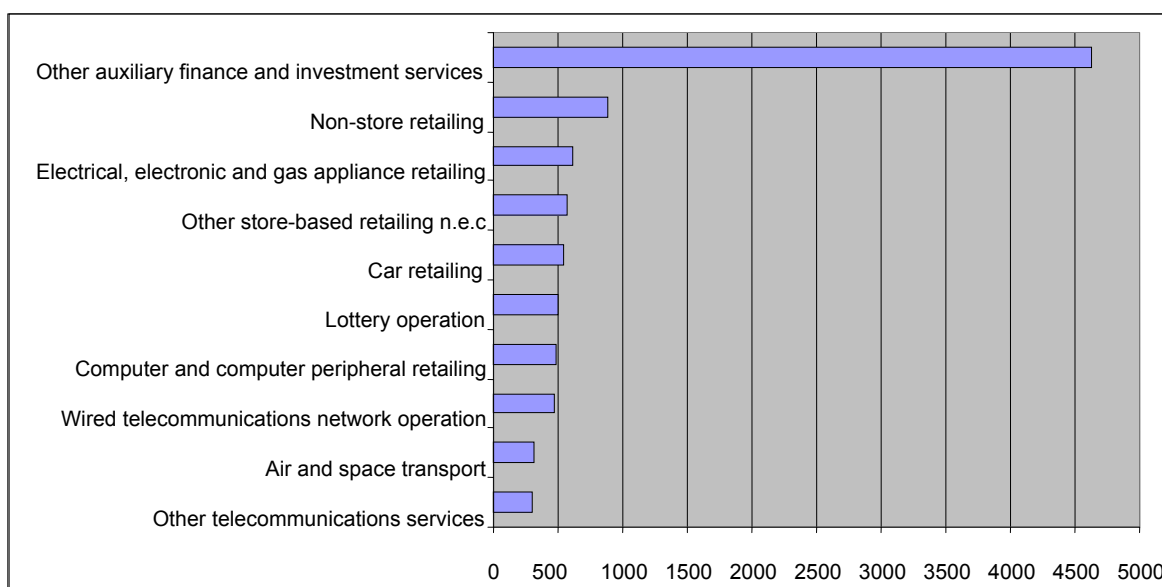
Complaints and inquiries

During the June 2009 quarter the ACCC Infocentre received 35 033 complaints and inquiries from businesses and consumers (email: 9250; telephone: 25 248; letter correspondence, 535). Of these complaints and inquiries, 19 180 (55 per cent) were entered into the ACCC's database.¹

Major drivers of these contact levels include concerns about scam-based activity and requests for warranty and refunds advice. The Infocentre escalated 188 matters to regional offices for assessment during the June quarter. Infocentre staff generally escalate Part IV-related allegations to the regional office closest to the caller's location. Part IVA and some complex Part V matters requiring further investigation were also escalated.

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

Chart 1.1 Top 10 industries for attracting complaints



Of the complaints and inquiries entered into the ACCC's database during the June quarter, 80 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

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

contacts, lower than the quarterly average figure of 5 per cent reported in 2008. Other matters accounted for 17 per cent, down from the 20 per cent 2008 quarterly average.

Enforcing for businesses and consumers

In undertaking its enforcement activity, the ACCC remains committed to conducting its work in an efficient and professional manner. 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

Fourteen first-instance enforcement litigation proceedings were commenced by the ACCC in the Federal Court during the June 2009 quarter.

Craftmatic Australia Pty Ltd and others

Commenced 7 April 2009 | QUD99/2009

Proceedings under parts IVA and V of the Trade Practices Act for alleged unconscionable conduct and misleading or deceptive conduct in relation to the sale of adjustable beds.

Cardcall Pty Ltd

Commenced 15 April 2009 | NSD314/2009

Proceedings under Part V for alleged misleading or deceptive conduct and false or misleading representations in the promotion of prepaid phone calling cards.

Burnan Pty Ltd and another

Commenced 23 April 2008 | WAD65/2009

Alleged breach of s. 87B undertakings and proceedings under Part V for alleged misleading or deceptive conduct in relation to the promotion and sale of résumé writing businesses to the public.

Cathay Pacific Airways Ltd

Commenced 30 April 2009 | NSD363/2009

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

Cosic Holdings Pty Ltd

Commenced 6 May 2009 | WAD70/2009

Proceedings under Part V for alleged pyramid selling in relation to the 'Emerald Passport' scheme.

Zanok Technologies Pty Ltd

Commenced 7 May 2009 | NSD385/2009

Proceedings under parts IVA and V for alleged unconscionable and misleading or deceptive in the promotion of employment in the information technology industry. The ACCC alleges that Zanok was not offering job opportunities but rather 'IT training' for which applicants were required to pay up to \$4 700 with no guarantee of an IT job at the end of the training.

Harvey Fresh (1994) Pty Ltd

Commenced 7 May 2009 | WAD71/2009

Proceedings under Part V for alleged misrepresentations about the place of origin of a certain cheese product.

Advanced Allergy Elimination Pty Ltd and another

Commenced 12 May 2009 | VID361/2009

Proceedings under Part V for alleged representations that Advanced Allergy 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.

Clarion Marketing Australia Pty Ltd

Commenced 27 May 2009 | NSD486/2009

Proceedings under Part V for alleged misleading or deceptive conduct in the promotion of mobile premium content services arising from the publication of promotional 'Scratch and win' cards.

Bridgestone Corporation and others

Commenced 1 June 2009 | VID407/2009

Proceedings under Part IV for allegedly engaging in price-fixing and market-sharing conduct in the supply of marine hoses to the Australian oil and gas industry.

Australian Karting Association (NSW) and others

Commenced 9 June 2009 | NSD548/2009

Proceedings under Part IV for alleged price fixing in relation to the go-cart industry.

Australian Dreamtime Creations Pty Ltd and another

Commenced 15 June 2009 | SAD89/2009

Proceedings under Part V for alleged misleading or deceptive conduct in representing that the artists whose work they promoted and sold were of Indigenous Australian descent when they are not.

DRS C3 Systems Inc.

Commenced 18 June 2009 | NSD588/2009

Proceedings under Part V for alleged cartel behaviour in the international military defence training systems industry.

Cabcharge Australia Ltd

Commenced 24 June 2009 | VID467/2009

Proceedings under Part IV for allegedly engaging in conduct with the purpose and/or effect of substantially lessening competition in the taxi industry for the supply of taxi meters and EFTPOS non-cash payment processing services to taxis.

Proceedings concluded

Ten first-instance enforcement litigation proceedings and two enforcement appeals were finalised during the June quarter.

Kloosterman, Bindert and others

Commenced 4 September 2008 | Concluded 20 April 2009 | NSD1391/2008

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

Justice Flick | Federal Court, Sydney

Outcome | Declarations, injunctions, costs.

Narnia Investments and another

Commenced 17 September 2008 | Concluded 22 April 2009 | TAD39/2008

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

Justice Marshall | Federal Court, Hobart

Outcome | Simon Charles Clarke and 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 Trade Practices Act.

Narnia Investments and another

Commenced 20 August 2008 | Concluded 23 April 2009 | TAD33/2008

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

Justice Marshall | Federal Court, Hobart

Outcome | Declarations and injunctions against Mr Clarke and Narnia Investments P/L, and Mr Clarke ordered to attend trade practices law compliance training.

Richard Pratt

Commenced 19 June 2008 | Concluded 29 April 2009 | VID443/2008

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

Justice Ryan | Federal Court, Sydney

Outcome | Matter discontinued.

AMV Holdings Pty Ltd and another

Commenced 23 January 2009 | Concluded 5 June 2009 | NSD58/2009

Proceedings under Part V for misleading or deceptive conduct in relation to advertising of mobile premium services.

Justice Moore | Federal Court, Sydney

Outcome | Declarations by consent.

Harris Scarfe Australia Pty Ltd

Commenced 10 October 2007 | Concluded 8 May 2009 | SAD155/2007

Proceedings under Part V for misleading and deceptive conduct in relation to a television commercial and sale catalogue for a '20% to 60% off storewide' sale.

Justice Mansfield | Federal Court, Adelaide

Outcome | 5 February 2009: declarations and injunctions; 8 May 2009: Harris Scarfe Pty Ltd to pay 80 per cent of ACCC costs.

LED Technologies Ltd and another

Commenced 19 August 2008 | Concluded 11 May 2009 | VID653/2008

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

Justice Tracey | Federal Court, Melbourne

Outcome | Justice Tracey noted the undertakings given to the court and ordered that the respondents pay a contribution to the ACCC's costs. Proceedings dismissed.

Cardcall Pty Ltd

Commenced 15 April 2009 | Concluded 22 May 2009 | NSD314/2009

Proceedings under Part V for alleged misleading or deceptive conduct and false or misleading representations in the promotion of prepaid phone calling cards.

Justice Lindgren | Federal Court, Sydney

Outcome | Declarations, injunctions, corrective notice order, community service orders and costs.

All Trades Services Pty Ltd and others

Commenced 17 June 2009 | Concluded 18 June 2009 | NSD1119/2008

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

Justice Moore | Federal Court, Sydney

Outcome | Injunctions and costs.

Dukemaster Pty Ltd and another

Commenced 2 October 2008 | Concluded 24 June 2009 | VID813/2008

Proceedings under Part IVA and Part V for alleged unconscionable conduct, misleading or deceptive conduct and false representations arising from dealings with tenants by the landlord of retail premises.

Justice Gordon | Federal Court, Melbourne

Outcome | Declarations, injunctions, orders for payment to the respective tenants of a total of \$275 456 (plus interest), and trade practices compliance program orders and costs.

Channel Seven Brisbane Pty Ltd and others

Commenced | 27 September 2005 | Concluded 30 April 2009 | [2009] HCA 19

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

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 filed an application for special leave to appeal to the High Court (granted 14 November 2008).

Matter heard by High Court on 10 March 2009.

Chief Justice French, Justices Gummow, Hayne, Heydon and Kiefel | High Court

Outcome | ACCC appeal allowed with costs. The High Court set aside the orders made by the Full Federal Court.

Ascot Four Pty Ltd

Commenced | 20 December 2006 concluded 26 May 2009 | SAD141/2008

Background | 21 August 2008: Justice Mansfield of the Federal Court, Adelaide handed down judgment finding Ascot Four guilty on all 11 counts. 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.

23 January 2009: Justice Mansfield of the Federal Court, Adelaide ordered that a conviction be recorded against the defendant on each of the 11 counts and imposed a penalty of \$380 000 and costs.

Chief Justice Black and Justices Ryan and Jagot | Full Federal Court, Adelaide

Outcome | 26 May 2009: The Full Federal Court, Adelaide comprising, dismissed Ascot Four Pty Ltd's appeal and ordered Ascot Four Pty Ltd pay the ACCC's costs.

Current Full Federal Court applications

There are no current enforcement appeals to the Full Federal Court.

Current Supreme Court applications

There are no current enforcement Supreme Court applications.

Current High Court applications

There are no current enforcement appeals to the High Court.

Section 87B undertakings accepted

The ACCC accepted 11 s. 87B undertakings during the June 2009 quarter.

Coca-Cola South Pacific Pty Ltd has provided court enforceable undertakings in relation to the publication of an advertisement entitled 'Kerry Armstrong on Motherhood and Myth-Busting', centred on discrediting health concerns consumers associate with Coca-Cola, which is considered likely to mislead or deceive consumers. Coca-Cola South Pacific Pty Ltd has undertaken to:

- publish the correct advertisement to the same presentation standard as the original advertisement, including page location and advertisement sizing
- ensure, for three years, that it will not make claims that:
 - consumption of Coca-Cola cannot contribute to weight gain unless that claim can be substantiated
 - consumption of Coca-Cola cannot contribute to tooth decay or that tooth decay is declining globally, unless the particular claim made can be substantiated
 - 250 ml of the Coca-Cola product bearing the brand name 'Diet Coca-Cola' contains only half the amount of caffeine as that contained in a cup of tea, without further qualification, unless that claim can be substantiated
- instruct a law firm with trade practices expertise, or a suitable professional with trade practice compliance experience and expertise, to undertake a review of Coca-Cola South Pacific Pty Ltd's procedures, as they relate to the application of Part V of the Trade Practices Act to advertising and promotional material for Coca-Cola Products

- provide a report to the ACCC in respect of the review and the implementation of any recommendations, with Coca-Cola South Pacific Pty Ltd to use its best endeavours to provide the report to the ACCC within six months of the undertaking coming into effect.

Natural Products of Australia Pty Ltd has provided court enforceable undertakings to the ACCC in relation to the labelling of hair and skincare products, considered likely to mislead or deceive consumers, and non-compliance with the relevant mandatory information standard for cosmetics. Natural Products of Australia Pty Ltd has undertaken to:

- publish corrective notices
- cease the contravening conduct
- provide refunds to affected customers
- implement a trade practices compliance program.

Coast to Coast Imports Pty Ltd has provided court enforceable undertakings to the ACCC about the supply of '6 Pce Stretch Cord 12'18'24' elastic luggage straps that did not comply with the prescribed consumer product safety standard for elastic luggage straps. Coast to Coast Imports Pty Ltd has undertaken to:

- cease the supply of the elastic luggage strap that does not comply with the mandatory standard
- conduct an audit of its range of products to identify any products that do not comply with the mandatory standard and, if any products are found, ensure they are immediately withdrawn from sale
- display an Information notice at the main service counter of each bargain/discount retail outlets that sold the product advising consumers that the product did not comply with the mandatory standard and offering consumers a full refund on return of the product
- develop and implement a trade practices compliance program that includes trade practices law compliance training for relevant staff and a corporate complaints handling system to ensure similar potential breaches of the Act do not occur in the future.

