



Australian
Competition &
Consumer
Commission

ACCCOUNT

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

1 July to 30 September 2009



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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
Section 87B undertakings accepted.....	8
2. Communicating with business and consumers	13
Liaison and education activities	13
Codes of conduct.....	15
Product safety	15
3. Mergers	20
Merger reviews	20
Statements of issues	21
Public competition assessments.....	21
Section 87B undertakings.....	22
Major matters	22
4. Adjudication.....	25
Authorisations.....	25
Collective bargaining notifications.....	31
Exclusive dealing notifications	32
5. Regulatory affairs	34
Communications.....	34
Australian Energy Regulator	37
Water.....	41
Price monitoring.....	42
6. International activities.....	47
Free trade agreements	48
Information requests.....	48
7. Reviews and inquiries.....	49
Legislative matters.....	49
Other developments	49
Parliamentary inquiries	50
Consultative committees.....	50
Appendix.....	51

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 a win for consumers, the ACCC has received from Telstra, Optus and Vodafone Hutchison court enforceable undertakings to review and improve advertising practices. The three industry leaders have agreed not to make claims such as 'free/unlimited price per minute' in circumstances where they are likely to mislead consumers. The ACCC is now working with second tier telecommunications companies to improve their advertising practices.

Coles and Woolworths have agreed not to enforce existing restrictive provisions contained in shopping centre supermarket leases. Both companies agreed that they will not include restrictive provisions in any new supermarket leases and that, with existing supermarket leases, they will not enforce restrictive provisions five years after trading begins. This phasing out for current leases takes into account commercial arrangements and rental contracts already in place.

Consumer safety continues to be a focus with a nationwide blitz on unsafe hot water bottles, which led to more than 250 000 being recalled across Australia. The ACCC and state and territory product safety regulators randomly checked and tested 30 brands of hot water bottles and 18 of these did not comply with the mandatory safety standard. A number of brands were voluntarily withdrawn from sale or removed from store shelves after action by the ACCC.

Close to 3000 small businesses have benefited from the Federal Court of Australia's decision that found that Bill Express had engaged in misleading and deceptive conduct and exclusive dealing in the supply of electronic bill payment services. As part of the court's orders, no steps will be taken to recover payments due under the contracts. Further, more than \$200 000 collected from newsagents around the time the ACCC commenced proceedings will be refunded.

On 23 September 2009 the ACCC reinstated interim authorisation to Port Waratah Coal Services, the Newcastle Coal Infrastructure Group and the Newcastle Port Corporation, including the port's coal queue capacity management system. This system will allow better management of the queue of ships waiting to load Hunter Valley coal.

Following extensive consultation with the grain industry, the ACCC formally approved Co-operative Bulk Handling Ltd's, GrainCorp's and AusBulk's grain port access arrangements under Part IIIA of the Trade Practices Act. The decision will ensure that Australian farmers and wheat exporters will benefit by having fair and transparent access to grain ports operated by CBH, GrainCorp and AusBulk. The Australian economy will benefit overall because the access arrangements will unlock constraints at grain ports, by promoting the development of an efficient and competitive wheat export marketing industry that advances the needs of wheat-growers.

Since the Water Charge (Termination Fees) Rules and Water Market Rules commenced in June 2009, the ACCC has begun an education campaign to alert stakeholders to the new rules and their rights and obligations. Throughout July 2009 the ACCC conducted a major public information campaign across the Murray–Darling

Basin. The ACCC continues to provide policy advice under the *Water Act 2007*. On 10 September 2009 the ACCC released its water trading rules position paper for consultation. The paper sets out the ACCC's positions on a range of matters relevant to water trading, including the 4 per cent limit, ownership and location restrictions, water delivery rights and irrigation rights.

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.

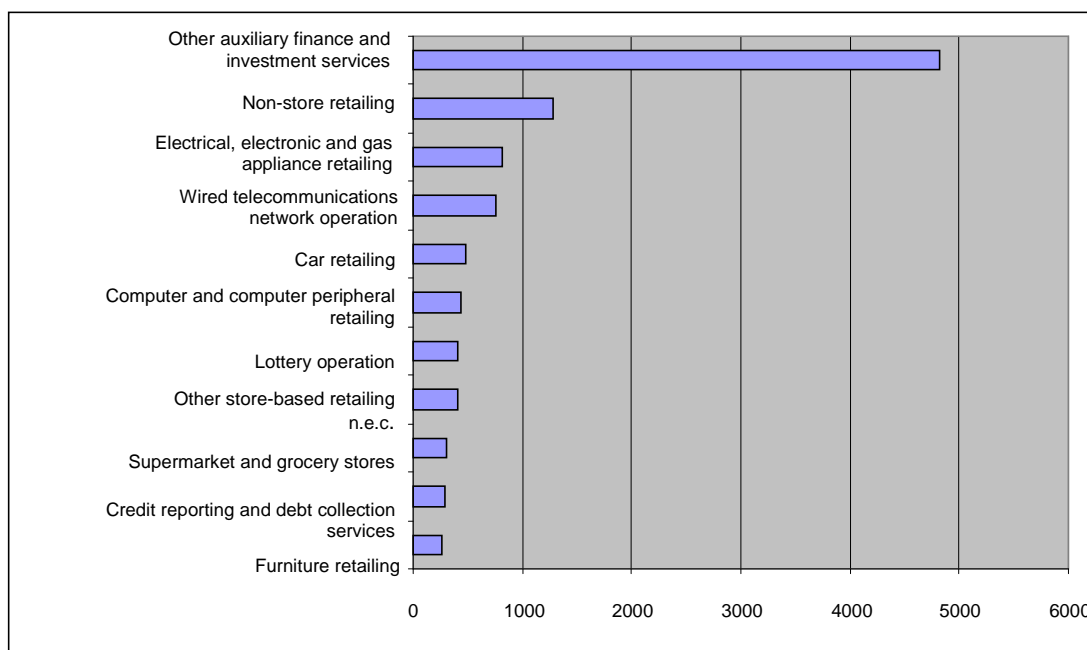
Complaints and inquiries

During the September 2009 quarter the ACCC Infocentre received 31 406 complaints and inquiries from businesses and consumers (email: 8177; telephone: 22 695; letter correspondence: 534). Of these complaints and inquiries, 20 882 (67 per cent) were entered into the ACCC's database.

Major drivers of these contact levels included concerns about scam-based activity, requests for warranty and refunds advice, and complaints about the telecommunications sector. The Infocentre escalated 226 matters to regional offices for assessment during the September quarter. Infocentre staff generally escalate Part IV-related allegations to the regional office closest to the callers' locations. 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 July to September 2009 quarter, 80 per cent related to consumer protection matters, higher than the 2008 quarterly average of 75 per cent. Competition matters accounted for 4 per cent of contacts, lower than the quarterly average figure of 5 per cent reported in 2008. Other matters accounted for 16 per cent, down from the 20 per cent quarterly average in 2008.

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

The ACCC began 15 first-instance enforcement litigation proceedings in the Federal Court during the September 2009 quarter, including:

Vanderfield Pty Ltd and others

Commenced | 1 July 2009 | QUD163/2009

Proceedings under Part IV for alleged price fixing and market sharing in the sale of light and medium trucks.

Colin Thompson

Commenced | 2 July 2009 | NTD15/2009

Alleged breach of s. 87B undertakings. Original conduct related to the supply of retail tobacco products that did not comply with the prescribed consumer product information standards for the labelling of tobacco products.

Ozdirect Online Brands Pty Ltd and another

Commenced | 13 July 2009 | NSD704/2009

Proceedings under Part V for allegedly accepting payment for goods the company knew, or ought reasonably to have known, it would not be able to supply within a reasonable time; and misleading and deceptive conduct and misrepresentations in relation to the sale of electronic goods.

Personalised Chocolates 4 U Pty Ltd and another

Commenced | 13 July 2009 | NSD709/2009

Proceedings under parts IVB and V of the Act for allegedly failing to comply with the Franchising Code of Conduct and making false, misleading and deceptive representations in the marketing of personalised chocolate franchises.

Aaron Smith and Leanne Vassallo

Commenced | 24 July 2009 | NSD756/2009

Proceedings under Part V for alleged false, misleading or deceptive conduct in the promotion of eBooks claiming to contain cures to a large number of medical conditions.

Star Promotions Club Pty Ltd

Commenced | 24 July 2009 | NSD760/2009

Proceedings under Part V for alleged misleading and deceptive conduct in the promotion of mobile premium services through 'scratch cards'.

Boost Tel Pty Ltd and Prepaid Services Pty Ltd

Commenced | 24 July 2009 | WAD125/2009

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

Allphones Retail Pty Ltd and others

Commenced | 14 August 2009 | NSD869/2009

Class action proceedings on behalf of 74 eligible current and former Allphones franchisees seeking damages for alleged unconscionable conduct by Allphones Retail Pty Ltd and three individuals.

Allphones Retail Pty Ltd

Commenced | 17 August 2009 | NSD1567/2008

Proceedings for alleged contempt of two s. 87B undertakings it gave to the court following ACCC action taken in October 2008.

Emirates

Commenced | 18 August 2009 | NSD876/2009

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

European City Guide SL

Commenced | 18 August 2009 | NSD879/2009

Proceedings under Part V for alleged misleading or deceptive conduct relating to the promotion of online directory business listing services through the publication of forms sent to businesses in Australia.

P T Garuda Indonesia Ltd

Commenced | 2 September 2009 | NSD955/2009

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

T F Woollam and Son Pty Ltd and others

Commenced | 18 September 2009 | QUD236/2009

Proceedings under Parts IV and V for alleged price fixing and misleading or deceptive conduct in tendering for government construction projects in Queensland.

Proceedings concluded

Nine first-instance enforcement litigation proceedings were finalised during the September 2009 quarter.

Toll (PRK) Ltd and others

Commenced | 24 August 2007 | concluded | 3 July 2009 | NSD1703/2007

Proceedings under Part IV for allegedly entering into contracts, arrangements or understandings that restrict dealings or affect competition; entering arrangements to share motor vehicle wharf facilities around Australia and to jointly acquire other facilities.

Justice Jacobson | Federal Court Sydney

Outcome | respondent 2—pecuniary penalty (\$1.9 million); respondents 1, 3 to 5—costs (total of \$100 000) and proceedings dismissed; respondent 7—pecuniary penalty (\$1.9 million) and costs (\$100 000); respondents 6 and 8—proceedings dismissed; respondents 10 to 13—proceedings dismissed.

Harvey Fresh (1994) Pty Ltd

Commenced | 7 May 2009 | concluded 30 July 2009 | WAD71/2009

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

Justice Siopsis | Federal Court, Perth

Outcome | declarations, injunctions, orders for corrective notices, trade practices law compliance training and costs.

Colin Thompson

Commenced | 2 July 2009 | concluded 5 August 2009 | NTD15/2009

Alleged breach of s. 87B undertakings. Original conduct was the supply of retail tobacco products that did not comply with the prescribed consumer product information standards for the labelling of tobacco products.

Justice Mansfield | Federal Court, Darwin

Outcome | declaration, an order that Mr Thompson display specified anti-smoking posters in his shop for three months and costs.

Teracomm Ltd

Commenced | 23 January 2009 | concluded 20 August 2009 | NSD59/2009

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

Justice Moore | Federal Court, Sydney

Outcome | declarations and costs.

Leanne Vassallo and Aaron Smith

Commenced | 23 July 2009 | concluded 24 August 2009 | NSD756/2009

Proceedings under Part V for alleged false, misleading or deceptive conduct in the promotion of 'eBooks' claiming to contain cures to large number of medical conditions.

Justice Graham | Federal Court, Sydney

Outcome | declaration, injunctions and costs.

