



Australian
Competition &
Consumer
Commission

ACCCOUNT

A report of the Australian Competition and
Consumer Commission's activities
1 October to 31 December 2009



Australian
Competition &
Consumer
Commission

ACCCount

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

1 October to 31 December 2009

Australian Competition and Consumer Commission

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

© Commonwealth of Australia 2010

This work is copyright. Apart from any use permitted by the *Copyright Act 1968*, no part may be reproduced without prior written permission from the Commonwealth available through the Australian Competition and Consumer Commission. Requests and inquiries concerning reproduction and rights should be addressed to the Director Publishing, Australian Competition and Consumer Commission, GPO Box 3131, Canberra ACT 2601 or by email to publishing.unit@acc.gov.au.

ACCC 03/2010

www.accc.gov.au

Contents

| | |
|---|-----------|
| Overview | 1 |
| 1. Enforcement and compliance | 3 |
| Complaints and inquiries | 3 |
| Enforcing for businesses and consumers | 3 |
| Section 87B undertakings accepted | 7 |
| 2. Communicating with businesses and consumers | 12 |
| Liaison and education activities | 12 |
| Codes of conduct | 13 |
| 3. Mergers | 15 |
| Merger reviews | 15 |
| Statements of issues | 17 |
| Public competition assessments | 17 |
| Section 87B undertakings | 17 |
| Major matters | 17 |
| 4. Adjudication | 22 |
| Authorisations | 22 |
| Collective bargaining notifications | 29 |
| Exclusive dealing notifications | 29 |
| Invalid exclusive dealing notification | 30 |
| 5. Regulatory affairs | 31 |
| Communications | 31 |
| Australian Energy Regulator | 34 |
| Water | 37 |
| Price monitoring | 40 |
| 6. International activities | 45 |
| International forums | 45 |
| Free trade agreements | 46 |
| Information requests | 46 |
| 7. Reviews and inquiries | 48 |
| Legislative matters | 48 |
| Other developments | 48 |
| Parliamentary inquiries | 49 |
| Consultative committees | 49 |
| Appendix | 51 |

| | |
|--------------------|----|
| Speeches | 51 |
| News releases..... | 51 |
| Publications | 51 |

Overview

The Australian Competition and Consumer Commission, through securing compliance with the *Trade Practices Act 1974*, enhances the welfare of all Australians by promoting competition and fair trading, and protecting consumers from unscrupulous business practices.

In meeting these objectives, the ACCC ensures that its processes are efficient, transparent and fair, and that outcomes achieved are communicated to the Australian public.

In the December 2009 quarter, the ACCC undertook a range of activities that benefited both business and consumers.

In December 2009, more supermarkets agreed to remove restrictive lease provisions from new shopping centre leases and phase out these provisions in current leases.

Aldi, Franklins SPAR, Australian United Retailers Limited (Foodworks) and Metcash Limited agreed to court enforceable undertakings to remove restrictive lease provisions, joining Coles and Woolworths, which agreed to similar undertakings in September 2009.

The effect of these undertakings is to open up competition by providing access to shopping centre sites for new supermarkets.

These developments were complemented by the Unit Pricing Code, which came into effect on 1 December 2009.

Unit pricing involves labelling prices on particular products by a standard unit of measurement, such as by volume or weight, and is mandatory for larger supermarkets, online traders and businesses that voluntarily choose to opt in. Unit pricing allows consumers to compare the value of products across brands and stores.

In a further boost to pricing accountability for consumers, the ACCC took action against rental car company Avis for not meeting the component pricing requirements in s. 53C of the Act.

From May to October 2009, the reservation pages of Avis's website did not specify a single or total price for hiring its cars including all mandatory charges as required by law.

The ACCC accepted court enforceable undertakings from Avis, which agreed to change its website to reflect the requirements of s. 53C and write to affected customers offering to refund additional fees paid.

The ACCC continued its campaign to lift standards in the telecommunications sector by taking action against Clarion Marketing Australia for misleading or deceptive conduct under the Act in the promotion of its 'Scratch and win' Moby Planet cards.

These scratch cards were not a game of chance; instead, consumers were tricked into signing up for a mobile premium subscription service, costing \$10 per week.

The Federal Court made orders for declarations, injunctions to stop future conduct and correctives by way of text message sent to current and former subscribers advising of the outcome of the proceedings and providing information about obtaining refunds.

In finalising its action against bed retailer Craftmatic, the ACCC also demonstrated that it would vigorously pursue businesses and employees that engaged in particularly egregious conduct towards consumers.

From August 2005 until about June 2008, Craftmatic used misleading and unfair tactics to convince elderly people to agree to home presentations by sales representatives. Craftmatic would then pressure elderly consumers to purchase beds that, in some cases, cost more than \$15,000.