M2 Telecommunications Pty Ltd has provided court enforceable undertakings to the ACCC about representations regarding statutory rights, preconfigured software and the network compatibility of mobile phones considered likely to mislead or deceive consumers. M2 Telecommunications Pty Ltd has undertaken to:

- refrain from making similar representations in the future
- offer affected consumers redress in the form of replacement mobile phones or refunds
- publish a corrective notice on its website
- publish an information article in a telecommunications industry journal
- review and maintain its trade practices compliance program.

Kogan Technologies Pty Ltd has provided court enforceable undertakings to the ACCC about comparative ('two-price') representations in the advertising of home entertainment products considered likely to mislead or deceive consumers. Kogan Technologies Pty Ltd has undertaken to:

- refrain from representing price comparisons without clearly identifying the brand and model of the good with which the price comparison is made
 - refrain from offering or advertising any goods as being on sale, by reference to a price, unless those goods have been offered for sale or sold at the higher price in reasonable quantities for a reasonable amount of time within a reasonable period of the date of the offer or advertisement
 - ensure that all future advertising and other forms of promotion by Kogan complies with Part V of the Act
 - implement a trade practices compliance program.
-

Colin Thompson has provided court enforceable undertakings to the ACCC about the supply of retail tobacco products that did not comply with the prescribed consumer product information standards for the labelling of tobacco products. Colin Thompson has undertaken to:

- refrain from supplying retail tobacco products where the consumer product information, as prescribed by the regulations, is in any way obscured
 - comply with any consumer product information standard on retail tobacco products as prescribed
 - prominently display three 'Quitline' posters of A3 size in any retail outlet from which he supplies retail tobacco products.
-

Narnia Investments Pty Ltd and **Simon Clarke** have provided court enforceable undertakings to the ACCC about false and misleading representations regarding a vulnerable consumer's rights under his contract. Narnia Investments Pty Ltd and Simon Clarke have undertaken to:

- pay the affected consumer the \$5000 balance of \$10 000 damages previously agreed between the ACCC and Mr Clarke
 - refund the affected consumer his \$1800 deposit
 - pay the ACCC's legal costs of \$12 785.
-

Dodo Australia Pty Ltd has provided court enforceable undertakings to the ACCC about the advertising of mobile telephone plans, considered likely to be false, misleading or deceptive. Dodo Australia Pty Ltd has undertaken to:

- write to the consumers affected by the conduct
- pay refunds to certain consumers
- reduce the monthly fee for each of the free offer plans

- implement and maintain a revised trade practices compliance program.

Jarvis Walker Pty Ltd has provided court enforceable undertakings to the ACCC about the supply of elastic luggage straps that did not comply with the prescribed consumer product safety standard for elastic luggage straps. Jarvis Walker Pty Ltd has undertaken to:

- ensure that each product it supplies complies with any relevant consumer product safety standard
- implement a trade practices compliance program.

GAF Control (Sales) Pty Ltd has provided court enforceable undertakings to the ACCC about representations on warranty cards in small appliances supplied by GAF Control considered likely to mislead consumers about their statutory warranty rights. GAF Control (Sales) Pty Ltd has undertaken to:

- refrain from making false or misleading representations concerning the existence exclusion or effect of any condition, warranty, right or remedy implied by the Trade Practices Act
- replace its warranty cards by 1 July 2009
- send a letter to retailers of its small electrical appliances enclosing the new warranty card
- place a notice on its website informing consumers about the misrepresentations on its warranty card
- implement a trade practices compliance program for GAF employees and other persons involved in its business.

-
- **Sanjay Goel** trading as **Pacific ImpExp Services** has provided court enforceable undertakings to the ACCC about the supply of bunk beds that did not comply with the relevant mandatory consumer product safety standard. Sanjay Goel has undertaken to:
refrain from supplying bunk beds that do not fully comply with the mandatory standard for bunk beds
 - establish and implement a trade practices compliance program.

LaManna Bananas Pty Ltd has provided court enforceable undertakings to the ACCC on an alleged breach of the Horticulture Code of Conduct. LaManna Bananas Pty Ltd has undertaken to:

- advise potentially affected growers of the ACCC's concerns
- establish a special process to deal with any growers who raise concerns about sales of their produce
- report to the ACCC on any grower's complaint that it could not resolve under that process
- implement a trade practices compliance program to help it avoid future code breaches

- refrain from selling between themselves horticultural product assigned to them by growers without first having growers express consent to the transaction/s
- implement a complaint resolution process to deal with growers' complaints.

Skins Compression Garments Pty Ltd has provided court enforceable undertakings to the ACCC about resale price maintenance and misleading and deceptive conduct in the retail sports goods industry. Skins Compression Garments Pty Ltd has undertaken to implement a trade practices compliance program

Christopher Thomas Warhurst has provided court enforceable undertakings to the ACCC about resale price maintenance in the retail sports goods industry. Christopher Warhurst has undertaken to:

- refrain from being knowingly concerned in or party to any corporation inducing or attempting to induce a party not to sell or advertise products at a price less than a price specified by the corporation
- attend trade practices compliance training

Jaimie Royston Fuller has provided court enforceable undertakings to the ACCC about misleading and deceptive conduct in the retail sports goods industry by Skins Compression Garments Pty Ltd. Jaimie Fuller has undertaken to attend Trade Practices Compliance training.

Waverley Woollen Mills Pty Ltd has provided court enforceable undertakings to the ACCC about alleged false or misleading 'Product of Australia' labelling on casual jumpers woven in Vietnam and sold at its factory outlet. Waverley Woollen Mills Pty Ltd has undertaken to:

- refrain from representing that its products are products of Australia unless it has first established the goods meet the test for country of origin claims
- publish an ACCC approved corrective notice on its website and in its local newspaper
- undertake trade practices compliance training.

Janome Australia Pty Ltd and another have provided court enforceable undertakings to the ACCC about the resale price maintenance of sewing and quilting machines, overlockers and associated products. Janome Australia Pty Ltd and Tosiya Takayasu have admitted the conduct. Janome Australia Pty Ltd has provided court enforceable undertakings to:

- refrain from engaging in similar conduct in the future
- implement and maintain a trade practices compliance program for three years
- write to all its resellers advising them of its conduct and its breach of the Act

- publish a corrective notice on its website for three months
- publish a full page corrective notice in *Australian Stitches* and *Embroidery and Cross Stitch* magazines.

Furniture and Bedding Concepts Ltd has provided court enforceable undertakings to the ACCC about comparative ('two-price') representations in the advertising of bedding, furniture and homeware products considered likely to mislead or deceive consumers. Furniture and Bedding Concepts Ltd has undertaken to:

- not make misleading price representations for three years
- offer affected consumers a \$100 gift voucher
- send a letter of apology to affected consumers and offer them a \$100 gift voucher
- publish corrective notices on its websites and in its retail stores
- publish an information article in a relevant industry magazine
- strengthen its existing trade practices compliance program

PMP Home Media Pty Ltd trading as **PMP Distribution** has provided court enforceable undertakings to the ACCC about alleged misleading or deceptive conduct with regards to reports that contained incorrect pamphlet delivery statistics. PMP Home Media Pty Ltd has undertaken to:

- implement business procedures and processes to ensure information PMP Distribution provides to its customers is accurate
- provide the ACCC with an independent auditor's report of its business procedures and processes on information PMP Distribution provides to its customers
- establish and implement a trade practices compliance program

Super A-Mart Pty Ltd has provided court enforceable undertakings to the ACCC about alleged misleading or deceptive conduct arising from representations qualified by fine-print disclaimers that were not sufficiently prominent and were too imprecise to adequately qualify the representations. Super A-Mart Pty Ltd has undertaken to:

- clearly label display stock as not for sale
- review the size of symbols used in its catalogues (such as asterisks) that are intended to refer consumers to qualifying terms and conditions located elsewhere in the catalogue
- review the wording used in disclaimers (written and oral)
- display public notices in store and on its website
- review and, if necessary, improve its internal catalogue review process and its television and radio advertisement review process to increase the accuracy and consistency of its advertising
- implement a trade practices compliance program, including trade practices training.

Londy Pty Ltd trading as **Purely Commercials** has provided court enforceable undertakings to the ACCC about alleged misleading representations about a tax benefit that applied to purchasers of vehicles displayed in an advertisement. Londy Pty Ltd has undertaken to:

- not represent that goods or services have benefits it does not have for three years
- will publish a corrective notice on its website, www.purelycommercials.com.au, and in the CARSguide section in the *Sunday Times*
- establish, implement and maintain a trade practices compliance program for three years.

Craftmatic Australia Pty Ltd has provided court enforceable undertakings to the ACCC about misleading or deceptive and unconscionable conduct relating to its marketing and selling techniques of adjustable beds to consumers, most of whom are elderly. Craftmatic Australia Pty Ltd has undertaken to:

- Appoint a legal practitioner with trade practices experience to review any form, script or instruction (any document) that Craftmatic intends to employ as part of its *Compliance manual*. Craftmatic will then not be able to use any document to sell beds or to train representatives to sell beds on its behalf that does not form part of the *Compliance manual*.
- Conduct trade practices training for all new employees and retraining of existing employees in accordance with its *Compliance manual*.

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 undertake. Industry associations play a key role in helping to disseminate information and to 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 June 2009 quarter, the ACCC, as part of its Outreach program:

- attended 66 meetings with government and industry representatives, small business operators and consumer groups nationally
- participated in 16 small business and franchising expos and field days
- conducted 57 presentations to small business operators, industry associations and consumer groups at forums such as 'You and your suppliers, competitors and customers—your rights and obligations under the Trade Practices Act' (Hobart and Launceston), the Local Government Managers Australia National Congress and Business Expo (Darwin) and the Franchise Expo (Perth).

Many ACCC educative activities conducted this quarter focused on consumer rights under the Trade Practices Act. As part of this, the ACCC worked with a range of consumer protection agencies, including a number of state and territory offices of fair trading, to ensure that disadvantaged and vulnerable consumers were made aware of their rights and protections.

Among the activities were the following:

- A series of presentations (made jointly with Australian Securities and Investments Commission and the Office of Consumer and Business Affairs) as part of South Australian Law Week to educate high school students about warranty and refund issues, scams and specific issues related to mobile phones and e-commerce.
- A road trip to a number of remote communities in the Northern Territory (with Consumer Affairs, North Australian Aboriginal Justice Agency and the Central Australian Aboriginal Legal Aid Service) to provide information to Indigenous Australian consumers.
- A joint stand with Office of Consumer Affairs and Fair Trading at Tasmania's AGFEST.
- The launch of an issues paper on debt collection practices in Australia, which summarises the major issues identified during joint ACCC and ASIC information-gathering exercises.

The ACCC was also involved in the matters described below.

Advertising practices

During the June quarter, the ACCC developed several new publications aimed at assisting businesses to ensure their advertising complies with the Trade Practices Act. In particular, these publications addressed the recent 'clarity in pricing' amendments to the Act and the practice of comparison, or 'two price', advertising.

Changes to s. 53C of the Act, which took effect on 25 May 2009, mean that 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. This means that a business can no longer make a price representation that is only a part of what a consumer must pay to obtain a particular product or service.

To help businesses understand their obligations under the new law, the ACCC produced a number of new publications, including specific guidance for sectors that most frequently employ component pricing practice—the motor vehicle industry, the travel and tourism industry and retailers of furniture and large electrical goods. The ACCC also updated its website and undertook a number of speaking engagements to educate industry participants and address specific concerns and questions as they arose.

Another common advertising practice that can cause concerns under the Act is price comparison, or two-price, advertising. This occurs when retailers compare their current prices to previous or future prices (eg 'Was/Now' pricing). To help businesses avoid making misleading price comparisons, the ACCC published *News for business—Price comparison advertising*, which enables businesses to assess whether pricing promotions in their advertising are likely to comply with the law.

Unit pricing

The Australian Government's national mandatory unit pricing code under the Trade Practices Act became effective on 1 July 2009. As part of its responsibilities in administering and enforcing the code, in the lead-up to its introduction the ACCC liaised with industry stakeholders (e.g. major supermarket chains, independent retailers and wholesalers, industry associations and consumer groups) to ensure that all of them were made aware of their rights and obligations under the code.

Guidance for industry

During the June quarter the ACCC released some new guidance materials explaining businesses' rights and obligations under the Trade Practices Act. The *Food labelling guide* provides businesses in the food and beverage industry with information on product labelling, packaging and advertising. In particular, the guide highlights the obligation of businesses to avoid making any claims or representations on a food or beverage label, package or advertisement that indicates that an ingredient is a predominant ingredient in that product, if that is not the case. The guide also explains the roles of the two regulatory agencies most relevant to the sector—the ACCC and Food Standards Australia New Zealand.

Competing fairly, a series of audiovisual presentations about areas of the Trade Practices Act most likely to concern small business, was also released this quarter. The presentations, which address advertising and selling, supply issues, warranties and refunds and collective bargaining, are streamed on the ACCC website and are also available on DVD format.

Scams

Scammers continue to employ new strategies and to focus on topical issues in their attempts to take money from Australian businesses and consumers. During the June quarter SCAMwatch radar alerts were issued on the following topics:

- swine flu scams
- tax bonus payment scams
- sports investments schemes
- fake department store gift cards.

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 to develop effective national voluntary industry codes of conduct.