Allergy Pathway Pty Ltd (formerly known as Advanced Allergy Elimination Pty Ltd) and Paul Keir

Commenced | 12 May 2009 | concluded 27 August 2009 | VID361/2009

Proceedings under Part V for alleged representations that it can test for and accurately identify a substance to which a person is allergic, and that it can eliminate and successfully treat a person's allergy.

Justice Finkelstein | Federal Court, Melbourne

Outcome | declarations, injunctions, orders for corrective advertising, trade practices compliance program and costs.

Allphones Retail Pty Ltd

Commenced | 7 May 2009 | concluded 28 August 2009 | NSD1720/2008

Preliminary discovery application.

Justice Foster | Federal Court, Sydney

Outcome | application dismissed with costs.

Bill Express Ltd and others

Commenced | 29 October 2008 | concluded 14 September 2009 | VID894/2008

Proceedings under parts IV and V for alleged third line forcing; and false and misleading or deceptive conduct relating to the 'Bill express' electronic product distribution, promotion, sales and bill payment network.

Justice Gordon | Federal Court, Melbourne

Outcome | declarations: BNY has undertaken to the court that it will not take any steps to request or recover any payment relating to the contracts and that it will also repay in excess of \$200 000 collected from newsagents around the time the ACCC began proceedings until the court's decision.

Australialink Pty Ltd and others

Commenced | 3 December 2008 | concluded 18 September 2009 | QUD406/2008

Proceedings under parts IVA and V for alleged unconscionable conduct and misleading or deceptive conduct relating to solicitation for online business directory listings.

Justice Spender | Federal Court, Brisbane

Outcome | declarations, injunctions, orders that Mr O'Keefe and Ms Dargie attend relevant trade practices training, orders that Australialink write to businesses invoiced by Australialink notifying them of the orders made by the court and costs.

Section 87B undertakings accepted

The ACCC accepted 26 s. 87B enforcement undertakings during the September 2009 quarter. Some of the more significant s. 87B undertakings accepted during the September 2009 quarter are outlined below.

Telstra Corporation Ltd, Singtel Optus Pty Ltd, Vodafone Hutchison Australia Pty Ltd

These companies have provided court enforceable undertakings to the ACCC relating to the most prevalent advertising practices of concern within the telecommunications industry. Telstra Corporation Ltd, Singtel Optus Pty Ltd, Vodafone Hutchison Australia Pty Ltd have undertaken to:

- refrain from creating any new advertising that uses the practices identified at paragraph 33 of the undertaking
- review any of their current advertising that uses the specified advertising practices and cease such advertising
- report to the ACCC about the effectiveness of their complaint-handling systems
- provide appropriate consumer redress to customers in specified circumstances
- review their trade practices compliance program
- report to the ACCC about any advertising that has been ceased under paragraph 31c of the undertaking
- report to the ACCC regarding redress provided under paragraph 31e of the undertaking.

Coles Group Ltd and Woolworths Ltd

Coles and Woolworths have both provided court enforceable undertakings to the ACCC on the use of restrictive covenants in leases between the two corporations and shopping centre operators. Coles Group Ltd and Woolworths Ltd have both undertaken:

- not to include restrictive provisions in any new supermarket leases, and in the case of existing supermarket leases, they will not enforce restrictive provisions five years after commencement of trading.

Mitre 10 Australia Ltd

Mitre 10 has provided court enforceable undertakings to the ACCC on the promotion of a '20 per cent off storewide' sale that failed to adequately disclose that a number of products were excluded from the sale. Mitre 10 Australia Ltd has undertaken to:

- refrain from making representations that all or substantially all goods offered for sale by Mitre 10 members are available for purchase at a discounted price over a specified period when all or substantially all of those goods are not available for purchase at the discounted price over that period
- refrain from making representations as to the price of goods, including the availability of a discount off the price, without clearly and prominently disclosing all relevant terms and conditions that may

affect or change the price paid for the goods or affect the availability of a discount off the price

- refrain from offering to supply, supplying or entering into an agreement to supply elastic luggage straps that do not comply with s. 65C of the Trade Practices Act and the regulations
- establish and implement an expanded trade practices compliance program.

Spray Pave Australia Pty Ltd

Spray Pave has provided court enforceable undertakings to the ACCC about the promotion of Spray Pave business opportunities. Spray Pave Australia Pty Ltd has undertaken to:

- refrain from making any of the following representations unless the representation is correct and can be substantiated:
 - that it is a franchise
 - that it is an international business with offices operating in Africa, America, Canada and India
 - that no qualifications are necessary to operate a Spray Pave business when a builder's licence is required in South Australia, New South Wales and Queensland to conduct spray paving work
- place corrective notices on specified websites
- implement a trade practices compliance program.

I-Life Factory Pty Ltd, Direct Savings Stones Corner Pty Ltd and Direct Savings Pty Ltd

These companies have provided court enforceable undertakings to the ACCC on the supply of two types of 'Boboriyong' elastic luggage straps without a warning label as required by regulation 11C of the Trade Practices (Consumer Product Safety Standards) Regulations 1979.

All three have undertaken to:

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

AMV Holding Ltd (UK Company No 05811953)

AMV has provided court enforceable undertakings to the ACCC about alleged misleading or deceptive conduct relating to advertising mobile premium services. This undertaking is ancillary to Federal Court proceedings NSD58/2009. AMV Holding Ltd has undertaken to:

- communicate clearly the nature of content services being advertised or promoted, particularly if they are subscription services
- communicate clearly, using sufficiently large font size text and in close proximity to the number to be called, the relevant costs

- not promote in the same advertisement multiple content services that have different terms and conditions
- clearly and prominently state where ringtones are not recordings of the original songs
- ensure that the nature of the content services, the terms and conditions and the instructions on how to stop receiving services are printed in black text on a white background that is not obscured by colour or design.

Gemtime Nominees Pty Ltd

Gemtime has provided court enforceable undertakings to the ACCC about the supply of six-piece stretch cord 12-, 18- and 24-inch elastic luggage straps without a warning label as required by regulation 11C of the Trade Practices (Consumer Product Safety Standards) Regulations 1979. Gemtime has ceased the supply of the non-compliant elastic luggage straps and has undertaken to:

- audit its range of products to identify any products that do not comply with the mandatory standard and, if any non-compliant products are found, to ensure they are immediately withdrawn from sale
- display information notices at the main service counters of all bargain/discount retail outlets that sold the product, advising consumers that the product did not comply with the mandatory standard and offering them a full refund on return of the product
- develop and implement a trade practices compliance program.

Sci-Fleet Motors Pty Ltd and Vanderfield Pty Ltd

These companies have provided court enforceable undertakings to the ACCC relating to alleged price fixing and market sharing in the sale of light and medium trucks. This undertaking is ancillary to Federal Court proceedings QUD163/2009. Sci-Fleet Motors Pty Ltd and Vanderfield Pty Ltd have undertaken to implement and maintain a trade practices compliance program.

Australian Regional Employment Agencies Pty Ltd and Mr Shreyas Narayana

Australian Regional Employment Agencies and Mr Narayana have provided court enforceable undertakings to the ACCC about alleged misleading or deceptive conduct in promoting employment in the IT industry. AREA and Mr Narayana have undertaken to:

- refrain from engaging in conduct likely to mislead persons seeking employment about the availability, nature, or terms or conditions of that employment
- ensure that all AREA advertisements are worded so that they do not mislead persons seeking employment, and that these advertisements will be reviewed by AREA's general manager before being placed
- ensure that all representations made to persons seeking employment are accurate in describing the nature and conditions of the employment offered
- implement a trade practices compliance program.

Wicked Travel Pty Ltd and Greentree Corporation Pty Ltd, trading as Adventure Travel Bugs and Peter Pan's Backpacker Adventure Travel Pty Ltd

These companies have provided court enforceable undertakings to the ACCC relating to misleading representations about the total price of travel packages.

The corporations have undertaken to:

- refrain from making misleading price representations for three years
- publish various corrective notices in backpacker magazines, in stores and on their websites
- implement a trade practices compliance program.

Angelo Sette and Susan Sette

Mr and Mrs Sette have provided court enforceable undertakings to the ACCC relating to misleading representations about the success rate of their smoking cessation treatments. Mr and Ms Sette have undertaken to:

- refrain from engaging in similar conduct in the future
- attend a trade practices compliance seminar.

The Australian Bush Hat Company Pty Ltd

The Australian Bush Hat Company has provided court enforceable undertakings to the ACCC relating to misleading country-of-origin claims made about its hats.

The company has undertaken to:

- refrain from representing that its hats are manufactured in Australia unless they meet the country-of-origin test as outlined in the Trade Practices Act
- publish a corrective notice in the weekend edition of the *West Australian*, offering refunds to customers who purchased the hats in the belief they were manufactured in Australia
- write to retailers asking them to return non-compliant stock to the company
- establish and implement a trade practices compliance program.

Greg Gardner, Darren Wallis, Joanne Harris and Netdeen Pty Ltd

Messrs Gardner and Wallis, Ms Harris and Netdeen have provided court enforceable undertakings to the ACCC relating to the alleged breach of the Franchising Code of Conduct. They have undertaken to:

- offer compensation totalling \$40 000 to two former franchisees affected by the conduct
- Netdeen Pty Ltd has also undertaken to implement a number of corrective measures, including
 - conducting a review of its corporate materials

- publishing corrective notices on its website and in a franchising magazine
- establishing a trade practices compliance program.

Basfoods (Aust) Pty Ltd, Calcorp (Australia) Pty Ltd and Antonio Gianluca Dattilo

The companies and Mr Dattilo have provided court enforceable undertakings to the ACCC relating to misleading representations about the quality of olive oil.

Basfoods (Aust) Pty Ltd and Calcorp (Australia) Pty Ltd have both undertaken to:

- Refrain from representing that a cooking oil is 'extra virgin olive oil', 'virgin olive oil' or 'olive oil' when it is not.
- Before supplying a batch of edible oil in Australia labelled 'olive oil', 'virgin olive oil' or 'extra virgin olive oil', require the producer or its supplier of the edible oil to provide a certificate of analysis, or equivalent document, that demonstrates compliance of a sample from the applicable batch with the International Olive Council's trade standard applying to olive oils and olive-pomace oils (IOC standard) or other equivalent or recognised standard.
- Commission a National Association of Testing Authorities (NATA)- or IOC-accredited laboratory within Australia to test a sample from the applicable batch against the IOC standard or other equivalent or recognised standard.
- Implement a trade practices compliance program.

In addition, Basfoods (Aust) Pty Ltd has undertaken to send a letter to each person Basfoods supplied Aigeon to between March 2007 and April 2009, informing them of Basfoods' conduct.

Mr Dattilo has undertaken to:

- Refrain from engaging in conduct that contravenes ss. 52 and/or 53(a) of the Trade Practices Act, or being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision.
- Require documentation from his suppliers demonstrating compliance with the IOC standard and commission a further test by a NATA- or IOC-accredited laboratory before supplying edible oil.
- Attend practical trade practices training.

Australian Loans Management Pty Ltd and Active Money (Aust.) Pty Ltd

These companies have provided court enforceable undertakings to the ACCC in relating to non-compliance with the Franchising Code. They have undertaken to:

- implement measures to ensure future compliance with the code
- provide existing franchisees with a copy of the code, a disclosure document and a proposed franchise agreement that complies with the code
- provide existing franchisees with the opportunity to cancel their existing licence agreements and obtain full refunds of all moneys paid to Australian Loans Management.

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 September 2009 quarter, as part of its Outreach program, the ACCC:

- attended 140 meetings with government and industry representatives, small business operators and consumer groups nationally
- participated in nine small business and franchising expos and field days
- conducted 41 presentations to small business operators, industry associations and consumer groups on topics, including the Franchising Code, clarity in pricing amendments to s. 53C of the Trade Practices Act, green marketing, and advertising and selling practices.

Unit pricing guidance for industry and consumers

Many of the ACCC's educative activities during the September quarter focused on mandatory industry codes of conduct. The national mandatory unit pricing code, introduced following amendments to the Trade Practices Act, took effect on 1 July 2009 and will be enforceable from 1 December 2009. To assist grocery retailers to understand their obligations under the code and to explain the code to consumers, the ACCC has developed a number of education tools, including:

- *Unit pricing: a guide for grocery retailers*, which provides detailed information on grocery retailers' rights and responsibilities
- *Unit pricing: a quick guide*, which is designed to help retailers ascertain whether they will be subject to the code's requirements
- created pages on the ACCC website explaining what consumers can expect from the introduction of the code.

The ACCC has been working with a range of consumer and industry groups to ensure all stakeholders are fully informed about the code before 1 December 2009. This has included meetings with major supermarket chains and independent retailers and wholesalers as well as consumer organisations such as the Consumer Action Law Centre and the Queensland Consumer Association.

Franchising rights and obligations

Franchisors' and franchisees' rights and obligations under the mandatory Franchising Code were also the subject of considerable ACCC educative efforts across the country in recent months, including:

- presentations at 10 Australian Defence Force transition seminars for Defence personnel who may be considering the purchase of a franchise with their redundancy or superannuation lump sum payments
- booths at franchising and business opportunity expos in Brisbane and Melbourne, were manned by ACCC staff who spoke to prospective franchisees about their rights and responsibilities under the Franchising Code
- a range of presentations to prospective franchisees in Melbourne, Hobart and Perth about the need for due diligence and what to do before buying a franchise
- presentations at Legalwise seminars in Sydney and Melbourne about the relevance of s. 52 of the Trade Practices Act for franchisors experiencing financial hardship and the professional advisor's role in franchising.

Consumer information

During the September quarter, the ACCC undertook a range of consumer education initiatives and released consumer guidance materials on a number of topics.

The ACCC attended shows in Darwin, Alice Springs and Katherine to provide consumers with information on warranties and refunds, scams and product safety.

Ten SCAMwatch radar alerts were issued during the quarter, notifying Australians of emerging scams related to celebrity deaths (spam emails linking to viruses and spyware embedded in songs, videos and pictures of celebrities), business opportunities, fake government communications (e.g. a warning about a door-to-door scam where the scammers claimed to represent the Australian Taxation Office) and a fake prize SMS scam.

Mobile premium services—Information for consumers is a fact sheet developed by the Australian Communications and Media Authority and the ACCC to help users of mobile premium SMS to:

- only sign up to an ongoing service if they want to
- cancel services they no longer want or need
- know where to get help or resolve a complaint with an SMS provider.

New consumer information pages on the ACCC website explain the mandatory unit pricing code and what consumers can expect from the code. Another new page deals with key points to keep in mind and another provides other sources of information about retirement village accommodation.

Trade Practices Act seminars

The ACCC continues to provide trade practices information and to work with other agencies and industry associations to address the needs of specific stakeholder groups. During this quarter, such activities have included:

- a series of joint presentations (with the Office of Consumer and Business Affairs and the Australian Securities and Investments Commission, or ASIC) to South Australian school children on youth consumer issues
- presentations to small business centres in Western Australia on topics such as advertising and selling, the Franchising Code and new requirements for component price advertising
- meetings with and presentations to tourism industry groups in the Northern Territory to highlight the application of the clarity in pricing amendments to advertising practices in that sector
- presentations to local councils in northern New South Wales and the Riverina on the ways cartel conduct can impact on government procurement practices, and warning signs that a cartel may be operating in a market.

Codes of conduct

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 September quarter the ACCC provided guidance to industry and/or government regarding several national voluntary industry codes of conduct, including the Indigenous Australian Art Commercial Code of Conduct, the Motor Vehicle Insurance and Repair Industry Code of Conduct and the Internet Industry Spam Code of Practice.

Product safety

The ACCC administers and enforces a range of provisions under the Trade Practices Act that aim to protect consumers from unsafe products. It develops and reviews mandatory safety and information standards and bans, and advises suppliers and consumers about them by way of 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 activities

The ACCC continues to progress a suite of product safety reforms approved by the Council of Australian Governments that will lead to a more harmonised product safety system by the end of 2010:

- Harmonisation of product safety regulations across Australian states and territories, including the consolidation of current federal, state and territory mandatory product safety and information standards and bans under the Trade Practices Act.

The overall list of approximately 177 regulations has been reduced to approximately 44 existing federal bans and standards, with four mandatory standards identified for national adoption before the end of 2009. The final phase is for approximately 20 bans and standards to be assessed to determine whether they will be harmonised and applied nationally or repealed.

- The ACCC is on track to implement the new Product Safety Australia website. It is anticipated that the site will be launched in February 2010. The website will present a single entry point for product safety information in Australia, with content for business and consumers on current product hazards and regulatory information. It will also explain the roles of specialist regulatory agencies (such as the Therapeutic Goods Authority) with links to relevant websites.
- The Emerging Hazards Clearinghouse is on track to be implemented by 31 December 2009. It will draw on a range of information sources and facilitate a method for analysing consumer product incidents to identify emerging hazards relevant to product safety in Australia. It will facilitate the sharing of emerging hazard information between regulators.
- The Recalls Review is considering the effectiveness of the consumer product recall mechanism in removing unsafe consumer products from the sale and post-sale environment, and whether the current system can be improved. The review will culminate in a paper that includes options and recommendations for the Ministerial Council of Consumer Affairs by 31 December 2009.
- The development of a mandatory reporting concept for products associated with serious injury or death and a proposed implementation plan (for December 2010).
- Extensive consultation with relevant stakeholders, including representatives from state and territory jurisdictions and industry, business and consumer sectors, is being conducted into the development of these initiatives.
- The ACCC has actively been contributing to the development and implementation of the national product safety legislative framework and proposed reforms being implemented under the Australian Consumer Law reform process.

Development of new mandatory standards and bans

Sky lanterns

An 18-month temporary ban on sky lanterns was declared by the Minister for Competition and Consumer Affairs and published in *Special Gazette* No. 150 on 24 September 2009. A sky lantern is essentially a miniature unmanned hot air balloon that relies on an open flame as a heat source to heat the air inside the lantern with the intention of causing it to lift into the atmosphere. These products potentially could cause uncontrolled fires because of the possibility of open flame contacting combustible material, particularly in bushfire-prone areas.

Magnets in children's toys

A draft regulation impact statement (RIS) to examine the case for a possible mandatory safety standard for small magnets in toys has been prepared and is expected to be available for public consultation shortly. These small strong magnets, if ingested, can draw together in the digestive tract, causing significant injuries.

The RIS process has begun to examine the case for a possible mandatory safety standard for portable soccer goalposts, curtain and blind cords, projectile toys and skimmer boxes.

Emerging issues

Motorised mobility scooters

Investigations are continuing into the safety issues associated with the use of mobility scooters. A national meeting, comprising injury research organisations, business and consumer representatives and federal, state and territory agencies, was held on 17 September 2009 to discuss safety concerns and potential solutions.

The ACCC has agreed to follow up the proposed actions and to consult with relevant stakeholders. It is proposed that an issues paper will be developed at a later date, recommending how to progress the issue of motorised mobility scooter safety.

Reviews of mandatory standards

- Reviews of the mandatory standards for vehicle jacks and portable ramps for motor vehicles are close to completion, with new revised mandatory safety standards to be introduced shortly.
- The review of the mandatory standard for bicycle helmets is progressing with a RIS due to be circulated for public comment.
- The RIS process for reviews of the mandatory safety standard for bunk beds and the care labelling information standard has begun.

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 September 2009 quarter:

- R King Enterprises Pty Ltd, trading as Mocare (SA), provided court enforceable undertakings to the ACCC after it supplied hydraulic trolley jacks that failed to comply with the warning labelling requirements of the mandatory safety standard. The company immediately withdrew the products from sale and implemented a consumer recall of the trolley jacks.

- 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 displayed in-store.
- The Federal Court found that a Darwin tobacconist, Colin Thompson, had breached court enforceable undertakings provided to the ACCC in April 2009 by failing to display specified anti-smoking posters in his shop. The court ordered Mr Thompson to display the specified posters for a further three months and to pay ACCC court costs as agreed.
- Party horns supplied by Bakery Sugarcraft Party Horns to various department stores across Australia were recalled after tests commissioned by the ACCC revealed that the product presented a choking hazard and failed the mandatory safety standard for toys for children under the age of three.
- Woolworths Pty Ltd has undertaken an urgent voluntary recall of 19 styles of girls' nighties and boys' pyjamas incorrectly labelled as 'low fire danger' when they should have been labelled 'high fire danger'. The consumer recall and offer of a full refund at Big W stores was implemented following ACCC market surveillance checks and testing showed that the garments did not comply with the low fire danger flammability requirements of the mandatory safety standard for children's nightwear. Advertisements for the recall appeared in newspapers, online and in-store.

Consumer awareness activities

Hot water bottles

The ACCC issued a safety alert and warning to suppliers of hot water bottles that it would be leading a nationwide blitz on unsafe hot water bottles. The blitz followed a rise in severe burns resulting from hot water bottles splitting, leaking or bursting. In New South Wales between January 2006 and August 2009, 111 people were treated at a severe burns unit for hot water bottle scalds, with nearly a third of them requiring skin grafts. In Victoria, more than 70 burns were treated over the same time.

Consumers were urged to take extreme caution when using hot water bottles and reminded that a safety alert brochure outlining tips on the safe use of these products is available on the ACCC website.

More than 250 000 hot water bottles were recalled by a number of suppliers following coordinated action by the ACCC and state and territory product safety regulators.

Safety campaign for working safely under vehicles

A safety warning about the dangers associated with working under motor vehicles was issued by the ACCC following the tragic death of a South Australian man and severe injuries suffered by another in Victoria after the cars they were working on collapsed.

The ACCC urged people to take extreme caution when using vehicle jacks, ramps and stands and trolley jacks. Suppliers were reminded that these products must meet the relevant mandatory safety standards before they can be supplied in Australia.

Online child car restraints recalled

Following the recall of unsafe child car restraints by an online trader, the ACCC raised a serious safety alert about the need for consumers to take extreme caution when buying or borrowing, installing and using child car restraints.

The baby car seats, which were supplied via eBay Australia, breached the mandatory safety standard because they were supplied without an upper tether strap. In the event of a car accident this breach poses risks of serious injury or death.

Safety tips for kid's toys

Two-piece party horns supplied by Bakery Sugarcraft Party Horns and sold by various department stores were recalled after tests revealed them to be a choking hazard for children under three years of age.

Following an incident where a two-year-old boy nearly choked when the smaller part of the mouthpiece detached from the party horn, the ACCC commissioned testing of the product, which resulted in it failing to meet the requirements of the mandatory safety standard for toys for children three years and under.

The ACCC issued a media release warning that these products had been recalled and advising parents and carers about crucial steps to take to ensure the toys their children play with are safe.

Flammable children's nightwear recalled

Parents and carers were urged to check children's sleepwear after Big W's recall of 27 garment styles incorrectly labelled as 'low fire danger'.

While the garments recalled by Big W are more likely to ignite and burn more quickly than those that meet requirements for low fire danger labelling, the ACCC issued a warning that even low fire danger garments are not fireproof and that care should be taken at all times to ensure that children are not exposed to fire hazards.

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.

Merger reviews

The ACCC conducted 77 reviews (including confidential and public merger reviews) between 1 July and 30 September 2009; of these, 87 per cent of merger proposals were not opposed. The ACCC expressed serious competition concerns in three confidential review proposals and opposed one public proposal outright. Section 87B undertakings were accepted for one merger proposal, and one variation to existing undertakings was accepted during the quarter. No decisions were made in four reviews, either because the proposal was withdrawn or because a view could not be formed on a confidential basis.