Mandatory codes

Franchising Code of Conduct

During the June 2009 quarter, the ACCC:

- Held a meeting of its Franchising Consultative Committee (formerly the Franchising Consultative Panel), which included discussions on the impact of the global financial crisis on the franchising sector and the ACCC's enforcement and educational activities relating to franchising.
- Continued to educate industry participants about their rights and responsibilities under the Franchising Code by engaging with the franchising sector in educational seminars including:
 - participation in six Australian Defence Force transition seminars for Defence personnel considering purchasing a franchise with their redundancy or superannuation lump sum payments
 - attendance at the Franchising and Business Opportunity Expo and at a pre-entry education seminar for prospective franchisees in Perth to educate prospective franchisees about their rights and responsibilities under the Franchising Code.
- Met with insolvency experts to discuss issues surrounding franchisor insolvency.
- Distributed more than 9000 franchising publications and continued to expand the Franchising Code Information Network. During the quarter, subscribers to the network received updates on topics including:
 - information about mediation from the Office of the Mediation Adviser
 - copies of recent ACCC articles about franchising
 - information about the government's options paper, which invites final comment from relevant parties and the broader community on amendments to the code discussed in the Parliamentary

Joint Committee inquiry into shareholder engagement and participation.

- Published articles in a range of media, including the *Business Franchise Magazine*, News Ltd papers and *Franchising Magazine* to advise prospective franchisees to research business and franchising opportunities carefully before committing themselves to a franchise.

The Horticulture Code of Conduct

The Australian Government established a Horticultural Code Committee following the report of the ACCC inquiry into the competitiveness of retail prices for standard groceries (the grocery inquiry report). As part of its deliberations the ACCC is considering recommendations to improve the code so that it works properly, still ensures transparency in transactions and establishes a fair dispute resolution mechanism. The Horticulture Code Committee is currently considering implementation issues arising from the ACCC recommendations. The committee has consulted widely with the stakeholders to inform itself of potential issues, and will report its findings to the minister.

During the June 2009 quarter, the ACCC:

- Attended a Horticulture Code Committee meeting to discuss ACCC recommendations made in the grocery inquiry report to amend the Horticulture Code.
- Continued to work with the Department of Agriculture, Fisheries and Forestry—in particular, discussing the recommended amendments to the Horticulture Code, their potential impact on the horticulture industry and the ACCC's enforcement role
- Maintained the Horticulture Code Information Network—a free subscription service—mailing out information on the ACCC's acceptance of court enforceable undertakings from LaManna Bananas Pty Ltd, on behalf of the LaManna Group companies, over horticulture produce transactions within the group.

National voluntary industry codes

Effective voluntary industry codes serve the purpose of fostering more effective compliance with the Trade Practices Act as well as setting industry best practice standards. In particular, effective industry codes of conduct can play an integral part in preventing misleading or deceptive conduct and unconscionable conduct in business-to-business and business-to-consumer transactions.

During the June quarter the ACCC's industry codes section continued to provide guidance to industry and/or government on national voluntary industry codes of conduct including:

- **Indigenous Australian Art Commercial Code of Conduct**
Aims to promote fair trading practices in the Indigenous Australian art sector to ensure clarity and transparency of transactions and fair treatment of artists, and to provide consumers with a means to check authenticity of artwork. The ACCC has provided guidance to the National Association for the Visual Arts Ltd and the Australia Council about the development of this code

- Jewellery industry code of conduct

The ACCC has provided guidance to the Jewellers Association of Australia Ltd about developing a code of conduct for advertising and sale of jewellery items. The aim of the code is to create preferred standards for procedures and conduct of participants in the Australian jewellery industry.

- Motor Vehicle Insurance and Repair Industry Code of Conduct

The ACCC is currently liaising with stakeholders on the impact of this code on trade practices issues in this sector.

Product safety

The ACCC develops, reviews and enforces Trade Practices Act product safety and information standards and product bans. The ACCC develops and reviews mandatory standards and bans and advises staff and suppliers about them by way of supplier and consumer education and compliance activities.

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

Product safety reform and liaison activities

The ACCC has focused on progressing a suite of product safety reforms, approved by the Council of Australian Governments on 3 July 2008, which will lead to a more harmonised product safety system by the end of 2010. Work is progressing towards the new product safety single law multiple regulator model and the following initiatives recommended in the 2006 Productivity Commission report, *Review of the Australian consumer product safety system*:

- Harmonisation of product safety regulations across the federal, state and territory jurisdictions, including consolidating current federal, state and territory mandatory product safety and information standards and bans under the Trade Practices Act.
- Establishment of the Product Safety Australia website—an electronic single entry point to information and services about product safety for consumers, suppliers and other stakeholders. The ACCC is on track to implement the website, and it is anticipated that most of its design and content will be completed by 31 December 2009.
- Implementation of an emerging hazards clearinghouse that will draw on various information sources to assist in analysing consumer product incidents, with the aim of identifying emerging product safety hazards in Australia. It is expected that the clearinghouse will be established by 31 December 2009.
- Completion of a recalls review, which will consider:
 - the effectiveness of the current consumer product recall mechanism in removing unsafe consumer products from the sale and post-sale environment
 - whether the current system can be improved.

The review will produce an options paper that makes recommendations to the Ministerial Council of Consumer Affairs by 31 December 2009.

- Development of a mandatory reporting concept for products associated with serious injury or death and a proposed implementation plan (for December 2010).

The ACCC continues to consult with state and territory jurisdictions and a wide range of stakeholders about the development of these initiatives.

The ACCC continues to contribute actively to the development and implementation of a national product safety legislative framework and proposed reforms under the Australian Consumer Law reform process.

Development of new mandatory standards and bans

Treadmills | A new mandatory standard for treadmills was declared on 4 June 2009. This mandatory safety standard is designed to prevent young children from suffering friction burns that can result if they are playing near or on a treadmill. All treadmills supplied in Australia after 1 December 2009 must carry a prominent label warning users of the need to keep young children away from the machine.

Manufacturers, importers, wholesalers, hire companies and retailers supplying treadmills must comply with the requirements of the regulations.

Development of the safety standard followed consultation by the ACCC with regulators, industry, consumer groups and other stakeholders.

Reduced fire risk cigarettes | On 9 April 2009 the Trade Practices (Consumer Product Safety Standard) (Reduced Fire Risk Cigarettes) Regulations 2008 were amended to reduce the transition period that non-compliant reduced fire risk cigarettes will be available for sale from 12 to six months.

The amendment is to ensure that all cigarettes supplied in Australia will be reduced fire risk compliant from 23 September 2010, well in advance of the 2010–11 bushfire season.

Emerging and other issues

The RIS process has begun to examine the case for a possible mandatory safety standard for small magnets in toys. These small, strong magnets, if ingested, can draw together in the digestive tract, causing significant injuries.

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

Two new mandatory safety standards were introduced on 8 April 2009:

- flotation toy and aquatic toys
- swimming aids and flotation aids for water familiarisation and swimming tuition.

These mandatory standards replace an existing safety standard regulating swimming aids and flotation toys that had been in place since 1992. It was reviewed as part of a regular review program to ensure changes in the marketplace and innovation were acknowledged as well as ensuring that new Australian standards were referenced.

Reviews of 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 surveillance outcomes

The ACCC has recently collated the results of its surveillance program for the 2008–09 financial year. The standards surveyed included baby walkers, bunk beds, candles with lead wicks (ban), children's dart gun sets (ban), cosmetics, disposable cigarette lighters, elastic luggage straps, flotation aids and aquatic toys, household cots, lead in children's toys (ban), pedal bicycles (children's), portable vehicle ramps, prams and strollers, toys for children under three (infants toys), trolley jacks and vehicle support stands.

The surveillance program has checked over 440 stores nationally, inspected nearly 2000 products, tested 54 products, had at least 17 non-compliant products withdrawn from sale and identified approximately 221 breaches of mandatory safety standards.

Enforcement outcomes resulting from these breaches ranged from administrative action (in the form of withdrawal from sale and relabelling or rectification of minor faults) to implementation of consumer recalls, court enforceable undertakings and legal proceedings.

Product safety enforcement and compliance outcomes

The following matters highlight the range of product safety enforcement and compliance outcomes obtained by the ACCC during the June 2009 quarter:

- The ACCC has accepted court enforceable undertakings from various companies that supplied elastic luggage straps that did not have mandatory warning labels permanently attached as required by the mandatory standard. The companies implemented voluntary trade or consumer recalls of the products. Warning notices were published in major daily newspapers or were displayed in-store.
- Australian cosmetics manufacturer, Natural Products of Australia Pty Ltd, published corrective notices in national newspapers and magazines following ACCC action about incorrect labelling on the company's hair and skin care products. Court enforceable undertakings were provided by the company in which it agreed to relabel its products, provide full refunds to affected customers and implement a trade practices compliance program.
- A Darwin tobacconist provided court enforceable undertakings to the ACCC following action to stop him covering mandatory health warnings, images and Quitline information on cigarette packets with stickers promoting his own services.
- The ACCC has accepted court enforceable undertakings from a bunk bed supplier, Mr Sanjay Goel, trading as Pacific ImpExp Services, after two bunk bed models he supplied through eBay did not comply with the mandatory safety standard. A national voluntary recall of the bunk beds was conducted.

Consumer awareness activities

Easter do-it-yourself media campaign

A do-it-yourself safety reminder was issued by the ACCC before Easter, providing media outlets with information to warn consumers about avoiding accidents or injuries on DIY jobs 'around the home'. Consumers were reminded of safety standards applying to the supply of elastic luggage straps, vehicle jacks, trolley jacks portable ramps and stands, and the voluntary Australian Standard for ladders.

National approach to dodgy cots

The ACCC issued a media release calling for reports on unsafe wooden cots after IGC Doral Australia Pty Ltd agreed to voluntarily recall Kensington cots that had faulty drop sides.

The ACCC is leading a campaign with fair trading agencies in South Australia, Western Australia and Queensland to encourage consumers and suppliers to help identify cots with loose filler bars. Several models of timber cots are currently being tested to ascertain whether the existing performance requirements in the mandatory standard are sufficient.

Launch of redeveloped recalls website

The redeveloped Product Recalls Australia website was launched by the Minister for Competition Policy and Consumer Affairs on 8 May 2009. For the first time, the website has a facility for suppliers and other regulators to submit product recall notifications using a standardised and secure online s. 65R notification form.

Other improvements to the website include:

- recalls are organised by topic to make it easier for consumers to find what they are particularly interested in
- an enhanced search capability
- a facility for subscribing to email alerts and RSS feeds on new recalls
- an expanded list of frequently asked questions
- a 'Hot topic' feature, for providing information on topical issues
- recalls—last 30 days has been maintained
- recalls can be listed by year and within selected categories
- an updated guide on the how to conduct an effective product recall.

The Product Recalls Australia website remains the same—www.recalls.gov.au; alternatively, it may be accessed through the ACCC website, www.accc.gov.au, by following the relevant links.

3. Mergers

The ACCC's outputs of ensuring compliance with competition laws, fostering competitive market structures and informed behaviour are supported through its assessment of mergers, acquisitions and asset sales under s. 50 of the *Trade Practices Act 1974*.

Merger reviews

The ACCC conducted 79 reviews (including confidential and public merger reviews) between 1 April and 30 June 2009; of these, 65 merger proposals were not opposed. The ACCC expressed concern following one confidential review proposal. Section 87B undertakings were accepted for one merger proposal, and three variations to existing undertakings were accepted during the quarter. No decisions were made in nine reviews either because the proposal was withdrawn or a view could not be formed on a confidential basis.

Table 1 Merger review outcomes

	Confidential	Public	Total
Total reviews undertaken 1 April to 30 June 2009	45	34	79
This total can be broken down into the following categories:			
Not opposed	37	28	65
Finished—no decision (including withdrawn) ¹	7	2	9
Opposed outright	0	0	0
Confidential review—ACCC concerns expressed	1	0	1
Resolved through undertakings ²		1	1
Variation to undertaking accepted	0	3	3

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 June 2009 quarter. This does not include the nine matters where no decisions were made or the three variations to existing undertakings.

Nine reviews of completed mergers were conducted during the quarter. 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.

Table 2 Time taken assessing mergers

Time taken to undertake merger reviews (cumulative)	Number of reviews	Percentage of mergers %
Two weeks or less	44	67
Four weeks or less	58	88
Six weeks or less	61	92
Eight weeks or less	62	93
More than eight weeks	5	7

Statements of issues

Three statements of issues were released during the June quarter:

- Vodafone Group plc and Hutchison 3G Australia Pty Limited—proposed merger of Australian mobile operations—1 April 2009
- Pact Group Pty Ltd—proposed acquisition of Viscount Plastics Pty Ltd—15 April 2009
- Rheem Australia Pty Ltd—proposed acquisition of Aqua-Max Pty Ltd—23 April 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 one public competition assessment during this quarter:

- Vodafone Group plc and Hutchison 3G Australia Pty Limited—proposed merger of Australian mobile operations—24 June 2009

Section 87B undertakings

One s. 87B undertaking was accepted in the June quarter:

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

Three variations to existing undertakings were accepted in the June quarter:

- Kirin Holdings (Australia) Pty Ltd—acquisition of Australian Co-operative Foods Limited (Dairy Farmers)—first variation, 20 May 2009
- Healthscope Limited, Ironbridge Capital, Archer Capital—variation to withdraw existing undertaking, 20 May 2009
- Kirin Holdings (Australia) Pty Ltd—acquisition of Australian Co-operative Foods Limited (Dairy Farmers)—second variation, 24 June 2009

Major matters

Major matters decided during the June 2009 quarter included:

- Baiada Poultry's proposed acquisition of Bartter Enterprises
- Vodafone Group plc and Hutchison 3G Australia Pty Limited—proposed merger of Australian mobile operations
- A Gange Proprietary Limited—proposed acquisition of West Suburban Taxis Pty Ltd
- Rheem Australia Pty Ltd—proposed acquisition of Aqua-Max Pty Ltd

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 30 June 2009 the ACCC decided not to oppose the proposed acquisition after accepting court enforceable undertakings.