Table 1 Merger review outcomes

	Confidential	Public	Total
Total reviews undertaken 1 July 30 September 2009	41	36	77
This total can be broken down into the following categories			
Not opposed	35	32	67
Finished—no decision (including withdrawn) ¹	3	1	4
Opposed outright	0	1	1
Confidential review—ACCC concerns expressed	3	0	3
Resolved through undertakings ²		1	1
Variation to undertaking accepted ¹	0	1	1

Notes

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

2 Only public matters can be resolved through undertakings.

Time taken to assess mergers

The following table breaks down the time taken by the ACCC to assess merger proposals completed. This does not include the four matters where no decisions were made or 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 ¹	Percentage of mergers (%)
Two weeks or less	28	39
Four weeks or less	24	72
Six weeks or less	8	83
Eight weeks or less	5	90
More than eight weeks	7	10

Note

- 1 These do not include four matters where no decisions were made or one variation to an undertaking

Statements of issues

Three statements of issues were released during the September quarter:

- Pact Group Pty Ltd—proposed acquisition of certain assets from Huhtamaki Australia Pty Ltd—12 August 2009
- Thomson Reuters (Professional) Australia Limited—proposed acquisition of Ernst and Young's tax compliance software products—19 August 2009
- Caltex Australia Limited—proposed acquisition of the retail assets of Mobil Oil Australia Pty Ltd—2 September 2009

Public competition assessments

To support the aim of fostering informed markets and providing an enhanced level of transparency in its decision-making, the ACCC provides public competition assessments outlining how decisions are reached on matters of particular public interest or that have important precedence value.

The ACCC issued three public competition assessments during the September 2009 quarter:

- Woolworths Ltd—proposed acquisition of Macro Wholefoods Market—14 July 2009
- Rheem Australia Pty Ltd—proposed acquisition of Aqua-Max Pty Ltd—30 July 2009
- POTA NSW Pty Ltd—proposed acquisition of Maritime Container Services Pty Ltd—15 September 2009

Section 87B undertakings

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

- Pfizer Inc—proposed merger with Wyeth Corp—30 September 2009

One variation to existing undertakings was accepted in the September quarter:

- Asciano undertakings—monitoring and compliance post-restructure—19 August 2009

Major matters

Major matters decided during the September 2009 quarter included:

- Pfizer Inc—proposed merger with Wyeth Corp—30 September 2009
- POTA NSW Pty Ltd—proposed acquisition of Maritime Container Services Pty Ltd—26 August 2009
- Nufarm Limited—completed acquisition of A H Marks Holdings Limited—19 August 2009

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

Pfizer Inc—proposed acquisition of Wyeth Corp

Result | on 30 September 2009 the ACCC announced its decision not to oppose the proposed acquisition and to accept court enforceable undertaking.

Summary | Pfizer Inc and Wyeth Corp, both global pharmaceutical companies, entered into an arrangement whereby Pfizer would acquire Wyeth. In Australia, Pfizer and Wyeth compete in a number of human and animal health markets, with Wyeth operating its animal health business under the name **Fort Dodge Australia**.

The ACCC commenced an informal review of the proposed acquisition on 3 June 2009.

After consultation with a range of market participants, including wholesalers, veterinarians, government agencies and other pharmaceutical manufacturers, the ACCC identified a number of animal health markets where divestitures were required to address competition concerns.

The ACCC concluded that the proposed acquisition would significantly increase concentration in a number of animal vaccine markets because of the limited number of current suppliers. Without the proposed divestitures, there would be three or fewer suppliers, including Pfizer, in the animal vaccine markets. The ACCC found that new entrants or imports were unlikely to effectively constrain the merged entity because of significant regulatory and other barriers associated with the manufacture and importation of vaccines.

Further, the ACCC concluded that the merged entity would have considerable market power in certain animal pharmaceutical markets through the supply of market-leading cattle and sheep worming products. The ACCC found that other cattle and sheep worming products would be unlikely to constrain the merged firm and generic entry was unlikely to be timely or effective given the difficulties in accessing the active ingredient used to make these worming products.

To address these concerns Pfizer offered a court enforceable undertaking that will see certain Fort Dodge assets sold after completion of the acquisition. In consultations on

the undertaking, market participants widely agreed the competition concerns would be resolved through the sale of the assets as two packages:

- The Fort Dodge companion animal business, including a number of companion animal products, to be sold to Boehringer Ingelheim, which the ACCC has approved as the purchaser.
- The livestock business, which includes a number of Fort Dodge livestock products, and a manufacturing facility located in Penrith. The ACCC will approve a purchaser for these assets in due course.

Generally, market participants did not raise competition concerns relating to the human health markets, and the ACCC did not identify any further concerns in these markets.

The transaction is, or has been, reviewed by a number of competition agencies around the world. In conducting its informal review, the ACCC cooperated closely with overseas agencies that were also reviewing the transaction.

On 30 September 2009 the ACCC accepted the court enforceable undertaking offered by Pfizer and announced its decision.

POTA NSW Pty Ltd—proposed acquisition of Maritime Container Services Pty Ltd

Result | on 26 August 2009 the ACCC announced its decision to oppose the proposed acquisition.

Summary | POTA NSW Pty Ltd (POTA) entered into an agreement to acquire 100 per cent of the issued share capital in Maritime Container Services (MCS). The ACCC view is that the proposed acquisition would be likely to have the effect of substantially lessening competition in the market for the supply of container storage services with rail transport facilities in Sydney.

MCS and POTA NSW both operate parks that provide storage and other services for empty containers in the Port Botany precinct with rail access. The only other provider of storage services of this type in the area is Patricks' facility in Camellia. The ACCC investigation indicated that the proposed acquisition would therefore result in a reduction in the number of operators offering storage for empty containers moved by rail from three to two.

Market inquiries indicated that shipping lines, exporters and transport operators are heavily reliant upon the three container park facilities with rail facilities. The ACCC found that the proposed acquisition would significantly increase the level of concentration in the market for the supply of container storage services with rail transport facilities in Sydney. It was found that post-acquisition, there would be no comparable substitutes readily available for the storage of empty containers to be transported by rail. Further, the ACCC found that it was unlikely that there would be sufficient entry or expansion of existing facilities to provide an effective competitive constraint on the merged entity post-merger.

The ACCC was concerned that post-acquisition POTA would have the ability to significantly and sustainably increase prices or exercise market power in other ways, such as non-price terms and conditions for the use of the MSC Cooks River and POTA Port Botany container parks. Therefore, the ACCC formed the view that the proposed acquisition would be likely to result in a substantial lessening of competition, with effects on prices for the shipping lines and their customers.

A public competition assessment was published on the ACCC website on 15 September 2009.

Nufarm Limited—completed acquisition of A H Marks Holdings Limited

Result | on 19 August 2009 the ACCC decided not to oppose the proposed acquisition.

Summary | on 5 March 2008 Nufarm Limited acquired all shares in A H Marks Holdings Limited, a United Kingdom-based manufacturer and supplier of phenoxy herbicides. Pre-acquisition A H Marks supplied phenoxy herbicides to Australia under chemical registrations held by its Australian subsidiary, A H Marks Australia Pty Ltd.

The ACCC considered the competitive effects of the completed acquisition in the context of the national markets for the manufacture and supply of:

- MCPA active ingredients (including MCPA technical acid and MCPA 2-ethylhexyl ester)
- 2,4-D active ingredients
- straight MCPA formulated products
- MCPA active ingredients.

Although the completed acquisition resulted in Nufarm increasing its already high market share, the ACCC considered that the merged entity would be constrained by actual and potential import competition. In reaching its conclusion the ACCC noted imports of MCPA active ingredients from Asia and Europe as well as the recent entry to the market of a new supplier of MCPA active ingredients and the strong likelihood of entry by other suppliers in the foreseeable future.

2,4-D active ingredients

The ACCC considered that the completed acquisition was unlikely to raise competition concerns in this market because of the limited overlap between the merger parties and the existence of a number of other competitors, which would constrain the merged entity.

Straight MCPA formulated products

Given its conclusion that no substantial lessening of competition was likely in the (closely related) upstream MCPA active ingredient market, the ACCC considered that the completed acquisition was also unlikely to raise competition concerns in this market. The ACCC noted the existence of a number of other competitors and the potential for new entry, which it considered would constrain the merged entity.

Subsequently, the ACCC formed the view that the completed acquisition was unlikely to substantially lessen competition in any of the relevant markets.

4. Adjudication

Authorisations

During the September 2009 quarter, the ACCC received 34 new authorisation applications, covering 18 projects. Of these, 28 applications covering 15 projects are to take account of amendments to the Trade Practices Act (Cartel Conduct) Act, which commenced on 24 July 2009.

At 30 September 2009 a total 33 authorisation applications, covering 10 projects, were being considered by the ACCC.

Matters finalised

Softwood Tasmania Joint Venture—A91120 to A91122

Summary | on 17 February 2009, Forestry Tasmania, Tasmania Softwood Fund and Southern Hemisphere Softwood Strategies (the JV participants) applied for authorisation of the relevant provisions of a joint venture agreement and related arrangements for the planting, cultivating, harvesting, processing, marketing and selling of softwood logs in Tasmania.

The joint venture involves the JV Participants appointing 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.

On 29 July 2009, the ACCC released a final determination granting authorisation to the arrangements for 10 years.

TOTE Tasmania Pty Ltd and others—A91123, A91124, A91158 and A91159

Summary | on 27 February and 24 July 2009 TOTE Tasmania Pty Ltd, ACTTAB Limited and Racing and Wagering Western Australia applied for authorisation for:

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

On 11 September 2009 the ACCC issued a final determination granting authorisation until 28 May 2014.

Tabcorp Manager Pty Ltd—A91127–A91132 and A91162–A91165

Summary | on 30 March and 24 July 2009 Tabcorp Manager Pty Ltd applied for authorisation to give effect to the agreements entered into between Tabcorp and ACTTAB Ltd on 20 March 2009, and between Tabcorp and Racing and Wagering

Western Australia on 16 March 2009 in respect of agreements governing ACTTAB's and RWWA's participation in the SuperTAB Pool operated by Tabcorp.

On 9 September 2009 the ACCC issued a final determination granting authorisation until 14 August 2012.

Australian Brick and Blocklaying Training Foundation Ltd—A91133 and A91166

Summary | on 15 April and 24 July 2009 the Australian Brick and Blocklaying Training Foundation applied for re-authorisation to impose 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 Australian Capital Territory.

The funds will be used to create apprenticeship opportunities for school leavers and mature age entrants, and to provide subsidies for employers of apprentice bricklayers to alleviate shortages of skilled bricklayers.

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

Woodside Energy Ltd and Benaris International Pty Ltd—A91135 and A91157

Summary | on 16 April and 24 July 2009 Woodside Energy Ltd and Benaris International Pty Ltd applied for authorisation to jointly market and sell their shares of the Otway Gas Project joint venture's liquefied petroleum gas (LPG) to a common customer or common customers.

Woodside and Benaris are two of the four partners in the Otway unincorporated joint venture. The joint venture, operated by Woodside, extracts LPG (specifically propane and butane for such applications as residential heating and transport) from offshore fields south of Port Campbell, Victoria.

On 2 September 2009 the ACCC issued a final determination granting authorisation until 31 December 2012.

Australian Newsagents Federation Ltd—A91134

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

On 16 July 2009 the ACCC granted conditional authorisation in respect of the proposed arrangements for five years.

Retail Energy Market Company Limited—A91136–A91138, A91170 and A91171

Summary | on 1 May and 24 July 2009 the Retail Energy Market Company Ltd (applied for re-authorisation of Chapter 5 (which sets out rules for dealing with imbalances in the gas network) and Chapter 6 (which sets out procedures for ensuring compliance with the RMR) of the Retail Market Rules and the associated ancillary deeds. Gas retail market systems in South Australia and Western Australia operate under the RMR.

On 26 August 2009 the ACCC issued its final determination granting authorisation to the arrangements for 10 years in Western Australia, and in South Australia, for 10 years or until REMCo's South Australian functions are transferred to the Australian Energy Market Operator.

Transport Workers Union of Australia SA/NT Branch—A91146 and A91179

Summary | on 25 June and 5 August 2009 the Transport Workers Union of Australia SA/NT Branch (TWUA) applied for 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 and the new owner of the Dairy Farmers business, Parmalat.

The TWUA proposed that collective bargaining would be over matters such as distribution-contract terms, the rationalisation of distribution businesses and any dispute between vendors and processors.

On 9 September 2009 the ACCC issued a final determination granting authorisation for five years.

Draft determinations issued (not otherwise appearing above)

Chevron Australia Pty Ltd and others—A91139, A91140, A91160 and A91161

Summary | on 20 May and 24 July 2009 the applicants together with potential future equity partners* in the Gorgon Gas Project 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 understandings between the applicants containing common terms and conditions, including price and price arbitrations and determinations, upon which domgas will be offered for sale and sold by the applicants
- in relation to 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.

Authorisation was sought for a period of the earlier of:

- until customer agreements have been reached for the sale of 2000PJ of domgas, or
- six years from the date of the first supply of domgas to a customer in Western Australia.

The ACCC granted conditional interim authorisation to the applicants on 24 June 2009. Interim authorisation came into effect on 15 July 2009.

The ACCC released a draft determination on 17 September 2009 proposing to grant authorisation until 31 December 2015.

* Future equity partners are limited to any customer that purchases LNG from the applicants, up to a total of 10 per cent equity interest held by all LNG customers in the Gorgon Gas Project.

Southern Sydney Regional Organisation of Councils—A91143 and A91167

Summary | on 18 June and 24 July 2009 Southern Sydney Regional Organisation of Councils applied for 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 the Ashfield, Botany Bay, Burwood, Canada Bay, City of Sydney, Leichardt, Marrickville, Randwick, Waverley and Woollahra councils.

On 15 July 2009 the ACCC granted interim authorisation to allow the councils to engage in pre-contract tender activities.

On 16 September 2009 the ACCC issued a draft determination proposing to grant authorisation in respect of the proposed arrangements until 31 December 2027.

Applications lodged (not otherwise appearing above)

Australian Amalgamated Terminals Pty Limited—A91141, A91142, A91181 and A91182

Summary | on 10 June and 5 August 2009 Australian Amalgamated Terminals Pty Limited applied for authorisation to give effect to the agreements and related arrangements that establish the AAT joint venture.

AAT was established in 2002 and operates automotive and general cargo terminals at various ports around Australia.

The ACCC has sought submissions from interested parties and the matter is under consideration. The ACCC anticipates releasing a draft determination responding to the AAT's applications in October 2009.

The University of Melbourne and others—A91144, A91145 and A91178

Summary | on 19 June and 4 August 2009, the University of Melbourne, on behalf of the Graduate Australian Medical School Admission Test Consortium, applied for authorisation for an agreement to abide by the following two policies adopted by the consortium that govern the selection of applicants to graduate-entry medical schools in Australia.

1. Preference policy

Under the preference policy, applicants submit a single application to the Graduate Australian Medical Schools Admission Centre, listing in order of preference the medical schools to which they wish to apply. The number of preferences (three for students commencing in 2010) is set out in the current *Admission guide*. When an applicant is not selected for an interview, the school must pass the application to that applicant's next preference school.

2. One interview policy

Under the one interview policy, medical school applicants will receive only one offer for an interview. The interview will be conducted by the medical school for which the applicant has given the highest preference. Interviews are awarded based upon a selection process used by each school. Applicants whose rankings are not high enough for them to be offered an interview at their first preference medical school or applicants interviewed but not selected are passed onto their next preferred medical school.

The ACCC is currently seeking submissions from interested parties regarding the applications for authorisation and anticipates releasing a draft determination in October 2009.

Port Waratah Coal Services Limited and others—A91147, A91149, A91168 and A91169

Summary | on 29 June and 24 July 2009 Port Waratah Coal Services, Newcastle Coal Infrastructure Group and Newcastle Port Corporation applied for authorisation for certain aspects of the long-term solution to the capacity constraints at the Port of Newcastle.

In particular, the applicants seek authorisation to make and give effect to a contract, arrangement or understanding that involves proposed conduct set out in their capacity framework arrangements. The applicants requested urgent interim authorisation of the proposed capacity framework arrangements.

On 22 July 2009 the ACCC granted interim authorisation to allow the applicants to commence implementing the capacity framework arrangements. Interim authorisation was subject to a condition that the applicants execute their respective capacity framework documents by 31 August 2009.

On 31 August 2009 the applicants advised that one party failed to execute their capacity framework documents. Accordingly, the ACCC revoked interim authorisation on 1 September 2009. On 14 September 2009 the applicants sought to amend the conduct for which authorisation is sought.

On 17 September 2009 the applicants advised that all their respective capacity framework documents had now been executed. The ACCC granted interim authorisation of the amended capacity framework arrangements on 23 September 2009.

The ACCC has sought submissions from interested parties and the matter is under consideration. The ACCC anticipates releasing a draft determination responding to the applications in October 2009.

Medicines Australia Limited—A91150, A91155, A91156, A91183 and A91184

Summary | on 30 June and 12 August 2009 Medicines Australia applied for authorisation of its code of conduct (edition 16).

The ACCC has sought submissions from interested parties and the matter is under consideration. The ACCC anticipates releasing a draft determination responding to Medicines Australia's application in October 2009.

Virgin Blue Airlines Pty Ltd and others—A91151, A91152, A91172 and A91173

Summary | on 9 July and 24 July 2009 the Virgin Blue Group and Delta applied for authorisation to make and give effect to their coordination agreement, the cooperation agreement and the joint venture agreement (together the Virgin Blue / Delta Joint Venture).

Through the Virgin Blue / Delta Joint Venture, the applicants are seeking to establish a commercial relationship to provide customers with a broad and coordinated transpacific air passenger network (transpacific routes being those between Australia and mainland United States).

The Virgin Blue / Delta Joint Venture contemplates coordination and agreement between the applicants on transpacific routes relating to:

- schedules, capacity and routes flown
- passenger sales and marketing activities
- pricing and revenue management
- enhancement of frequent flyer and lounge program offerings
- purchasing and procurement.

It also contemplates the pooling of revenue under arrangements founded on the principle of metal neutrality. This means the applicants will adopt revenue allocation arrangements that make it irrelevant, from the perspective of either applicant, which applicant's aircraft a passenger travels on.

The ACCC has sought submissions from interested parties and the matter is under consideration. The ACCC anticipates releasing a draft determination responding to the applications in October 2009.

Australian Payments Clearing Association Limited—A91153 and A91154

Summary | on 13 July 2009 the Australian Payments Clearing Association applied for revocation and substitution of authorisations A30228 and A30229. APCA is seeking a replacement authorisations for provisions contained within the consumer electronic clearing system regulations and manual.

The ACCC has sought submissions from interested parties and the matter is under consideration. The ACCC anticipates issuing a draft determination responding to APCA's application in October or November 2009.

Cuscal Limited and others—A91175 and A91177

Summary | on 28 July 2009 Cuscal Limited, National Australia Bank Limited and rediATM network members applied for authorisation for, in broad terms, the applicants (as well as each future member) to make and give effect to arrangements between Cuscal and members:

- about the deployment of ATMs in the rediATM network
- not to directly charge cardholders of the members for the supply of ATM transaction services at a rediATM
- not to charge cardholders of non-members a direct charge fee that exceeds the maximum direct charge for the supply of ATM transaction services at a rediATM as set by Cuscal in consultation with members
- to refuse to give a discount to a foreign cardholder in relation to the supply of ATM transaction services at a rediATM.

The ACCC has sought submissions from interested parties and the matter is under consideration. The ACCC anticipates releasing a draft determination responding to the applicants' applications in October or November 2009.

Hurstville City Council and others—A91180

Summary | on 4 August 2009 the councils of Hurstville, Kogarah, Rockdale and Sutherland applied for authorisation for 20 years to make and give effect to a contract, arrangement or understanding to jointly tender for the provision of all municipal putrescible waste transfer, processing and disposal services in their respective local government areas.

The councils also requested immediate interim authorisation to begin the joint tender process. The councils intend to enter into separate contracts with the successful tenderer(s), although these contracts would contain identical terms and conditions.

On 26 August 2009 the ACCC granted interim authorisation to conduct a joint tender process, including inviting and evaluating tenders, selecting a winner and preparing (but not signing) contracts for the services of the winning tenderer.

Interim authorisation is effective until a determination on the matter comes into effect or the ACCC revokes interim authorisation.

The ACCC sought submissions from interested parties and anticipates releasing a draft determination in October 2009.

Collective bargaining notifications

The ACCC received 65 notifications of collective bargaining involving two new collective bargaining matters during the September 2009 quarter.

Summaries of these notifications are provided below.

PaintRight Ltd—CB00081 and CB00137

Summary | on 21 August 2009 PaintRight Ltd notified a proposal to negotiate on behalf of 56 independently owned paint retailers in its banner group with 57 suppliers, principally of paint and painting accessories, but also, for example, of banking and marketing services.

The ACCC sought submissions from interested parties before allowing the notifications to stand on 16 September 2009.

Australian Independent Record Labels Association Ltd—CB00073 and CB00080

Summary | on 9 July 2009 the Australian Independent Record Labels Association Ltd notified a proposal to collectively bargain, on behalf of 63 participating members, with Telstra, Optus, Foxtel, Austar, MTV, XYZ, Fuel TV and Bigpond on licensing its members' sound recording rights for public performance and transmission of music videos.

The ACCC sought submissions from interested parties before allowing the notifications to stand on 5 August 2009.

Exclusive dealing notifications

During the September quarter 2009, the ACCC received 165 new notifications involving 79 new exclusive dealing matters (of which one matter consisting of four notifications was withdrawn). Notifications of interest considered during the quarter include:

Brisbane International Speedway Pty Ltd and others—N94032 and N94034

Summary | on 7 July 2009 Brisbane International Speedway Pty Ltd, Murray Bridge Sporting Car Club and Motorcycle Club Incorporated and Premier Speedway Club Warrnambool lodged three notifications.

The notifying parties describe the conduct as:

- offer by the notifying parties, and supply by the notifying parties pursuant to such offers, of race services from time to time, including access to track facilities and race events, subject to a condition that:
 - the offeree has purchased a suitable licence from the National Association of Speedway Racing Pty Ltd (NASR) to compete at the track, or
 - the offeree has purchased a suitable licence from NASR to visit the racing pit area.

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

Australian Ice Hockey Federation Incorporated—N94049

Summary | on 27 July 2009 Ice Hockey Australia lodged a notification proposing to sanction, through suspension or expulsion, any member of Ice Hockey Australia who has participated, or is participating, in a non-sanctioned Australian or international ice hockey game or league.