Summary | Baiada Poultry proposed to acquire Bartter Enterprises. On 11 February 2009 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—were supplying the vast majority of processed chicken to large volume buyers and were each other's closest competitors.

Fast-food ('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 faced high barriers to expansion and were 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 an undertaking under s. 87B of the Trade Practices Act to address the ACCC's competition concerns about the impact that the proposed acquisition may have on the market for the wholesale supply of processed chicken meat.

Baiada's undertaking requires it, upon acquiring Bartter, to 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. The undertaking commits Baiada to divest certain assets as a condition of the proposed acquisition proceeding.

La Ionica was operating a chicken processing facility in Thomastown, Victoria that used a unique chemical-free processing method. La Ionica was a major supplier of whole dressed birds to customers, predominately located in Victoria.

The ACCC accepted Baiada's undertaking on 30 June 2009.

The undertaking aimed to maintain competition through the creation or strengthening of an additional viable, stand-alone, independent and long-term competitor for the wholesale supply of processed chicken meat products to customers with requirements for large volume purchases across multiple states of Australia, particularly quick service restaurants.

Rheem Australia Pty Ltd—proposed acquisition of Aqua-Max Pty Ltd

Result | on 23 June 2009 the ACCC decided not to oppose the proposed acquisition

Summary | Rheem Australia Pty Ltd proposed to acquire the water heater business of Aqua-Max Pty Ltd from Sietel Ltd, subject to ACCC clearance.

On 23 February 2009 the ACCC commenced its informal review of the proposed acquisition. Rheem and Aqua-Max are both manufacturers and suppliers of electric storage water heaters, gas storage water heaters (for five-star rated products only) and some solar water heaters.

Over the course of market inquiries, a number of concerns were expressed by market participants. On 22 April 2009 the ACCC released a statement of issues about the proposed acquisition, identifying a 'red light' issue about the electric storage water heater segment of the national market for the supply of water heaters.

After a comprehensive review, including an examination of internal strategy documents from Rheem and Aqua-Max, the ACCC concluded that the proposed acquisition was not likely to substantially lessen competition in the national market for the manufacture and supply of water heaters.

In reaching its conclusion, the ACCC considered existing and proposed regulatory changes likely to affect competition in the water heater industry, particularly in the electric storage water heaters segment of the market. The ACCC also considered federal, state and territory government subsidies (e.g. renewable energy certificates and rebates) to eligible consumers for the replacement of less energy-efficient water heaters with more energy-efficient water heaters.

The ACCC's inquiries revealed that Aqua-Max had been a vigorous and effective competitor in the electric storage water heaters and gas storage water heaters segments of the market. In the electric storage water heaters segment, Aqua-Max tended to be the price leader. In the gas storage water heaters, Aqua-Max was regarded as a key innovator. However, in the other segments—instantaneous gas water heaters, solar water heaters and heat pumps—Aqua-Max had no or a minimal presence. The ACCC therefore recognised the different role that Aqua-Max played in driving competition across the various water heater segments.

However, the ACCC considered that the overall competitive importance of Aqua-Max in the water heater market was likely to diminish over time without the acquisition. The ACCC notes that proposed regulatory developments mean it is likely that a large number of electric storage water heaters and gas storage water heaters will be phased out in the next two to three years, to be replaced with instantaneous gas water heaters (where possible) or solar water heaters. Government subsidies have also played a role in driving customer take-up of more energy-efficient water heaters, such as solar powered water heaters. Given this, the ACCC considers that a number of existing competitors supplying solar powered water heaters (e.g. Rinnai, Bosch and Chromagen) will expand to meet the increased demand.

Based on available evidence and other information provided by the merger parties (including consideration of confidential and strategic internal documents), the ACCC concluded that the proposed acquisition would not be likely to result in a substantial lessening of competition.

A public competition assessment outlining the ACCC's analysis of the proposed acquisition will be issued in due course

Vodafone Group plc and Hutchison 3G Australia Pty Ltd—proposed merger of Australian mobile operations

Result | On 29 May 2009 the ACCC decided not to oppose the proposed acquisition.

Summary | Vodafone Group plc and Hutchison 3G Australia Pty Ltd) proposed to merge their Australian mobile operations.

The ACCC undertook an extensive investigation that included scrutiny of a substantial number of internal company documents from the merger parties and their competitors.

The ACCC considered the changing nature of the mobile telecommunications industry and the increasing need for mobile network operators to have sufficient scale to be able to continue to make significant investments in their network capabilities.

In reaching its decision the ACCC considered evidence showing that without the merger, the parties would be unlikely to sustain the investment in their mobile networks necessary to provide competitive high-speed data services, such as mobile broadband.

The ACCC concluded that ongoing investments would be needed to meet the increased customer demand for bandwidth-hungry data services, including mobile broadband. In this respect, the ACCC considered that mobile voice and data services would continue to converge in the future.

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. The ACCC considered evidence suggesting that without this merger, the individual 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.

The pricing commitment issued on 25 May 2009 by the merger parties did not have any bearing on the ACCC's decision. The ACCC generally regards behavioural measures like this as unattractive merger remedies and is unlikely to consider them acceptable to assuage competition concerns.

On 24 June 2009 the ACCC issued a public competition assessment outlining the ACCC's analysis of the proposed acquisition.

A Gange Proprietary Limited—proposed acquisition of West Suburban Taxis Pty Ltd

Result | On 13 May 2009 the ACCC decided to oppose the proposed acquisition.

Summary | Gange proposed to acquire West Suburban Taxis. The proposed transaction aimed to combine two network services providers operating in the Melbourne metropolitan taxi zone—Silver Top Taxis and West Suburban Taxis.

The ACCC considered the proposed acquisition in the context of markets for:

- the supply of pre-booked taxi services to the general public in the metropolitan Melbourne taxi zone
- the supply of taxi depot services to taxi operators in the metropolitan Melbourne taxi zone.

On the supply of taxi services to the general public, the ACCC noted that, given that the fares paid by the general public were regulated, the nature of competitive tension

between depots in attracting jobs primarily related to the quality of taxi services provided.

The ACCC found that many dimensions of service quality on which taxis competed were more within the control of the taxi driver or operator than the depot. On the dimensions of service provision on which depots do compete, the ACCC noted that Black Cabs and Silver Top regarded each other as their closest competitors. The ACCC also noted that West Suburban's geographic coverage was largely complementary to that of Silver Top.

On the supply of taxi depot services to taxi operators in the metropolitan Melbourne taxi zone, the ACCC's market inquiries suggested that there was limited competition for drivers and operators between Silver Top and West Suburban.

Accordingly, the ACCC formed the view that the proposed acquisition was unlikely to substantially lessen competition in the relevant markets.

4. Adjudication

Authorisations

During the June 2009 quarter, the ACCC received 18 new authorisation applications, covering 11 projects.

The total number of authorisation applications being considered by the ACCC on 30 June 2009, was 29 covering 14 projects.

Matters finalised

Real Estate Institute of Western Australia (Inc)—A91026

Summary | On 31 October 2008 the Real Estate Institute of Western Australia applied for minor variation to authorisation A91026 relating to amendments to REIWA's articles of association, members' code of practice and the REIWA auction code of conduct.

The ACCC issued a determination granting the minor variation sought by REIWA on 1 April 2009.

Tasmanian Farmers and Graziers Association—A90914

Summary | On 24 February 2009 the Tasmanian Farmers and Graziers Association applied for minor variation to authorisation 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 final determination granting the minor variation was issued by the Commission on 15 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 NSW and ACT and the Victorian Newsagents Association to collectively negotiate on behalf of their members with newspaper and magazine publishers and distributors. The QNF also sought authorisation on behalf of newsagents or groups of newsagents who are not members of the associations but ask to join in any collective bargaining.

A final determination granting conditional authorisation for five years was issued by the Commission on 22 April 2009.

Powercor Australia Limited—A91114–A91116

Summary | On 15 December 2008 a group of Victorian electricity distribution network owners and operators applied for authorisation of an arrangement 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.

A final determination granting authorisation was issued by the Commission on 23 April 2009.

Port Waratah Coal Services Limited and others—A9111001510150—A91112

Summary | On 19 November 2008 the Port Waratah Coal Services Limited (PWCS) and the Newcastle Coal Infrastructure Group applied for authorisation for arrangements concerning the Hunter Valley coal chain. Authorisation was sought for the period from 1 January 2009 to 30 June 2009.

The ACCC granted conditional interim authorisation to the arrangements on 17 December 2008.

A final determination granting authorisation until 30 June 2009 was issued by the Commission on 13 May 2009.

Mortgage and Finance Association of Australia—A91118

Summary | On 21 January 2009 the Mortgage and Finance Association of Australia applied for reauthorisation of its disciplinary rules that are part of the regime governing the conduct of MFAA members.

A final determination granting conditional authorisation for five years was issued by the Commission on 27 May 2009.

Lottery Agents Association of Victoria Inc.—A91126

Summary | On 16 March 2009 the Lottery Agents Association of Victoria (LAAV) 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.

LAAV proposes that the negotiations will include such matters as commissions paid to retailers, retailer application fees, service charges, delivery charges and point of sale equipment hire costs.

A final determination granting authorisation for five years was issued by the Commission on 3 June 2009.

Information Technology Contract and Recruitment Association—A91063

Summary | On 29 January 2009 the Information Technology Contract and Recruitment Association (ITCRA) applied for minor variation to authorisation A91063 to alter its code of conduct provisions relating to contractor transitioning.

On 3 June 2009 the Commission advised ITCRA that the variations sought were not minor and denied ITCRA's application.

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

Summary | On 2 February 2009 Cashcard Australia and the Bank of China (Australia) (the applicants) applied for authorisation to enter into an unincorporated joint venture to establish, market and promote a sub-network of ATMs 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 to apply to future parties to the proposed arrangements.

A final determination granting authorisation for five years was issued by the Commission on 4 June 2009.

Australasian College of Cosmetic Surgery—A91106

Summary | On 6 November 2008 the Australasian College of Cosmetic Surgery (ACCS) applied for authorisation for its code of practice and parts of its bylaws. The code of practice 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. On 15 March 2009 the ACCS revised its application.

A final determination granting conditional authorisation for three years was issued by the Commission on 18 June 2009.

TAB Agents Association of New South Wales—A91125

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

The collective negotiations will cover the terms and conditions of the provision of services by members to Tabcorp, including the appointment, extension or renewal of a contract or arrangement for the provision of those services, and to participate, through the association, in the process of resolving disputes between more than one agent and Tabcorp or any successor entity that holds the licence to conduct off-course totalisator.

The ACCC issued a draft determination in this matter on 24 April 2009. Interim authorisation was granted at this time.

A final determination granting authorisation for five years was issued by the Commission on 26 June 2009.

Draft determinations issued (not otherwise appearing above)

Australian Newsagents Federation Ltd—A91134

Summary | On 17 April 2009 the Australian Newsagents Federation applied for authorisation to collectively bargain with newspaper publishers and magazine publishers and distributors on behalf of ANF members.

On 15 May 2009 the ACCC issued a draft determination proposing to grant authorisation in respect of the proposed arrangements for five years. On 15 May the ACCC also granted the interim authorisation until a final determination on the matter comes into effect. A pre-decision conference was held on 16 June 2009.

Softwood Tasmania Joint Venture—A91120–A91122

Summary | On 17 February 2009 Softwood Tasmania Joint Venture participants applied for authorisation of their joint venture operating agreement, management agreement and sales agency agreement. The agreements involve 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.

A draft determination proposing to grant authorisation for 10 years was issued by the Commission on 11 June 2009.

TOTE Tasmania Pty Ltd and other—A91123 and A91124

Summary | On 27 February 2009 TOTE Tasmania, ACTTAB and Racing and Wagering Western Australia (the applicants) applied for authorisation for:

- An agreement entered into between the applicants on 16 February 2009 relating to the formation of a joint venture for 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.

Interim authorisation was granted to the arrangements on 29 April 2009.

A draft determination proposing to grant authorisation for five years was issued by the Commission on 24 June 2009.

Applications lodged (not otherwise appearing above)

Australian Brick and Blocklaying Training Foundation Ltd—A91133

Summary | On 15 April 2009 the Australian Brick and Blocklaying Training Foundation (ABBTF) applied for reauthorisation on behalf of itself, Think Brick Australia and the Concrete Masonry Association of Australia and its members to apply a levy of \$2 per 1000 clay bricks sold and 10 cents per square metre on concrete and masonry walling products sold in Victoria, New South Wales, Queensland, Western Australia, South Australia, Tasmania and the Australian Capital Territory.

On 13 May 2009 the ACCC granted interim authorisation to the arrangements.

Woodside Energy Ltd and Benaris International Pty Ltd—A91135

Summary | On 21 April 2009 Woodside Energy Ltd and Benaris International Pty Ltd applied for authorisation for three years to jointly market and sell their shares of the liquefied petroleum gas produced by the Otway gas project to a common customer or common customers. The Otway gas project is an unincorporated joint venture operated by Woodside that extracts LPG from offshore fields south of Port Campbell, Victoria.

Interim authorisation was granted to the arrangements on 6 May 2009. A draft determination proposing to grant authorisation for three years was issued by the ACCC on 1 July 2009.