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

eDosh Pty Ltd—N94164

Summary | eDosh proposes to offer the following member services to persons who subscribe for eDosh's services:

- (i) The provision of commissions and rebates to members who purchase products and services through those third party suppliers.
- (ii) The provision of commissions to members (and their referrers up to the fifth referral level) who referred the members referred to in the preceding paragraph to eDosh.
- (iii) Provision of those commissions and rebates by way of loyalty points or credits (eDosh dollars), by direct payment or other means.
- (iv) Additional benefits, including the ability to participate in competitions offered to members as a result of promotional programs carried out by eDosh from time to time.

eDosh proposes to supply the member services set out at (i) and (iii) to a member on the condition that the member acquires goods or services from one of the following third party suppliers:

- Coles Group Ltd
- Gotalk Communications Pty Ltd

and on the condition that eDosh receives a commission or a rebate from the third party supplier.

eDosh also proposes to supply the member services set out at (ii), (iii) and (iv) to a member on the condition that another member who was referred to eDosh by the member (or their referrers up to the fifth level) acquires goods or services from one of the above third party suppliers, and on the condition that eDosh receives a commission or rebate from that third party supplier.

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

5. Regulatory affairs

The ACCC and the Australian Energy Regulator 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 September 2009 quarter, the ACCC:

- announced its decision to extend the six declarations that enable Telstra's competitors to provide fixed voice and broadband services over Telstra's copper network for a further five years
- issued its draft pricing principles and indicative prices for six fixed lines wholesale services for the next three years
- commenced arbitration of five new access disputes
- made an interim determination and extended the operation of three interim determinations.

In this quarter, the Australian Competition Tribunal finalised its review of an earlier ACCC decision concerning Telstra's supply of public switch telephone network originating service (PSTN OA).

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.

ACCC confirms five-year extension for key Telco declarations

During the September 2009 quarter, the ACCC announced its decision to extend the six declarations—the unconditioned local loop service (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)—that enable Telstra's competitors to provide fixed voice and broadband services over Telstra's copper network for a further five years.

The ACCC chose not to vary the declared ULLS to include sub-loop unbundling. This decision will ensure consumers continue to reap the benefits of price and service competition in the sector.

The ACCC considers that the government's National Broadband Network, announced in April 2009, will have a major effect on the future telecommunications regulatory environment, particularly in the regulation of the fixed services subject to this declaration review. A lack of certainty regarding ongoing access in a period of transition could have a significant negative impact on competition and investment by both access providers and access seekers, to the detriment of end users.

Telstra exemption applications

The ACCC did not have any exemption applications for consideration during the September 2009 quarter. However, the Australian Competition Tribunal concluded its review of ACCC's decisions on Telstra's applications regarding certain fixed line access services.

Australian Competition Tribunal issues LCS, WLR and PSTN OA exemption orders

During the September 2009 quarter, the Australian Competition Tribunal issued orders exempting Telstra from its obligations to supply the LCS, WLR and the PSTN OA. The orders vary those granted by the ACCC in August and October 2008.

Under the tribunal's orders, whether an exemption will apply in a particular area will depend on a number of factors, including the number of Telstra's competitors already using the ULLS in that area as well as their market share. Twice a year, the ACCC will publish on its website a list of geographic areas where the exemptions will apply. No exemptions will come into effect before the end of 2010.

Access terms and conditions—indicative prices, undertakings and disputes

ACCC issues draft pricing principles, indicative prices for fixed line services

During the September 2009 quarter, the ACCC issued its draft pricing principles and indicative prices for six fixed line wholesale services (ULLS, LSS, PSTN TA, PSTN OA, LCS and WLR) for the next three years.

These services enable Telstra's competitors to provide fixed voice and broadband services over Telstra's copper network. The draft pricing principles propose that all six services will be priced on a cost basis. The ACCC considers setting indicative prices for wholesale access to these services will help to guide industry when negotiating the terms and conditions of access.

Access disputes

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

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

In the September quarter 2009, five new access disputes were notified to the ACCC—two each for the LSS and the mobile termination access service (MTAS), and one for the WLR. These new access disputes are between:

- Adam Internet Pty Ltd (a/s) and Telstra Corporation Ltd (LSS)
- Network Technology (Australia) Pty Ltd (a/s) and Telstra Corporation Ltd (LSS)
- Vodafone Network Pty Ltd (a/s) and Telstra Corporation Ltd (MTAS)
- Telstra Corporation Ltd (a/s) and Vodafone Network Pty Ltd (MTAS),
- Chime Communication Pty Ltd (a/s) and Telstra Corporation Ltd (WLR).

Network Technology subsequently withdrew its notified access dispute between itself and Telstra in relation to Telstra's supply of the LSS. However, with these new notifications, the ACCC continues to arbitrate 42 access disputes.

Interim and final determinations

During the September 2009 quarter, the ACCC issued one interim determination and extended the operation of three interim determinations for another period of 12 months. These determinations concern access disputes over the supply of the WLR service, the ULLS and the LSS. The ACCC did not make any final determination in the September 2009 quarter.

Published determinations

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

Determination	Total
Active disputes at 30 September 2009	42
Decisions subject to Federal Court review	0
New arbitrations begun in the September quarter 2009	5
Interim determinations issued in the September quarter 2009	1
Final determinations issued in the September quarter 2009	0
Withdrawal of disputes in the September quarter 2009	1
Published determinations in the September quarter 2009	0

Australian Energy Regulator

The focus of the AER's work in the September quarter has been the beginning of its price-revenue review process for the Queensland and South Australian electricity distribution network businesses.

At the same time, the AER began its review of gas distribution access arrangements for the New South Wales and Australian Capital Territory gas networks. This process will continue for up to 13 months and will conclude by May 2010.

Other major areas of work included a number of enforcement actions against certain market participants. In particular, proceedings were instituted in the Federal Court against Stanwell Corporation Limited for alleged contraventions of the National Electricity Rules (NER) in July. In September, the AER issued two infringement notices on Babcock and Brown Power (BBP) generators for putting the safety and security of the power system at risk.

Electricity network regulation matters

Publication of proposed amendments to AER's service target performance incentive scheme for electricity distribution businesses

On 21 September 2009 the AER released for consultation proposed amendments to its service target performance incentive scheme for electricity distribution networks.

The proposed amendments are designed to improve the clarity, effectiveness and operation of the scheme, and to increase its flexibility, most notably for determining the major event day boundary. The amended scheme and an explanatory statement detailing the amendments are available on the AER website, www.aer.gov.au. Interested parties are invited to lodge submissions in response to the proposed amendments by **30 October 2009**.

Draft regulatory information notice for Victorian distribution businesses

On 7 August 2009 the AER approved a proposed regulatory information notice (RIN) for comment by Victorian distribution businesses, in anticipation of the final regulatory information notice being prepared and formally served.

The AER is responsible for making distribution determinations for Citipower, Powercor, Jemena Victoria, SP AusNet and United Energy for the 2011 to 2015 regulatory control period.

To assist with this process, certain information is required from these businesses so the AER may assess each proposal and make a distribution determination for each. The National Electricity Law permits the AER to use regulatory information instruments to gather information from regulated businesses and related providers if it is considered reasonably necessary to carry out the AER's functions.

In April 2009 the AER provided the businesses with draft regulatory templates and written notices for comment. Following comments and further work, staff made significant refinements to these instruments and sought to issue a proposed RIN to the distribution businesses (written notice and regulatory templates), after which the businesses had 20 business days to provide comments to the AER.

The RIN will then be finalised and formally issued to the business. The information sought by the RIN (and accompanying templates) must be submitted to the AER with the distribution businesses' regulatory proposal, which is due on 30 November 2009. The AER will use this information when making its draft distribution determinations, which will be published in the first half of 2010.

Draft determination and public forum—Victorian distribution businesses' initial AMI budgets and charges

On 21 August 2009 the AER conducted a public forum to outline key aspects of its Victorian advanced metering infrastructure (AMI) draft determination, released on 31 July 2009. The forum also gave stakeholders an opportunity to raise issues and ask questions on the draft determination.

Under Victorian regulatory arrangements, CitiPower, Jemena, Powercor, SP AusNet and United Energy Distribution (the Victorian electricity distribution network service providers, or DNSPs) are required to install AMI for all customers consuming less than 160 MWh of electricity per annum by December 2013. The businesses are to recover costs for the roll-out via a pass-through mechanism, established through a Victorian Order-in-Council gazetted on 28 August 2007 and amended on 25 November 2008 and 22 March 2009. AMI is expected to deliver the following benefits:

- the introduction of cost-reflective time-of-use tariffs, resulting in more efficient network use
- distributor operational cost savings resulting from remote meter reading and connection and disconnection of customers' supply
- more efficient outage detection
- improved accuracy of customer billing.

As part of this process the AER must approve or reject the Victorian distributors' initial AMI budget applications covering forecast capital expenditure and operating expenditure for the 2009–11 period.

The AER must also approve or reject initial applications for metering charges to apply for 2010 and 2011. These charges recover distributors' expenditures resulting from metering costs over the 2006–08 period and any pre-start date AMI actual capital expenditure before 2009. The distributors' budget and charges applications are available on the AER website, www.aer.gov.au.

For the average customer, the draft determination would result in metering charges for 2010 that are \$53 above the 2009 charges, with a further \$25 increase in 2011. The increases mainly reflect the impact of large expenditures in new metering technology and supporting infrastructure.

The AER is required to publish a final determination on the AER website by 30 October 2009.

Regulatory proposals from Queensland and South Australian electricity DNSPs

On 3 August 2009 the AER hosted a public forum in Brisbane on the regulatory proposals submitted by Energex and Ergon Energy. The AER also hosted a public forum on ETSA Utilities' regulatory proposal on 6 August 2009 in Adelaide.

Under the NER, the AER is required to make distribution determinations for Energex and Ergon Energy and ETSA Utilities electricity distribution businesses. The distribution determinations will establish a revenue requirement for each distribution business for the 2010–15 regulatory control period.

The AER published regulatory proposals received from Energex, Ergon Energy and ETSA Utilities in July 2009. The AER's preliminary examination of the regulatory proposals found that each proposal sufficiently complies with the relevant provisions of the NER. The AER invited interested parties to make written submissions on each distribution business's regulatory proposal; submissions closed on 28 August 2009.

The AER also published its proposed negotiated distribution service criteria for each distribution business. The interested parties were invited to make submissions on these criteria.

The regulatory proposals and related documentation are available on the AER website, www.aer.gov.au, along with minutes and copies of the presentations from the public forums. Draft decisions are expected to be published at the end of November 2009, followed by final decisions in April 2010.

Final decision—Citipower's capital contribution charge policy

On July 17 2009 the AER released a decision on CitiPower's capital contribution charge policy for recovering future upstream network augmentation costs.

This decision follows a draft decision on *CitiPower's capital contribution charge for marginal cost of network reinforcement*, which was published by the Essential Services Commission of Victoria (ESCV) in December 2008.

The AER has now assumed responsibility for the economic regulation of electricity distribution services in Victoria from the ESCV, including making decisions on whether Victorian distributor charges for connecting new customers are fair and reasonable under the ESCV's regulatory instruments and guidelines.

The ESCV undertook a formal review of the fairness and reasonableness of CitiPower's charges for recovering the cost of augmenting shared assets upstream of the point of connection (deep connection), and published a draft decision for consultation that rejected CitiPower's approach. The AER progressed the ESCV review and similarly concluded that CitiPower's current charge rates do not comply with the ESCV guideline.

Gas network regulation matters

Access arrangement revision review processes for gas distribution pipelines

ActewAGL

On 30 June 2009 ActewAGL submitted its access arrangement proposal for the gas distribution network in the Australian Capital Territory, Queanbeyan and the Palerang region. Revisions to the access arrangement are to apply for the 2010–15 period.

The AER published ActewAGL's proposal and access arrangement information on 21 July 2009 and hosted a public forum on 27 July 2009 in Canberra, at which ActewAGL outlined key aspects of its access arrangement proposal.

Interested parties were invited to make written submissions on the proposal by 11 September 2009.

Country Energy

On 1 July 2009 Country Energy submitted its access arrangement proposal for the Wagga Wagga gas distribution network. The revisions to the access arrangement are to apply for the 2010–15 period.

The AER published Country Energy's proposal and access arrangement information on 21 July 2009 and hosted a public forum in Wagga Wagga on 28 July 2009, at which Country Energy outlined key aspects of its access arrangement proposal.

Interested parties were invited to make written submissions on the proposal by 11 September 2009.

Energy markets

Fines issued—Babcock and Brown Power

On 14 September 2009 the AER served infringement notices on two BBP generators, Playford and Braemar, alleging two breaches of the NER.

On 11 February 2009 a combination of increasing wind generation and generation from Playford power station resulted in the violation of a constraint equation, which was intended to prevent the overloading of a transmission line in the area. As a result, the Australian Energy Market Operator (AEMO) issued dispatch targets to Playford to reduce its output. However, despite these repeated instructions, Playford continued to generate electricity above the dispatch targets for approximately one hour.

Accordingly, the AER has alleged that Playford did not follow dispatch instructions on 11 February 2009, in breach of clause 4.9.8(a) of the NER.

The AER also considers that unit 1 of the Braemar power station did not follow dispatch instructions on 17 March 2009. Despite AEMO invoking a constraint limiting its output to zero until 1.05 pm, Braemar unit 1 began generating power at 12.47 pm.

Each alleged breach carries an infringement penalty of \$20 000. If BBP pays the \$40 000, the matter will be closed and the AER will release an investigation report. Payment of the two \$20 000 infringement penalties does not entail an admission by BBP that it breached the NER.

Quarterly compliance report for April to June 2009

In August 2009, the AER published its latest energy compliance report, which deals with compliance monitoring and enforcement matters in both the electricity and gas industries for the quarter ending 30 June 2009.

The report provides an overview of the results of investigations (including special reports into significant market or power system events), compliance audits and targeted compliance reviews as well as electricity derogations and rebidding inquiries undertaken by the AER during that quarter. The AER's quarterly compliance reports are available at www.aer.gov.au.

AER begins proceedings against Queensland generator Stanwell

On 20 July 2009 the AER announced that it had begun proceedings in the Federal Court, Brisbane against Stanwell Corporation Limited (a Queensland Government-owned electricity generator) for alleged contraventions of the NER.

The AER has alleged that Stanwell did not make several of its offers to generate electricity on 22 and 23 February 2008 in 'good faith'. The proceedings arose from the AER's report into the sustained high electricity prices in Queensland on 22 and 23 February 2008. A directions hearing was held on 4 September 2009.

\$5000/MWh reports

The AER published two *Spot prices above \$5000/MWh* reports in July 2009. Both reports dealt with high-price events in June 2009 in Tasmania.

On 1 June 2009 the spot price in Tasmania reached \$9159/MWh for the 10.00 am trading interval, primarily because Hydro Tasmania rebid capacity from prices below \$300/MWh to prices above \$9000/MWh.

On 12 occasions between 10 and 19 June 2009, the spot price in Tasmania exceeded \$5000/MWh. Eleven of the events occurred when sudden and repeated reductions in the output from non-scheduled generation owned by Hydro Tasmania resulted in the

dispatch of other high-priced Hydro Tasmania generation. Coincident with this, there was a step change in the amount of generation capacity offered at prices above \$5000/MWh by Hydro Tasmania.

On 16 June 2009 the weekly cumulative price exceeded the cumulative price threshold. As a result the market operator declared an administered pricing period (the first ever in Tasmania) until 4.00 am on 19 June 2009. The spot price exceeded \$5000/MWh on three occasions only hours after the end of the administered pricing period, but the cumulative price remained below the CPT.

Publication of final rebidding and technical parameters guideline

On 25 September 2009 the AER published the final *Rebidding and technical parameters guideline*.

The guideline outlines the detail that must be contained in a rebid reason submitted to AEMO. In addition, it covers several related areas associated with the bidding and rebidding of technical parameters.

The AER recognises that compliance with the new guideline will require a change to the business practices of many participants. Following consultation with the National Generators Forum, the AER has determined that the new guideline will be effective from 1 December 2009.

On 1 December 2009 the guideline will replace the existing *Rebidding: Guidelines on the disclosure of information* published by the National Electricity Code Administrator in July 2001.

Water

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

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

Education and enforcement activities under the water rules

On 23 June 2009 the Water Market Rules and the Water Charge (Termination Fees) Rules came into effect. With the rules coming into effect, the ACCC began an education campaign that included:

- releasing copies of two brochures to assist irrigators understand trade and transformation opportunities available to them under the water rules
- releasing copies of two comprehensive guides to assist operators to comply with the requirements of the rules
- advertising in eight regional newspapers to announce the commencement of the rules and to provide details of where brochures and guides could be accessed
- providing copies of the irrigator brochures to 64 operators and 121 water intermediaries across the MDB.

On 20 August 2009 the ACCC presented a paper, *Promoting efficient and effective water trading across the Murray–Darling Basin*, to the Australian Economic Forum.

On 28 August 2009 the ACCC released an enforcement guideline, *Enforcement guide for Water Market Rules and Water Charge (Termination Fees) Rules*, to assist industry to understand the ACCC's general approach to the enforcement of the Water Market Rules and Water charge (Termination fees) Rules.

The transition period to the Water Charge (Termination Fees) Rules expired on 31 August 2009 and the ACCC's enforcement role under the Water Act now has greater effect.

Policy development

Water rules monitoring guideline

On 7 August 2009 the ACCC released a consultation paper on operator reporting requirements as part of the monitoring functions provided for under the Water Act. The paper invited interested stakeholders to provide submissions by 14 September 2009.

The Water Act gives the ACCC responsibility for monitoring compliance with the water market and the water charge rules.

Under the Water Act the ACCC is also required to report to the Minister for Climate Change and Water on the results of its monitoring, consistent with an agreement between the minister and the ACCC.

The ACCC received nine submissions to the paper and is considering options for a final position.

Water trading rules

On 10 September 2009 the ACCC released its water trading rules position paper. The paper sets out the ACCC's position on a range of matters relevant to water trading, including the 4 per cent limit, ownership and location restrictions, water delivery rights and irrigation rights. Submissions on the position paper closed on 23 October 2009.

Water Charge (Infrastructure) Rules

On 14 September 2009, the ACCC received a request from the minister for advice and draft rules on the accreditation of state regulators by the ACCC to approve or determine charges under the Water Charge (Infrastructure) Rules. The minister has sought the ACCC's advice by 28 February 2010. The ACCC will release its draft advice and draft rules for public consultation in November 2009.

Price monitoring

Australia Post 2009 draft price notification

On 24 July 2009 Australia Post provided the ACCC with a draft price notification seeking increases in the prices of the letter services over which it has a statutory monopoly. Australia Post proposes to increase the basic postage rate from 55 cents to 60 cents, and to increase the prices of large ordinary letters, small ordinary letters and large pre-sort letters.

The ACCC is currently assessing the draft price notification and has released an issues paper, seeking submissions from interested parties. The closing date for submissions was 18 September 2009. The ACCC anticipates releasing a preliminary view on the proposed price increases in late November 2009 and making a final decision by late January 2010.

Wheat access

Under the federal *Wheat Export Marketing Act 2008*, bulk wheat exporters that 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 will be to operate 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.

In April 2009 three port operators, Co-operative Bulk Holdings, GrainCorp Ltd and ABB Grain Ltd, submitted undertakings to the ACCC for assessment under Part IIIA. After extensive consultation with Australian farm groups, port operators and other grain exporters, the ACCC released draft decisions on 6 August 2009 and 23 September 2009 announcing that it would not accept CBH's, GrainCorp's and ABB's original proposals and requiring them to revise their proposed access arrangements.

On 24 September 2009 CBH, GrainCorp and AusBulk (the wholly owned subsidiary of ABB Grain that owns and operates the ports) submitted revised undertakings to the ACCC for assessment under Part IIIA. On 29 September 2009 the ACCC decided to accept these undertakings.

The arrangements approved by the ACCC include:

- robust prohibitions against each port operator anti-competitively discriminating in favour of its own wheat trading business or hindering access to its port terminal services, with the ACCC being able to order independent audits of each port operator's compliance with the non-discrimination obligations
- clear and transparent port loading protocols that the port operators are obliged to follow in managing demand for the port terminal service—for example, in making decisions about the allocation of shipping slots
- obligations on the port operators to negotiate in good faith with eligible wheat exporters around price and non-price offers of access to port terminal services
- if negotiation fails, the ability of wheat exporters to seek mediation or binding arbitration on price and non-price terms of access to the port operators' port terminal services
- for wheat exporters wishing to take a standard offer, a set of clear and certain minimum non-price terms and conditions of access to port terminal services, with an obligation on each port operator to publish its standard prices for port terminal services at least one month before each new wheat exporting season begins
- obligations on each port operator to publish certain port terminal information to provide greater transparency over its operations.

The arrangements do not extend to 'up-country' supply chains, as the Wheat Export Marketing Act makes clear that the current process is intended to provide for access to the ports only. The government has indicated that it will be monitoring the up-country situation.

In light of the industry's transitional state, the grain port access arrangements have been approved for an initial period of two years. The relatively short duration of the arrangements will ensure that future regulatory arrangements can adapt to any changes in the industry environment.

Fuel monitoring

The ACCC monitors retail prices of petrol, diesel and automotive LPG in all capital cities and around 150 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.

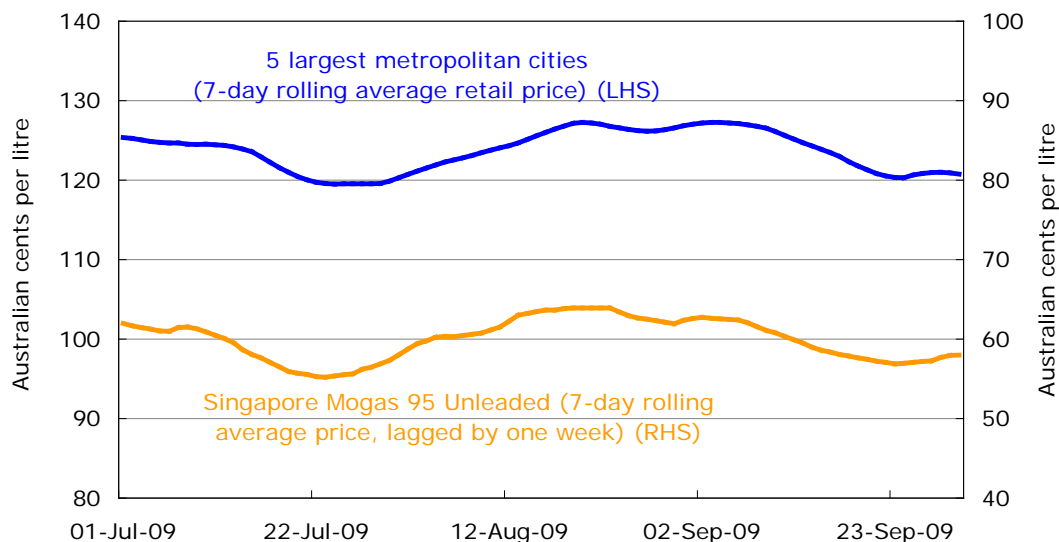
Price movements in the September 2009 quarter

Petrol

In the case of unleaded petrol, the ACCC 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).

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 an exact science, and that other factors can influence retail petrol prices in the short run. This caveat also applies to comparisons of movements between retail diesel and automotive LPG prices and their respective benchmarks.