Retail Energy Market Company Limited—A91136—A91138

Summary | On 1 May 2009 the Retail Energy Market Company Ltd (REMCo) applied for a renewal of the existing authorisation of chapters 5 (allocation, reconciliation and swing) and 6 (disputes) of the Retail Market Rules and the associated ancillary deeds commencing 31 May 2009. The RMR are the rules under which the gas retail market systems operate in South Australia and Western Australia.

On 27 May 2009 the ACCC granted interim authorisation to the arrangements.

Chevron Australia Pty Ltd and others—A91139 and A91140

Summary | On 20 May 2009 Chevron and the other participants in the Gorgon gas project, together with potential future equity partners, applied for authorisation to engage in the following conduct:

- jointly discuss and negotiate common terms and conditions, including price, under which natural gas produced for sale to customers in Western Australia (domgas) will be offered for sale by the applicants
- enter into and give effect to contracts, arrangements or understanding between the applicants containing common terms and conditions, including price and price arbitrations/determinations, upon which domgas will be offered for sale and sold by the applicants
- for any gas sales agreements entered into during the period of any interim and final authorisation for the supply of domgas continue to give effect jointly to the provisions of such agreements over their term.

Future equity partners will be limited to customers that purchase LNG from the applicants, up to a total of 10 per cent equity interest held by all LNG customers in the Gorgon gas project.

The ACCC granted conditional interim authorisation to the Applicants on 24 June 2009.

The ACCC is considering submissions from interested parties. It is anticipated that a draft determination will be issued in the September quarter.

Australian Amalgamated Terminals Pty Limited—A91141 and A91142

Summary | On 10 June 2009 Australian Amalgamated Terminals Pty Limited lodged an application seeking authorisation to give effect to the agreements and related arrangements that establish AAT, including the shareholders' agreement and the AAT constitution.

AAT is a joint venture established in 2002 that operates automotive and general cargo terminals at various ports around Australia.

The ACCC has sought submissions from interested parties. It is anticipated that a draft determination will be issued in the September quarter.

Southern Sydney Regional Organisation of Councils—A91143

Summary | On 18 June 2009 the Southern Sydney Regional Organisation of Councils (SSROC) lodged an application seeking authorisation, on behalf of a group of member councils, for those councils to jointly tender and contract for contractors to provide waste transfer, processing/recovery and disposal services to their respective local government areas.

The application is made on behalf of Ashfield, Botany Bay, Burwood, Canada Bay, City of Sydney, Leichardt, Marrickville, Randwick, Waverley and Woollahra councils.

The ACCC has sought submissions from interested parties. It is anticipated that a draft determination will be issued by in the September quarter.

University of Melbourne and others—A91144 and A91145

Summary | On 19 June 2009 the University of Melbourne and others lodged applications seeking authorisation on behalf of the 11 members of the Graduate Australian Medical Schools Admissions Test Consortium (GAMSAT) and any other

university or entity that becomes a signatory to or is otherwise bound by the consortium agreement after the date of authorisation.

GAMSAT is seeking authorisation for its preference policy and one interview policy.

The ACCC has sought submissions from interested parties. It is anticipated that a draft determination will be issued in the September quarter.

Transport Workers Union of Australia (South Australian and Northern Territory branches)—A91146

Summary | On 25 June 2009 the South Australian and Northern Territory branches of the Transport Workers Union of Australia lodged an application seeking authorisation to bargain on behalf of union-member and non-member milk vendors (independent owner-drivers contracted to milk processors to deliver milk) in South Australia with milk processor National Foods Milk Limited and the future owner of the Dairy Farmers business that National Foods is selling (Parmalat has agreed to buy the business).

The ACCC has sought submissions from interested parties. It is anticipated that a draft determination will be issued early in the September quarter.

Port Waratah Coal Services Limited and others—A91147–A91149

Summary | On 29 June 2009 Port Waratah Coal Services, Newcastle Coal Infrastructure Group and Newcastle Port Corporation lodged applications seeking authorisation of certain aspects of the long-term solution to the capacity constraints at the Port of Newcastle (referred to as 'capacity framework arrangements'). The applicants also request urgent interim authorisation of the proposed capacity framework arrangements.

The ACCC has sought submissions from interested parties and the matter is under consideration.

Medicines Australia Limited—A91150

Summary | On 30 June 2009 Medicines Australia lodged an application seeking authorisation of its amended code of conduct (the 16th edition). Medicines Australia was granted conditional authorisation in 2007 by the Australian Competition Tribunal for the 15th edition of its code of conduct.

The ACCC has sought submissions from interested parties and the matter is under consideration.

Tabcorp Manager Pty Ltd—A91127–A91132

Summary | On 30 March 2009 Tabcorp Manager Pty Ltd lodged applications seeking authorisation to give effect to 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 in respect of all provisions of the ACTTAB and RWWA 2009 agreements.

The ACTTAB and RWWA 2009 agreements govern ACTTAB's and RWWA's participation in the SuperTAB Pool operated by Tabcorp.

Interim authorisation was granted to the arrangements on 29 April 2009.

Exclusive dealing notifications

During the June quarter 2009 the ACCC received 93 new notifications involving 69 new exclusive dealing matters. Notifications of interest considered during the quarter include:

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

Greater Southern Area Health Service and others propose to require private inpatients in New South Wales public hospitals obtaining pathology services, unless it is not in the best interests of the patient, to obtain those services from pathology practitioners appointed by public health organisations, which are area health services and statutory health corporations that run public hospitals in New South Wales.

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.

Submissions have been sought from interested parties and the matter is under consideration.

AMS Mortgage Services Pty Limited—N93791

AMS Mortgage Services Pty Limited proposed to waive the deferred administration fee on existing 'Wizard'-branded home loans on condition that the borrower has refinanced, or agreed to refinance, with AHL Investments Pty Ltd. Therefore AMS proposes, at its discretion, to enforce its contractual right to levy the DAF in circumstances where the borrower has not refinanced, or has not agreed to refinance, with AHL.

Submissions were sought from interested parties before the ACCC issued a public decision document on 1 May 2009 allowing the notification to stand.

Gladstone Ports Corporation Limited—N93770

Gladstone Ports Corporation Limited (GPC) proposed to require that all vessels requiring towage services in the Port of Gladstone use the services of the holder of a tug licence. The notification is lodged in respect of conduct to occur between 1 January 2011 and 31 December 2018 (five-year licence with possible option to extend for three years).

Submissions were sought from interested parties before the ACCC issued a public decision document on 1 May 2009 allowing the notification to stand.

Collective bargaining notifications

The ACCC received one notification of collective bargaining during the June quarter, while one notification received in the March quarter was allowed to stand.

Summaries of these notifications are provided below.

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 22 April 2009.

Australian Newsagents Federation Limited—CB00072

Summary | On 6 May 2009 the Australian Newsagents Federation lodged a collective bargaining notification on behalf of its Western Australian members, the members of the Western Australian Distribution Association and certain independent newsagents. The notification relates to a proposal by the newsagents to collectively negotiate the terms and conditions of their contracts with West Australian Newspapers.

The ACCC sought submissions from interested parties before allowing the notification to stand on 27 May 2009.

5. Regulatory affairs

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

Communications

In the June 2009 quarter, the ACCC:

- provided a submission to the Australian Government's *National Broadband Network: Regulatory Reform for 21st Century Broadband* discussion paper
- rejected Telstra's undertaking that proposed a \$30 monthly charge for an unconnected local loop service (ULLS) in metropolitan areas
- finalised access arrangements for digital radio multiplexer services
- continued the declaration of the mobile terminating access service (MTAS) for a further five years
- proposed a five-year extension for other key telecommunications declarations
- commenced arbitration of four new access disputes
- issued two new interim determinations in arbitration of access disputes
- extended operation of 11 interim determination issued in arbitration of access disputes for further 12 months
- published four telecommunications related reports
- delivered three communications related speeches.

In the quarter, the Australian Competition Tribunal finalised its review of an earlier ACCC decision concerning Telstra's supply of regulated services to Optus in areas passed by its hybrid fibre coaxial (HFC) cable network. The tribunal reached the same decision as the ACCC—that Telstra should not be exempted from supplying regulated services to Optus in those areas.

Declarations

Part XIC of the Trade Practices Act enables the ACCC to declare telecommunications services. Once declared, the access provider is obliged to supply the services to an access seeker upon request.

MTAS declaration review | On 1 June 2009 the ACCC released the final report on its public inquiry into the declaration of MTAS, deciding to extend the existing MTAS declaration for five years to 30 June 2014. The ACCC has formed the view that mobile call termination remains an essential service and that extending the MTAS declaration for five years is in the long-term interest of end users.

Key telecommunications declarations review | On 4 June 2009 the ACCC issued its draft decision to extend the declarations that enable Telstra's competitors to provide fixed voice and broadband services over Telstra's copper network for a further five years. The six fixed-line services considered are the ULLS, line sharing service (LSS), local carriage service (LCS), wholesale line rental (WLR), public switched telephone network (PSTN) originating access (OA) and terminating access (TA). Submissions responding to the draft decision were due by 25 June 2009.

Telstra exemption applications

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

WLR/LCS limited merits review and judicial review | On 22 August 2008 the ACCC granted Telstra exemptions from the standard access obligations (SAOs) in respect of 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 and 10–12 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 Full Federal Court heard the review on 24–25 February 2009. On 11 March 2009 the Full Federal Court 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 30–31 March 2009.

On 27 May 2009 the tribunal advised the parties that it would make exemption orders subject to conditions and limitations relating to Telstra's supply of the WLR and LCS. The tribunal's reasons for making the orders and the draft orders were not publicly released at that time.

On 8 July 2009 a redacted version of the tribunal's reasons was publicly released. At this time, the tribunal is still consulting with parties on the terms of the conditions and limitations attached to the orders and, as such, the orders have not yet been finalised or publicly released.

PSTN OA limited merits review | On 29 October 2008 the ACCC granted 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 matter was heard on 20–22 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 in respect to 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 3–5 March 2009. On 22 May 2008 the tribunal rejected Telstra's exemption application to restrict regulated access for Optus in areas where Optus has its HFC cable network. This affirms the November 2008 decision by the ACCC.

Access terms and conditions—undertakings and disputes

Access arrangements for digital radio | On 23 April 2009 the ACCC finalised the access undertakings that set out the terms and conditions to apply to digital radio

broadcasters and digital radio multiplex transmission service providers. The decision concludes 18 months of extensive consultation by the ACCC with industry and other interested stakeholders. Digital radio services were to commence in Adelaide, Brisbane, Melbourne, Perth and Sydney by no later than 1 July 2009.

Telstra's ULLS undertaking | On 28 April 2009 the ACCC issued a final decision to reject Telstra's undertaking that proposed a \$30 monthly charge for the ULLS in metropolitan areas. The charge 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 Telstra's undertaking, including Telstra's own cost model, the ACCC was 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. It may also discourage investment in telecommunications infrastructure. In rejecting the undertaking, the ACCC also notes that Telstra's proposed monthly charge was significantly above estimates derived from benchmarking against comparative countries.

Access disputes

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

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

In the June quarter 2009, four new access disputes were notified to the ACCC: two in relation to the ULLS, one relating to MTAS and one relating to facilities access under the *Telecommunications Act 1997*. These new access disputes are between:

- NEC Australia and Telstra Corporation Ltd
- Network Technology (Aust) Pty Ltd and Telstra Corporation Ltd
- Vodafone Network Pty Ltd and Telstra Corporation Ltd
- Pipe Networks Pty Ltd and Telstra Corporation Ltd.

With these new notifications, the ACCC continues to arbitrate 34 access disputes. In addition, 17 arbitral determinations are under judicial review.

Interim and final determinations

During June 2009 quarter the ACCC issued two interim determinations, both for Telstra's provision of ULLS. The ACCC also extended the operation of 11 interim determinations—made for disputes over access to the ULLS—for a further 12 months. The ACCC did not make any final determinations in the June 2009 quarter.

Published determinations

In the June 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 June 2009 quarter and the active disputes as at 30 June 2009.

Table 3 Summary of determinations and currently active disputes

	Total
Active disputes (at 30 June 2009)	34
Decisions subject to Federal Court review	17
New arbitrations commenced (June 2009 quarter)	4
Interim determinations issued (June 2009 quarter)	2
Final determinations issued (June 2009 quarter)	0
Published determinations (June 2009 quarter)	0

Other developments

Proceedings against Telstra for alleged breach of standard access obligations

On 19 March 2009 the ACCC instituted proceedings in the Federal Court against Telstra Corporation Ltd for alleged contraventions of the Trade Practice Act and the Telecommunications Act 1 relating to its access obligations. 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 making representations to access seekers individually and on lists of 'capped' exchanges published on the Telstra Wholesale website that there was no capacity on the MDF at the seven exchanges.

A directions hearing is scheduled in the Federal Court in Melbourne on 24 July 2009.

Reports

In the June 2009 quarter, the ACCC produced four communication related reports.

Submission to the Australian Government's National Broadband Network: Regulatory Reforms for 21st Century Broadband discussion paper | On 7 April 2009 the Australian Government released its *National Broadband Network: Regulatory Reform for 21st Century Broadband* discussion paper calling for submissions on reforms to the existing telecommunications regulatory framework. On 3 June 2009 the ACCC provided a submission on this discussion paper that canvassed the ways in which the existing regulatory framework could be made to work more effectively in order to generate better outcomes for endusers.