Chart 5.1 Movements in retail unleaded petrol prices and the international benchmark prices, 1 July to 30 September 2009



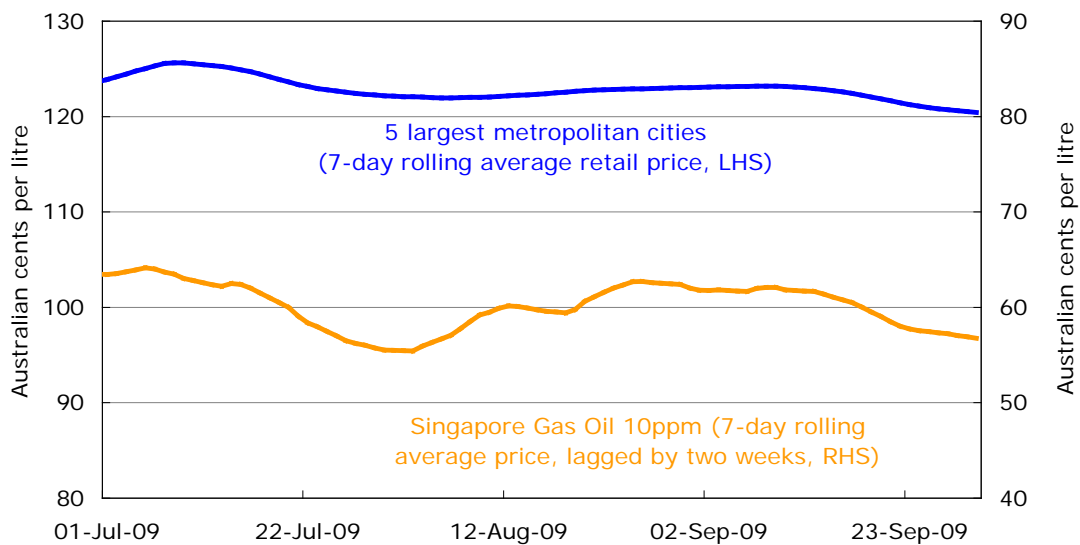
As illustrated in the chart, retail petrol prices broadly tracked movements in the benchmark prices in the September 2009 quarter. From 1 July to 30 September 2009 average retail unleaded petrol prices across the five largest metropolitan cities (on a seven-day rolling average basis) decreased from 125.3 cpl to 120.7 cpl, a decrease of 4.6 cpl.

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. In the chart below, retail diesel prices are shown on the left-hand side of the chart and Singapore Gas Oil prices are shown on the right-hand side.

Over the September 2009 quarter, average retail diesel prices for the five largest metropolitan cities (on a seven-day rolling average basis) decreased by 3.5 cpl, from 123.9 cpl to 120.4 cpl.

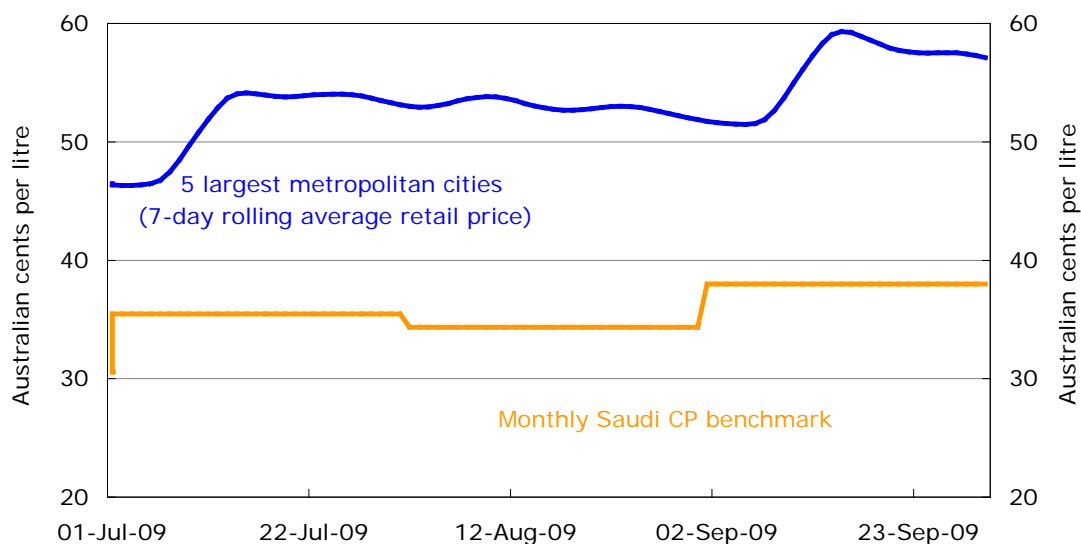
Chart 5.2 Movements in retail diesel prices and the international benchmark prices, 1 July to 30 September 2009



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. From 1 July to 30 September 2009, retail automotive LPG prices in the five largest metropolitan cities (on a seven-day rolling average basis) increased by 10.7 cpl, from 46.4 cpl to 57.1 cpl. The higher retail prices reflected an increase in the Saudi benchmark price since June 2009.

Chart 5.3 Movements in retail automotive LPG prices and the international benchmark prices, 1 July to 30 September 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.

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.

A significant development in the area of consumer protection for the ACCC occurred on 1 August 2009 when the Commission assumed presidency of the International Consumer Protection Enforcement Network. As part of its preparations, the ACCC, as President, is working with ICPEN members to host the next meeting of ICPEN in Australia in November 2009. 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 September 2009 quarter, the ACCC:

- attended and presented at the UNCTAD Intergovernmental Group of Experts on Competition Law and Policy Meeting in Geneva, Switzerland
- presented at the Hong Kong Consumer Council Symposium
- presented at the APEC meetings on cross-border trade, Singapore
- attended the APEC workshops for Toy Safety, Singapore
- attended and presented at the ASEAN Experts Group on Competition Workshop, Malaysia
- attended and presented at the APEC Competition Law Group workshop, Chinese Taipei
- attended the Fordham Heads of Agency Workshop and Fordham Annual Competition Law Conference, New York, USA
- attended the Energy Intermarket Surveillance Group Conference, Calgary, Canada
- attended the International Consumer Product Safety Caucus Stockholm, Sweden
- presented at the OECD Regional Centre for Competition training course, Seoul, South Korea.

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 counterparts. During the September 2009 quarter, the ACCC received and sought information from counterpart agencies in China, Chinese Taipei, the European Commission, France, Portugal, South Africa, Singapore, South Korea, the US, the UK and Vietnam.

Examples of shared information include the ACCC's activities regarding market inquiries, best-practice processes for investigations, product safety standards, outreach methodology and 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 and 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 September 2009 quarter, the ACCC met with representatives of the following agencies:

- Ministry of Economic Affairs, Bhutan
- OECD Competition Division
- United Nations Conference on Trade and Development Competition
- Indonesian Commission for the Supervision of Business Competition
- Hong Kong Consumer Council
- Hong Kong Economy and Commerce Development Bureau
- Fair Trade Commission of Chinese Taipei
- Malaysian Ministry for Domestic Trade and Consumer Affairs
- Tanzanian Fair Competition Commission
- US Department of Justice, Anti-trust Division
- US Federal Trade Commission
- UK Office of Fair Trading
- Canadian Competition Bureau.

7. Reviews and inquiries

Legislative matters

The following legislation came before the Australian Parliament during the September 2009 quarter;

- Federal Court of Australia Amendment (Criminal Jurisdiction) Bill 2008
The Federal Court of Australia Amendment (Criminal Jurisdiction) Bill 2008 was passed with amendments by the Senate on 17 September 2009. The amended Bill will now be considered by the House of Representatives.
If passed, the Bill will enable the Federal Court to apply uniform indictable criminal procedure across Australia to deal with serious cartel offences.
- 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.
The Senate Committee tabled its inquiry report on 7 September 2009. It recommended that the Bill be passed by the Senate. If passed, the Bill will introduce new remedies and powers to the Trade Practices Act 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.

Other developments

Reforms to telecommunications regulation

During the September 2009 quarter, the Minister for Broadband, Communications and Digital Economy announced reforms to existing telecommunications regulation. The proposed reforms are intended to:

- address Telstra's high level of integration to promote greater competition and consumer benefits
- streamline and simplify the competition regime to provide more certain and quicker outcomes for telecommunications companies

- strengthen consumer safeguards to ensure services standards are maintained at a high level
- remove redundant and inefficient regulatory red-tape.

Reports

The following report was provided to the minister during the September 2009 quarter.

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

Parliamentary inquiries

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

- **Senate Economics Reference Committee** | 18 September 2009 | Inquiry into GROCERYchoice website
- **Senate Select Committee on Fuel and Energy** | 25 September 2009 | Inquiry into fuel and energy on the impact of higher petroleum, diesel and gas prices and several related matters
- **Senate Economics Legislation Committee** | 5 October 2009 | Inquiry into the Trade Practices Amendment (Guaranteed Lowest Prices—Blacktown Amendment) Bill 2009

Consultative committees

- **Consumer Consultative Committee** | met 10 July 2009 | issues discussed included:
 - unit pricing
 - the proposed Australian Consumer Law
 - mobile premium services.
- **Health Sector Consultative Committee** | met 18 August 2009 | issues discussed included:
 - recent ACCC activities and compliant statistics
 - the ACCC's compliance and enforcement policy
 - issues regarding the credentialing of medical professionals.

Appendix

Speeches

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

[*Competition in rural and regional areas—an update from the ACCC*](#)

Mr Graeme Samuel, Chairman
Rural Press Club of Victoria, Melbourne, 17 July 2009

[*Promoting efficient and effective water trading across the Murray–Darling Basin*](#)

Mr Ed Willett, Commissioner
Australian Economic Forum, Sydney, 20 August 2009

[*Communications regulation in a changing environment*](#)

Mr Ed Willett, Commissioner
Telstra Public Policy and Communications Group, Sydney, 1 September 2009

[*The ACCC's enforcement approach—new and old*](#)

Mr Marcus Bezzi, Executive General Manager, Enforcement and Compliance Division
Trade Practices Compliance Summit, Sydney, 28 September 2009

News releases

During the September 2009 quarter the ACCC issued 85 news releases, while the AER issued four news releases.

Publications

Publications released from 1 July to 30 September 2009.

Corporate

- *ACCC corporate plan and priorities 2009–10*
- *ACCC ejournal* nos 60 to 62
- *ACCC update*, issue 26, July 2009
- *ACCCCount—A report of the Australian Competition and Consumer Commission's activities, 1 April to 30 June 2009*

For consumers

- *Fuel fact sheet, Fuel prices in regional Australia*
- *Fuel fact sheet, Petrol price cycles in Australia*
- *Fuel fact sheet, What influences the price of automotive LPG?*
- *Fuel fact sheet, What influences the price of diesel?*
- *Fuel fact sheet, What influences the price of unleaded petrol?*
- *Mobile premium services—information for consumers*
- *Unit pricing: a guide for grocery retailers—audio format*
- *Unit pricing: a quick guide—in Vietnamese, Traditional Chinese, Turkish, Korean, Arabic (electronic only)*

For business

- *ACCC briefing, June 2009*
- *Authorising and notifying cartel conduct*
- *Competing fairly DVD*
- *Outreach newsletter, July 2009*
- *Product safety bulletin, August 2009—Lead and certain elements in children's toys and finger-paints*
- *Product safety bulletin, May 2009—Flotation toys and swimming aids*
- *Section 87B of the Trade Practices Act—September 2009*

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- *ACCC compliance and enforcement policy*
- *ACCC immunity policy for cartel conduct July 2009*
- *ACCC immunity policy interpretation guidelines July 2009*

For regulated industries

- *Network issue 32*
- *Water market rules and water charge rules—Enforcement guide*
- *Water trading rules position paper—September 2009*
- *ACCC telecommunications reports 2007–08: Telecommunications competitive safeguards; Changes in the prices paid for telecommunications services in Australia*
- *Assessing cross-subsidy in Australia Post 2007–08*