ACCC annual report on competition and pricing for 2007–08 (Divisions 11 and 12 reports) | On 15 June 2009 the ACCC's reports for 2007–08 were tabled in parliament. The reports concluded that while consumers have been rewarded with greater competition and investment in telecommunications, the current structure of the industry is likely to limit future pay-offs.

Service prices declined universally in 2007–08 representing 5.5 per cent decline in fixed-line services and 6.2 per cent decline in internet services. The reports also noted that there was ongoing investment in the industry, including:

- increased take-up of regulated unbundled services, enabling companies to invest, innovate and compete more strongly for broadband customers
- enhancements to the coverage and data capacity of 3G networks
- increases in the peak network speeds of Telstra and Optus' cable networks.

In addition, the reports noted that the industry continues to have an extremely high level of disputes and litigation. At the same time, the level of consumer complaints has reached new heights.

Imputation and non-price terms and conditions reports for December quarter 2008 and March quarter 2009 | These quarterly reports are the twenty-second and twenty-third such reports issued by the ACCC under the enhanced accounting separation regime for Telstra. The reports are intended to provide greater transparency of Telstra's operations to ensure that it does not unfairly discriminate between access seekers using its network and its own retail operations.

Current cost accounting report for July–December 2008 | The ACCC has released a series of current cost accounting reports under the enhanced accounting separation regime. This report provides financial statements for Telstra's core services—ULLS, PSTN originating and terminating access services and LCS—which have been prepared on the accounting basis of historical cost and current cost.

Australian Energy Regulator

Electricity matters

Aurora Energy's cost allocation method

Electricity distribution businesses are required to ensure their business costs are appropriately allocated between their regulated and unregulated services.

The procedures they must follow when preparing accounting statements for regulated parts of their businesses are outlined in their cost allocation methodologies. They also include the preparation of forecast operating and capital expenditure in accordance with the National Electricity Rules (NER).

On 19 June 2009 the AER approved the Tasmanian distribution business, Aurora Energy's proposed cost allocation methodology, having determined that it was consistent with the AER's cost allocation guidelines and the requirements of the NER. Electricity distributors are required to submit cost allocation methodologies for approval.

The AER sought expert advice from accounting consultant McGrathNicol Corporate Advisory to assist in the assessment of Aurora Energy's proposed methodology.

Final decision—exclusions from Victorian service incentive scheme for supply reliability

On 5 June 2009 the AER published its final decision on applications by Victorian electricity distributors, requesting specific exclusions from the Victorian service incentive scheme for supply reliability. The exclusions related to supply interruptions following from transmission network incidents in November–December 2008.

The AER took over the economic regulation of Victorian electricity distribution services from the Essential Services Commission on 1 January 2009. The AER decided that the four supply interruption events met the exemption criterion of the supply reliability financial incentive scheme, under the Essential Services Commission's *Electricity distribution price review 2006–10*. The scheme consists of guaranteed service level payments to customers for low reliability and a service term (s-factor) in the price control formula.

Final decision—VENCorp's proposed wholesale gas budget and market fees for 2009–10

VENCorp is the Victorian gas market operator and is funded through market participant fees. On 5 June 2009 the AER approved VENCORP's proposed wholesale gas budget and market fees for 2009/19.

VENCorp applied for the following adjustments to its market service fees for 2009–10:

- an increase in the commodity tariff-D and commodity tariff-V rates of 13 per cent
- an increase in the system security tariff of 252 per cent
- a decrease in the distribution meter data management tariff of 1 per cent
- no change to the transmission meter data management tariff or the registration tariff.

Final decision—framework and approach process for Victorian electricity distribution businesses

On 29 May 2009, the AER published the framework and approach paper for its 2011–15 electricity distribution determination for CitiPower, Powercor, Jemena, SP AusNet and United Energy.

The framework and approach paper states the form of control that will apply to distribution services provided by these DNSPs in the forthcoming regulatory control period, and sets out the likely approach to the classification of services and application of a service target performance incentive scheme, efficiency benefits sharing scheme and demand management incentive scheme.

Final decision—2009–10 pricing proposals of ACT and NSW distribution businesses

On 28 May 2009 the AER determined that pricing proposals from ActewAGL, Country Energy, EnergyAustralia and Integral Energy complied with legal and regulatory requirements and that all forecasts associated with each proposal were reasonable. These approved prices will apply from 1 July 2009 to 30 June 2010.

Each distributor is required to maintain pricing information about approved pricing proposals on their websites.

Final decision—interval meter reassignment requirements

On 26 May 2009 the AER released its final decision on the interval (smart) meter reassignment requirements that will apply to Victorian electricity distributors before they can shift customers to time of use tariffs.

The decision implements the Essential Services Commission's *Electricity distribution price determination 2006–10*, which makes provision for tariff reassignment to occur where a smart meter is installed at a customer's premises.

Smart meters, which are being installed under a Victorian Government requirement between 2009 and 2013, will expose customers to new time of use tariffs, delivering

real time pricing. This will enable customers to better track their energy use and potentially shift some of their consumption to off-peak times and obtain cheaper tariffs in return. The final decision takes into account submissions from stakeholders and distributors, following release of the draft decision in March 2009.

Publication of amended service target performance incentive scheme for electricity distribution network service providers

On 15 May 2009 the AER published the final amended service target performance incentive scheme. This was to make amendments to version 1.0 of the scheme to correct for errors and clarify aspects of its operation.

Final decisions and distribution determination—Country Energy, EnergyAustralia, Integral Energy and ActewAGL

On 30 April 2009 the AER issued its final decisions and distribution determinations for Country Energy, EnergyAustralia, Integral Energy and ActewAGL for the 1 July 2009 to 30 June 2014 regulatory control period. These determinations approved the efficient revenues for these networks including \$14 billion-worth of capital investment over the next five years, representing an increase of around 80 per cent from the current level.

Country Energy, EnergyAustralia and Integral Energy are all electricity distribution businesses in New South Wales. ACTEWAGL is the electricity distribution business in Australian Capital Territory.

Final decisions and transmission determinations—TransGrid and Transend

On 30 April 2009 the AER issued its final decisions and determinations for TransGrid and Transend for the regulatory control period from 1 July 2009 to 30 June 2014. These determinations approved the efficient revenues for these networks taking account of operating expenditures and capital works requirements. The TransGrid determination approved \$2.4 billion (\$2007–08) of capital investment over the next five years, an increase of more than 72 per cent from the current level. The Transend determination approved \$606 million (\$2008–09) of capital investment over the next regulatory period, an increase of 47 per cent above the level of Transend's capital expenditure in the current regulatory control period.

Transgrid is the electricity transmission business in New South Wales. Transend is the electricity transmission business in Tasmania.

Final decision—review of the weighted average cost of capital parameters

On 1 May 2009 the AER released its statement (for electricity transmission) and statement of regulatory intent (for electricity distribution) on the revised weighted average cost of capital (WACC) parameters for these network service providers.

The outcomes of the review apply to all electricity network revenue reset determinations where the regulatory proposal is submitted after 1 May 2009 and before the completion of the next WACC review. The outcomes of the review are locked-in for transmission network service providers; for distribution network service providers, the AER may depart from these parameters in the context of an individual reset determination if there is persuasive evidence to do so at the time.

In its final decision, the AER confirmed its proposed position to adopt a gamma of 0.65 and equity beta of 0.8, compared to the previously adopted values of 0.5 and either 0.9 or 1.0, respectively. The AER also adopted a market risk premium of 6.5 per cent compared to the previously adopted value of 6 per cent. The AER also maintained a credit rating of BBB+ and a risk-free rate and debt premium term of 10 years.

Under the NER, industry-wide reviews are held every five years.

Service standards compliance review for 2008

In April 2009 the AER released the outcome of its service standards compliance review for the 2008 calendar year. The transmission service standards results were reviewed for eight transmission network service providers. The financial incentives to be applied for the 2009–10 financial year were also determined for each business.

Victorian demand management incentive scheme for distribution businesses

On 23 April 2009 the AER published its final demand management incentive scheme to apply to CitiPower, Powercor, Jemena, SP AusNet and United Energy (the Victorian distributors) for the 2011–15 regulatory control period. This follows the release of a proposed scheme on 19 December 2008, for which 10 submissions were received. After considering these submissions, the AER made its final decision on a demand management incentive scheme to apply to the Victorian distributors.

In preparing for the forthcoming Victorian electricity distribution determination for the 2011–15 regulatory control period, the AER is required to set out its likely approach to certain matters, including the application of a demand management incentive scheme in a framework and approach paper.

Gas network regulation matters

Amendments to Envestra's Queensland access arrangement

On 19 June 2009 the AER amended Envestra's Queensland access arrangement under clause 68 of the National Gas Rules. Envestra is the gas distribution business in Queensland.

The amendments made to the access arrangement relate solely to a misdescription in one of Envestra's tariff zones. The AER considered that the 'Dinmore zone' had been misdescribed in the access arrangement because it did not achieve the intended objective of the tariff zone as described by the Queensland Competition Authority (QCA) in its 2006 final decision.

Accordingly, the Dinmore zone has been replaced in the access arrangement by the 'Riverview zone', which reflects the intent of the QCA in approving Envestra's Queensland access arrangement.

Administrative decisions for Jemena Gas Networks (New South Wales)

On 9 June 2009 the AER directed Jemena Gas Networks (New South Wales) Ltd to consolidate its four access arrangements (for the two trunk pipelines, plus the Central West distribution network and the Wollongong–Sydney–Newcastle distribution network) into one access arrangement, subject to certain conditions. This was following a request submitted by Jemena on 16 April 2009.

On 9 June 2009 the AER granted the Jemena's extension request, moving the scheduled date for submission of Jemena's access arrangement revision proposals to be on or before 9.00 am AEST on Wednesday, 26 August 2009.

Annual tariff variation approvals

In May and June 2009 the AER approved the annual tariff variations for 2009–10 for the following transmission and distribution pipelines:

- Central West pipeline (transmission)
- Roma to Brisbane pipeline (transmission)
- Central Ranges Tamworth distribution network (distribution)

- ActewAGL Gas Distribution System in the Australian Capital Territory and greater Queanbeyan
- Wagga Wagga (New South Wales) gas distribution network
- Jemena Gas Networks (New South Wales) (distribution)
- Allgas (Queensland) distribution network
- Dawson Valley pipeline (transmission)
- Envestra Queensland gas distribution system
- Envestra (South Australia) gas distribution network.

The tariff variation approval process is undertaken annually for a full regulation pipeline. Tariffs approved at the beginning of an access arrangement period are adjusted to take account of inflation, volume and unaccounted for gas over the access arrangement period. The methodology for the process is established in the pipeline's approved access arrangement. The 2009–10 variation approval process is being undertaken under the code provisions.

GasNet access arrangement variation proposal

On 15 April 2009 the AER released a draft decision on the access arrangement variation proposal submitted by APA GasNet Australia Pty Ltd (GasNet) on 18 December 2009 for its access arrangement covering the principal transmission system in Victoria.

The variation proposal concerns the application of tariffs to the Western Underground Gas Storage facility and SEA Gas connection points. As set out in the draft decision, the AER proposed not to accept GasNet's proposal.

The AER sought submissions from interested parties to be considered in its final decision. A final decision on the variation proposal was scheduled to be released by the AER in early July 2009. However, on 8 May 2009 APA GasNet Australia Pty Ltd withdrew its access arrangement variation proposal.

Energy markets

Prices above \$5000/MWh

From 1 June to 19 June 2009 inclusive, the spot price in Tasmania exceeded \$5000/MWh on 13 occasions. Preliminary analysis suggests that reductions in the output of Hydro Tasmania's non-scheduled generation (mini-hydro) in conjunction with its bidding strategy for the rest of its portfolio were the significant drivers in the majority of these outcomes.

The AER will soon release reports analysing why the spot price exceeded \$5000/MWh on these occasions.

Revised compliance and enforcement statement of approach

In June 2009 the AER published its revised *Compliance and enforcement—Statement of approach*, explaining the AER's enforcement obligations, its approach to monitoring compliance with the electricity and gas rules and the enforcement options available. The publication was aimed at providing greater transparency about the compliance and enforcement program, with the intention of helping market participants to understand their obligations and encouraging compliance with the rules.

AER reports on AGL rebidding behaviour in South Australia

On 12 May the AER published the results of a comprehensive investigation into the rebidding behaviour of AGL Energy Limited during February 2008.

The investigation focused on AGL's rebidding of its Torrens Island power station located in South Australia, for the trading day of 19 February 2008. On two occasions on 19 February 2008, AGL rebid up to 75 per cent of capacity at TIPS from low prices to high prices immediately before dispatch, causing high spot prices.

Bidding capacity at high prices is not a breach of the NER but generators are required to offer and rebid in good faith.

Rebidding immediately before dispatch can lead to significant inaccuracies in market forecasting information. Accurate forecasts are crucial for fast-start generator and demand-side responses and, ultimately, efficient market outcomes.

The detailed investigation, however, did not produce sufficient evidence to support a breach of the NER. The investigation has now been closed.

Prices above \$5000/MWh

On Tuesday, 31 March the spot price in South Australia reached \$5022/MWh for the 5 00 pm trading interval primarily because of an unplanned outage at Flinders Power's northern power station, the largest generating unit in South Australia. This resulted in the dispatch of high priced generation for four five-minute dispatch intervals. Rebidding did not contribute to the high price.

On 7 May the AER released its \$5000/MWh report examining the event.

Draft rebidding and technical parameters guideline

On 7 April the AER released its draft rebidding and technical parameters guideline. The draft guideline covers several areas associated with the bidding and rebidding of technical parameters and follows the commencement of new provisions of the NER on 31 March 2009.

The new rules restrict the circumstances in which generators can declare themselves 'inflexible'—a special type of bid that means that a generator is not able to vary its output up or down. In addition, the new rules introduce a minimum speed that generators must be able to vary their output up and down.

The draft guideline replaces the existing *Rebidding: Guidelines on the disclosure of information* published by the National Electricity Code Administrator in July 2001 and outlines the detail that must be contained in a rebid reason submitted to NEMMCO.

Water

The ACCC has policy development, monitoring and enforcement responsibilities relating to water markets, water trading and water delivery services in the Murray–Darling Basin under the *Water Act 2007*.

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

Water Market Rules 2009 and Water Charge (Termination Fees) Rules 2009

The Water Market Rules 2009 and the Water Charge (Termination Fees) Rules 2009 were registered by the Minister for Climate Change and Water (the Hon. Penny Wong) on 22 June 2009 and came into effect on 23 June 2009.

To coincide with the commencement of the rules, the ACCC released both general and comprehensive guides to assist irrigators, operators and professional advisors to better understand and comply with both sets of rules.

The two general guides for irrigators provide an introduction for irrigators about the new Water Market Rules and Water Charge (Termination Fees) Rules:

- *Transforming your irrigation right and maintaining water delivery—a guide for irrigators about the Water Market Rules*
- *Permanently selling your water and terminating your delivery right—a guide for irrigators about the water market rules and rules on termination fees*

The more technical guides provide operators and professional advisors with compliance information on the application of the rules:

- *Water Charge (Termination Fees) Rules 2009—Technical guide for irrigation infrastructure operators*
- *Guide to the Water Market Rules 2009 and maintaining water delivery contracts*

These guides are available on the ACCC website.

The ACCC has also recently advertised the registration of the rules and the availability of the guides in rural newspapers throughout the Murray–Darling Basin.

ACCC provided final advice on water infrastructure charge rules to the minister

On 26 June 2009 the ACCC provided its final advice on water infrastructure charge rules to the minister.

Water infrastructure charge rules relate to charges levied by irrigation infrastructure operators and bulk water operators.

The ACCC engaged in extensive stakeholder consultation in formulating this advice. It released a series of consultation documents that included two issues papers, a position paper and draft advice (including draft rules), and conducted a public forum. In total the ACCC received 72 submissions during the consultation process.

Commissioner Willett was interviewed on ABC Southern Queensland radio on Tuesday, 30 June 2009 with the focus on the development of advice to the minister about the water charge (infrastructure) rules.

The ACCC provided final advice on water charge (planning and management information) rules to the minister.

The ACCC provided its final advice to the minister on 10 July 2009 and recommended that the minister make rules requiring publication of details of water planning and management charges. These charges refer to a range of levies and transaction fees imposed by state and territory government departments or agencies to recover the costs of water planning and management activities.

The ACCC also intends to collect data and report annually on water planning and management activities, costs and revenue collected through water planning and management charges.

Next steps

In the next quarter the ACCC will increase its focus on its monitoring and compliance role.

The purpose of ACCC monitoring is to inform the minister and stakeholders more broadly of the degree of compliance with the rules and arrangements for regulated water charges and transformation.

While the Water Charge (Termination Fees) Rules and the Water Market Rules commenced upon registration, both sets of rules provide for transitional periods to allow operators sufficient time to align their internal procedures to facilitate compliance with the rules. For that reason, the Water Charge (Termination Fees) Rules transitional period expires on 31 August 2009 while the Water market Rules transitional period expires on 31 December 2009.

During the transitional periods the ACCC proposes to engage with irrigators to raise awareness of the rules while also engaging with operators to assist them in transitioning their activities to comply with the rules.

In the upcoming quarter the minister will also consider the water charge infrastructure rules and the water (planning and management information) rules. In the meantime, the ACCC will prepare guidelines on both sets of rules.

In the next phase of developing its advice to the Murray–Darling Basin Authority, the ACCC proposes to release a position paper on water trading rules in August 2009 for consultation.

Water publications

For consumers

- *Transforming your irrigation right and maintaining water delivery—a guide for irrigators about the water market rules*
- *Permanently selling your water and terminating your delivery right—a guide for irrigators about the water market rules and rules on termination fees*

For business

- *Water charge (termination fees) rules 2009—Technical guide for irrigation infrastructure operators*
- *A guide to the Water Market Rules 2009 and maintaining water delivery contracts*

Reports

The following reports were provided to the minister during the June 2009 quarter; they are not yet available online.

- Water infrastructure charge rules—Final advice
- Water charge (planning and management information) rules—Final advice

Price monitoring

Milk

Removal of the dairy adjustment levy

The ACCC has completed its investigation into the reduction of milk prices following the removal of the 11 cents per litre dairy adjustment levy on 23 February 2009. The investigation received advice from major supermarket retailers and milk suppliers that the price of milk was reduced by the full amount of the levy either on or before the 23 February 2009. The ACCC also investigated a number of consumer complaints relating to milk prices either not being reduced or being increased in the weeks leading up to the removal of the levy. In most of the cases investigated by the ACCC, retail milk prices were reduced by the full 11 cents per litre on or before 23 February 2009.

Fertiliser

Senate Select Committee inquiry into pricing and supply arrangements in chemical and fertiliser markets

In May 2009 the ACCC appeared before the Senate Select Committee on Agriculture and Related Industries as part of the committee's inquiry into pricing and supply arrangements in chemical and fertiliser markets. At the hearing the ACCC presented the findings of its recent analysis of domestic and international fertiliser price movements. This analysis was completed at the request of the committee and represented a continuation of the analysis undertaken by the ACCC as part of its 2008 examination of fertiliser prices.

Insurance

ACCC issues sixth medical indemnity insurance monitoring report

On 28 April 2008 the Australian Government released the ACCC's sixth medical indemnity insurance monitoring report. This report was prepared in response to a government request for the ACCC to monitor medical indemnity insurance premiums on a yearly basis to assess whether they were actuarially and commercially justified. This report is the last in a series of medical indemnity insurance report requested by the government.

The ACCC's report focuses on how premiums were derived by the insurance companies from both an actuarial and commercial perspective. It considers the technical actuarial aspects of the premium pricing process, as well as whether the premiums are set to meet insurer's commercial obligations to key stakeholders.

The ACCC's sixth report examined the premiums written in the 2008–09 financial year (2008 calendar year for some insurance companies) and found them to be actuarially and commercially justified. In addition, the ACCC found that all the insurance companies had reached a fully capitalised position by the transitional time frame set by the Australian Prudential Regulation Authority.

Access arrangements

Wheat access

Under the federal *Wheat Export Marketing Act 2008*, bulk wheat exporters who also provide port terminal services for the export of bulk wheat (vertically integrated wheat exporters) are required to pass an access test as a condition of accreditation.

From 1 October 2009 one way of passing the access test is to have in operation an access undertaking under Part IIIA of the Trade Practices Act that allows for the provision of access by third parties (wheat export marketers) to port terminal services for the export of bulk wheat.

The ACCC has received and is currently assessing three access undertakings from vertically integrated wheat exporters (Co-operative Bulk Handling Limited, GrainCorp Operations Limited and ABB Grain Ltd) under Part IIIA.

Among other matters, each proposed undertakings provides:

- a negotiate/arbitrate model for price and non-price terms
- obligations regarding non-discrimination in the provision of port terminal services
- obligations regarding port terminal capacity management, including the shipping stem,
- ring-fencing obligations providing for restrictions on information flows.

The proposed undertakings relate to export terminals at:

- Albany, Esperance, Geraldton and Kwinana in Western Australia
- Port Adelaide, Outer Harbour, Port Giles, Wallaroo, Port Lincoln and Thevenard in South Australia:
- Fisherman Island, Gladstone and Mackay in Queensland
- Carrington and Port Kembla in New South Wales
- Geelong and Portland in Victoria

The ACCC released an issues paper on 29 April 2009 about the access undertakings and invited submissions from interested parties. ACCC staff visited Brisbane, Sydney, Melbourne, Adelaide and Perth during May to meet with stakeholders.

A draft decision is expected to be released by around the end of July 2009.

Transport access

Australian Rail Track Corporation Ltd—Hunter Valley rail access undertaking

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

On 23 April 2009 ARTC submitted a voluntary access undertaking for its Hunter Valley rail network to the ACCC for assessment under Part IIIA of the Trade Practices Act.

The network's main role is providing rail infrastructure to transport coal from mines to port terminals at the Port of Newcastle.

The undertaking is part of an overall solution to the continuing capacity constraints in the Hunter Valley coal chain, including the development of long-term access protocols to the coal loading terminals at the Port of Newcastle.

As part of the assessment process, the ACCC made an issues paper available to stakeholders asking for submissions on the undertaking. Submissions on the paper were by 26 June 2009, and the ACCC is currently considering the received submissions.

The ACCC assessment of the undertaking will include a draft decision and a further round of submissions.

Fuel monitoring

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

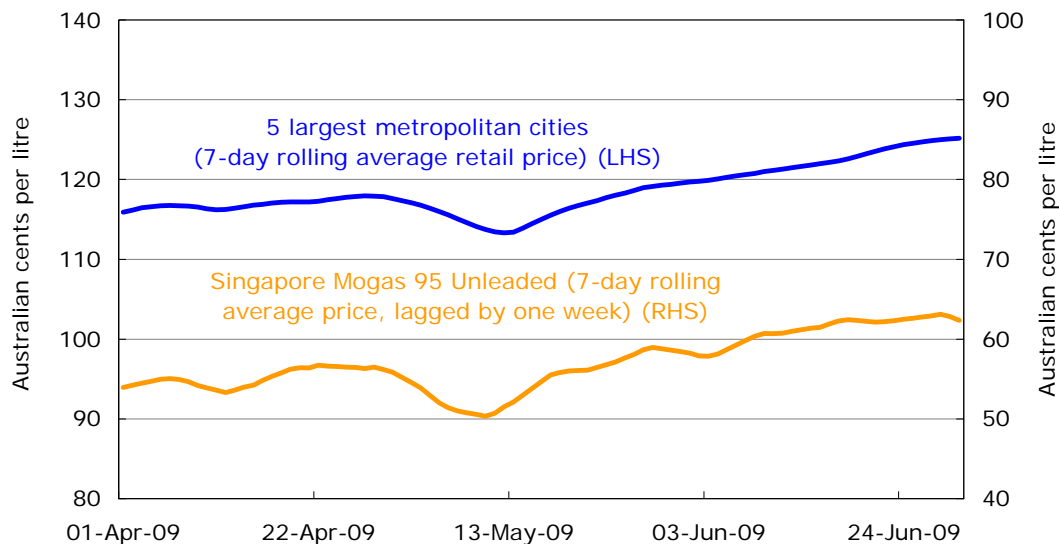
Price movements in the June 2009 quarter

Petrol

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

The chart below shows movements in these prices over the period from 1 April to 30 June 2009. Retail unleaded petrol prices are shown on the left-hand side of the chart and Singapore Mogas 95 Unleaded prices are shown on the right-hand side. It is important to remember that a comparison of these two prices is indicative rather than exact, and that other factors can influence retail petrol prices in the short run. This caveat also applies to comparisons of movements between retail diesel and automotive LPG prices and their respective benchmarks.

Chart 1 Movements in retail unleaded petrol prices and the international benchmark prices, 1 April to 30 June 2009



As illustrated in the chart, retail petrol prices broadly tracked movements in the benchmark prices in the June 2009 quarter. From 1 April to 30 June 2009, average retail unleaded petrol prices across the five largest metropolitan cities (on a seven-day rolling average basis) increased from 115.9 cpl to 125.2 cpl, an increase of 9.3 cpl. Singapore Mogas 95 unleaded prices (on a seven-day rolling average basis lagged by one week) increased by 8.4 cpl over the period.

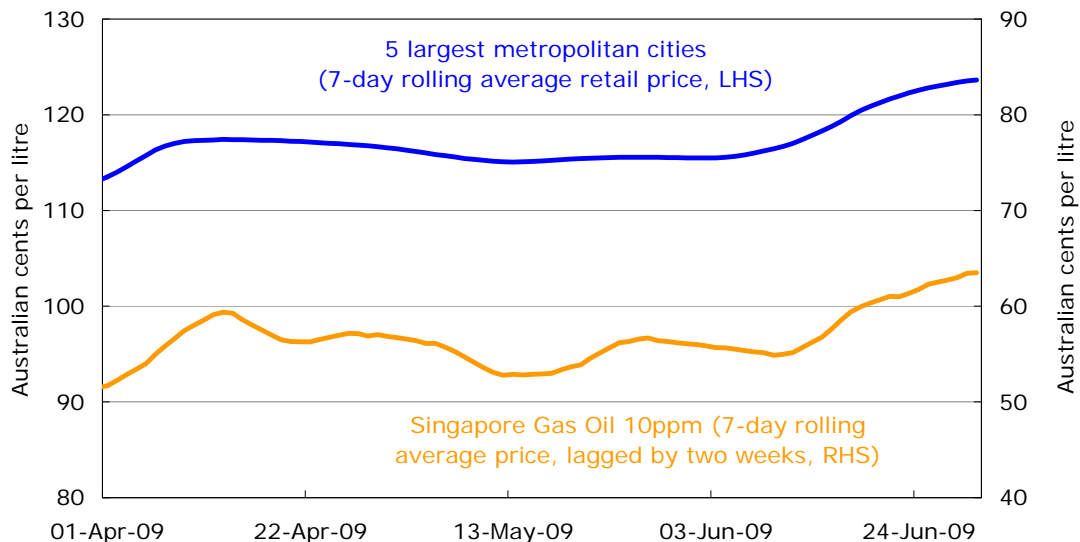
Diesel

The ACCC monitors the movement of retail diesel prices against the spot price of Singapore Gas Oil with 10 parts per million (ppm) sulphur content. The Australian standard for the maximum amount of sulphur permitted in diesel fuel changed from 50 ppm to 10 ppm on 1 January 2009.

In the following chart, retail diesel prices are shown on the left-hand side and Singapore Gas Oil prices are shown on the right-hand side. The chart illustrates that retail prices broadly tracked movements in the international benchmark price over the June 2009 quarter.

Over the June 2009 quarter, average retail diesel prices for the five largest metropolitan cities (on a seven-day rolling average basis) increased by 10.1 cpl, from 113.5 cpl to 123.6 cpl. Singapore Gas Oil 10 ppm prices (on a seven-day rolling average basis lagged by two weeks) increased by 11.8 cpl, from 51.7 cpl to 63.5 cpl.

Chart 2 Movements in retail diesel prices and the international benchmark prices, 1 April to 30 June 2009

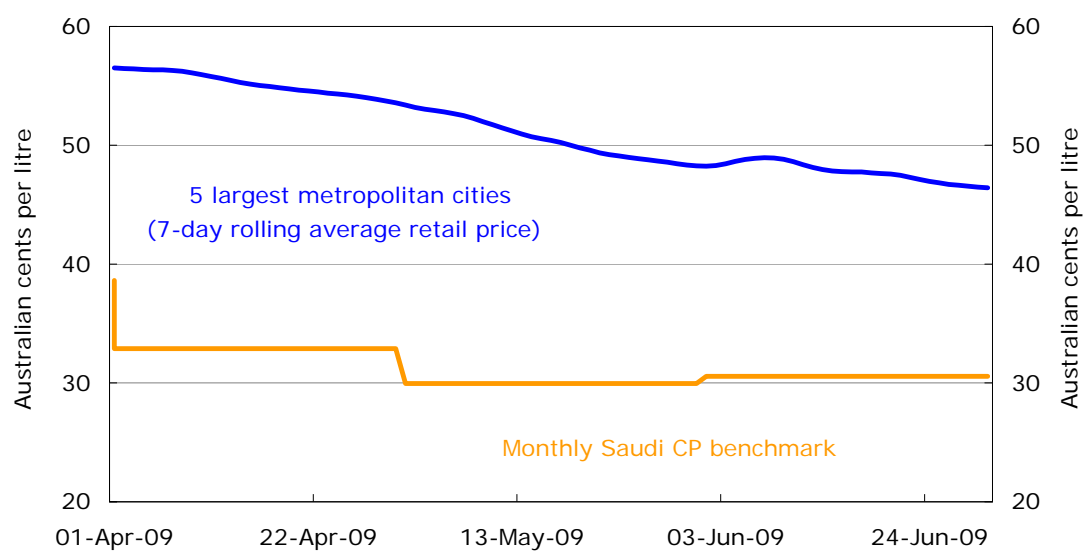


Automotive LPG

The ACCC monitors the movement of retail automotive LPG prices against the average price of Saudi Aramco contract prices for propane and butane, which are issued on the first day of the month. The following chart illustrates that retail prices tracked movements in the international benchmark price over the June 2009 quarter.

From 1 April to 30 June 2009, retail automotive LPG prices in the five largest metropolitan cities (on a seven-day rolling average basis) decreased by 10.1 cpl, from 56.5 cpl to 46.4 cpl. The lower retail prices reflected a drop in the Saudi benchmark price over the same period.

Chart 3 Movements in retail automotive LPG prices and the international benchmark prices, 1 April to 30 June 2009



6. International activities

The ACCC'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.

International forums

The ACCC participates in a variety of international forums throughout the year. It is an active member of International Competition Network (ICN) and is represented on its steering committee and a number of working groups, including some relating to mergers and cartels. The ACCC is also actively involved in the International Consumer Protection Enforcement Network (ICPEN) advisory committee and working groups. Other organisations in which the ACCC participates include the Organisation for Economic Cooperation and Development (OECD) and Asia Pacific Economic Cooperation (APEC).

Participation in such forums:

- 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.

In particular, during the June 2009 quarter, the ACCC:

- participated in the ICN annual conference, Zurich, Switzerland
- attended the IBA's twentieth annual communications and competition law conference Rome, Italy
- participated in the Beijing University of Aeronautics and Aviation/DePaul University of College conference in Beijing, China on competition law;

- participated in meetings of the OECD Competition Committee in Paris, France (including a peer review examination of the competition regulation framework in Australia)
- attended the IBA conference in New York, United States of America
- participated in the Taiwan International Conference on Competition Policies/Laws held in Chinese Taipei
- participated in the International Council for Small Business conference in Seoul, South Korea
- participated in the Lear Conference in Rome, Italy
- held meetings with International Energy Agency in Paris, France
- participated in the International Telecommunications Regulation for Fixed and Mobile Service Providers conference held in London, United Kingdom.

The ACCC is currently preparing to assume the ICPEN presidency. As part of its preparations, the ACCC is working with the current president (France) and the ICPEN Secretariat to host the next meeting of ICPEN in Australia in November.

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. The ACCC's participation in these negotiations reflects its goals of promoting competition in the region and ensuring that the FTAs are:

- compatible with Australia's competition regulations
- practical in implementation
- 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 June 2009 quarter, the ACCC received requests from China, Fiji, Chinese Taipei, Mexico, The Netherlands, South Africa, Singapore, South Korea, the United States, the United Kingdom and Vietnam.

Examples of shared information include the ACCC's activities regarding market inquiries; best-practice processes for investigations; product safety standards, outreach methodology; cross-border marketing fraud; and general information about Australia's competition, regulatory and consumer protection framework.

The ACCC made similar requests to its counterparts 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 June quarter, the ACCC met with representatives of the following agencies:

- Ministry of Economic Affairs, Bhutan
- Inner Mongolia Consumer Commission, Mongolia
- International Energy Agency
- OECD Competition Division
- United Nations Conference on Trade and Development Competition
- Indonesian Commission for the Supervision of Business Competition
- Fair Trade Commission of Chinese Taipei
- United States Department of Justice, Anti-trust Division
- United States Federal Trade Commission
- Vietnamese Competition Administration Department
- Canadian Competition Bureau.

Capacity-building activities

ACCC involvement in technical assistance programs provides staff with valuable experience delivering training. The ACCC's capacity-building activities mainly focus on best practice processes in infrastructure regulation, competition and consumer protection. During the June quarter, the ACCC participated in the Australia – China legal professional development program by hosting an official from China.

Staff exchange

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

7. Reviews and inquiries

Legislative matters

The following legislation came before federal parliament during the June 2009 quarter.

Trade Practices Amendment (Cartel Conduct and Other Measures) Act 2009

The *Trade Practices Amendment (Cartel Conduct and Other Measures) Act 2009* became law on 26 June 2009.

The substantive provisions of the Act commenced on 24 July 2009, with the Trade Practices Act now containing criminal penalties for the following forms of cartel conduct:

- price fixing
- restricting outputs in the production or supply chain (e.g. agreeing to cut back on production)
- allocating customers, suppliers or territories
- bid rigging.

A civil prohibition now operates for the same forms of cartel conduct.

Other provisions of the Act:

- enhance the ACCC's capacity to conduct search warrants
- enhance confidentiality of information provided to the ACCC about cartel conduct
- enable telephone interception to be used for investigation of the cartel offence.

Following the legislation's passage through the parliament, the ACCC signed a memorandum of understanding with the Commonwealth Department of Public Prosecutions and released guidelines on how it will approach the investigation of cartels.

Federal Court of Australia Amendment (Criminal Jurisdiction) Bill 2008

Following its introduction in federal parliament on 3 December 2008, the Federal Court of Australia Amendment (Criminal Jurisdiction) Bill 2008 was referred to the Senate Standing Committee on Legal and Constitutional Affairs. If passed, the Bill will enable the Federal Court to apply uniform indictable criminal procedure across Australia to deal with serious cartel offences.

The Senate Committee issued its report on 11 March 2009, recommending some amendments to the Bill; the government similarly has proposed some amendments to it. The Bill will next come before parliament during the spring parliamentary sitting.

Trade Practices Amendment (Australian Consumer Law) Bill 2009

The Trade Practices Amendment (Australian Consumer Law) Bill 2009 was introduced in the Australian Parliament on 24 June 2009 and referred to the Senate Standing Committee on Economics on 25 June 2009.

If passed, the Bill will introduce new remedies and powers to the *Trade Practices Act 1974* for consumer protection, including:

- civil pecuniary penalties
- disqualification orders
- orders to redress loss or damage suffered by non-party consumers
- infringement notices
- substantiation notices
- public warning notices.

The Bill also proposes provisions to protect consumers from unfair contract terms in standard form consumer contracts.

The Senate Standing Committee on Economics is due to report on the Bill by 7 September 2009.

Parliamentary inquiries

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

- Senate Economics Reference Committee | 2 June 2009 | Inquiry into foreign investment by state-owned entities
- Senate Select Committee on Agricultural and Related Industries | 7 May 2008 |
- Inquiry into the pricing and supply arrangements in the Australian and global fertiliser market

Consultative committees

The Infrastructure Consultative Committee | met 23 April 2009 | A number of transport issues were discussed, including rail access and airport and stevedore monitoring. The ACCC presented a short outline of its processes and role prior to the government announcement about the National Broadband Network (NBN).

The role of competition policy and the global financial crisis also came under scrutiny. International views, specifically from the OECD, were discussed as were views regarding the impact of the financial crisis on regulation in Australia.

A final report was made on the most recent work commissioned by the ICC, a major benchmarking study of regulatory practices and processes used in the economic regulation of seven key infrastructure and network industries in 11 OECD benchmark countries (and the European Union). This study is divided between a final report and detailed country-based studies provided as an appendix to the report. The next meeting of the ICC is due to be held in November 2009.

Small Business Consultative Committee | met 22 May 2009 | Issues addressed included:

- ACCC action on unconscionable conduct, including four cases currently being litigated
- national (harmonised) consumer law and how it may impact on the small business sector
- planned ACCC guidance and education campaigns on issues that include the application of the Trade Practices Act to the operation of industry associations and the professions, mandatory unit pricing code and clarity in pricing amendments to the Trade Practices Act.

Franchising Consultative Committee | 29 May 2009 | Included discussions on the impact of the global financial crisis on the franchising sector and the ACCC's enforcement and educational activities relating to franchising.

The Australian Government established a Horticultural Code Committee following the report of the ACCC inquiry into the competitiveness of retail prices for standard groceries (the grocery inquiry report). As part of its deliberations the ACCC is considering recommendations to improve the code so that it works properly, still ensures transparency in transactions and establishes a fair dispute resolution mechanism. The Horticulture Code Committee is currently considering implementation issues arising from the ACCC recommendations. The committee has consulted widely with the stakeholders to inform itself of potential issues, and will report its findings to the minister.

Horticulture Code Committee | 5 May 2009 | Discussed ACCC recommendations made in the grocery inquiry report to amend the Horticulture Code.

Appendix

Speeches

During the June quarter 2009, the ACCC delivered numerous speeches, including:

- [FTTH and the National Broadband Network—opportunity and challenges for competition regulation](#), Mr Michael Cosgrave, Group General Manager, Communications Group, at the FTTH Council Asia Pacific Annual Conference and Exhibition 2009, 19 May 2009
- [National Broadband Network heralds new wave of telecommunications development](#), Mr Graeme Samuel, ACCC Chairman, Australian Telecommunications Users Group Regional Conference, Canberra, 21 May 2009
- [Financial stress and vulnerability: the perfect recipe for scams](#), Mr Peter Kell, Deputy Chairman, 2009 Law Week South Australia Justice Oration, 21 May 2009
- [The conduct of cartel litigation: the ACCC enforcement perspective on serious cartels—some key issues and practical considerations](#), Mr Marcus Bezzi, Executive General Manager, Enforcement and Compliance Division, Competition Law Conference 2009, 23 May 2009
- [Competition regulation in a changing environment](#), Mr Ed Willett, Commissioner, Broadband Australia 2009 Conference, 11 June 2009

News releases

During the March quarter 2009 the ACCC issued 89 news releases, while the Australian Energy Regulator issued six news releases.

Publications

Publications released from 1 April to 30 June 2009

Corporate

ACCC ejournal, issues nos 57 to 59

ACCCCount—A report of the Australian Competition and Consumer Commission's activities, 1 January to 31 March 2009

AER strategic plan and work program 2009–11

For consumers

Sports 'investment' scams fact sheet

For business

Cartels: deterrence and detection—a guide for government procurement officers

Food labelling guide

News for business: Component price advertising

News for business: Component pricing—electrical goods, whitegoods and furniture advertising

News for business: Price comparison advertising

Price advertising and the travel industry

Pricing manual for the motor vehicle industry

Unit pricing: a guide for grocery retailers

Unit pricing: a quick guide

ACCC report

Medical indemnity insurance: sixth monitoring report

For regulated industries

A guide to the Water Market Rules 2009 and maintaining water delivery contracts

Permanently selling your water and terminating your delivery right—a guide for irrigators about the water market rules and rules on termination fees

Transforming your irrigation right and maintaining water delivery—a guide for irrigators about the water market rules

Water charge (termination fees) rules 2009—Technical guide for irrigation infrastructure operators

Water charge rules for planning and management, draft advice—May 2009

Water infrastructure charge rules, draft advice and advert