A former director of Craftmatic gave undertakings to the Federal Court not to engage in the impugned conduct for a period of three years. This followed declarations and injunctions by the court in June 2009 against Craftmatic for acting in an unconscionable manner towards senior citizens and a similar undertaking made by another staff member.

The ACCC also continued to thoroughly assess mergers, acquisitions and asset sales under s. 50 of the Trade Practices Act.

On 2 December 2009, the ACCC announced it would oppose Caltex Australia's proposed acquisition of retail assets of Mobil Oil Australia. The ACCC established that, if 53 Mobil sites were acquired by Caltex, this would likely lead to a substantial lessening of competition in the fuel retail markets for petrol, diesel or automotive LPG.

The ACCC also had other concerns about the proposed transaction's effect on stability, effectiveness and coordination in determining petrol prices between the major fuel retailers.

The December quarter also saw the Australian Energy Regulator release its *2009 State of the energy market report* and the ACCC continue to meet its responsibilities under the *Water Act 2007*.

In December, the ACCC provided draft advice to the Minister for Climate Change and Water regarding changes to the Water Market Rules 2009 and Water Charge (Termination Fee) Rules 2009. Also in that month, the ACCC provided draft advice to the Murray–Darling Basin Authority about the development of water trading rules.

1. Enforcement and compliance

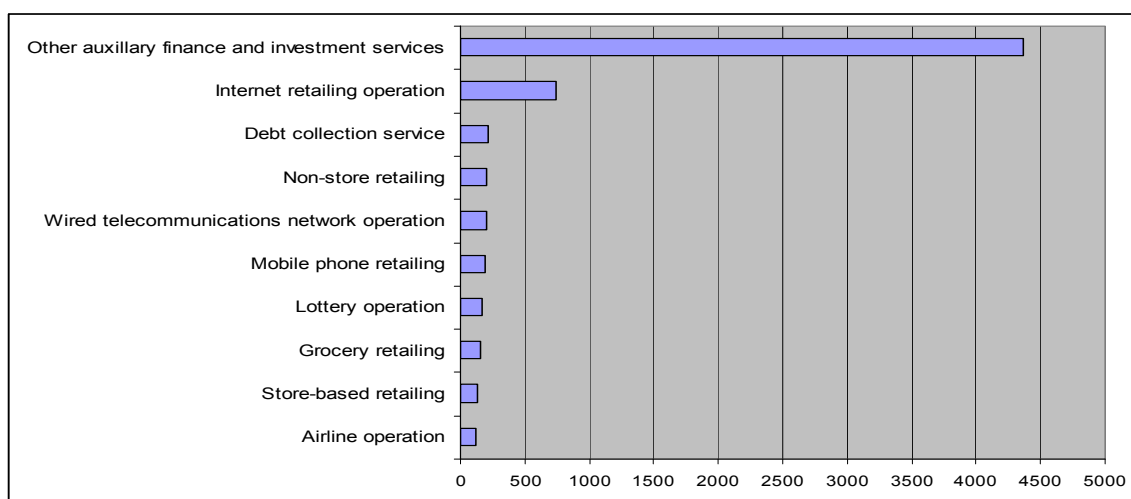
Maintaining and enhancing compliance with the Trade Practices Act is a key objective of the ACCC. We do this by promoting competition and informing markets, encouraging fair trading and protecting consumers. The enforcement function of the ACCC, including litigation, is well supported by our liaison,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

Complaints and inquiries

During the December 2009 quarter the ACCC Infocentre received 32,961 complaints and inquiries from businesses and consumers (email: 8,173 / telephone: 24,254 / letter correspondence: 534). More than half of these complaints and inquiries (17,186 or 52.14 per cent) were entered into the ACCC's TRACKIT database.

Feedback received included concerns about scam-based activity, requests for warranty and refunds advice, and complaints about the telecommunications sector. The Infocentre escalated 259 complaints or inquiries to Enforcement Operations staff (including regional offices) for assessment during the December quarter.

Chart 1 The 10 industries attracting the most complaints—1 October to 31 December 2009



The top category in Chart 1 refers primarily to complaints received about advance fee and other financial fraud schemes.

Of the complaints and inquiries entered into the ACCC's database during the period, 79 per cent related to consumer protection matters. This figure was higher than the 2008 quarterly average of 78 per cent. Competition matters accounted for 5 per cent of contacts, which was higher than the quarterly average figure of 3 per cent reported in 2008. Other matters accounted for 16 per cent, down from the 19 per cent 2008 quarterly average.

Enforcing for businesses and consumers

In undertaking its enforcement activity, the ACCC remains committed to working in an efficient and professional manner. As Australia's national consumer protection and competition agency, the ACCC manages its enforcement processes to achieve effective and efficient outcomes that serve the public interest.

Litigation commenced

The ACCC began seven first-instance enforcement litigation proceedings in the Federal Court of Australia during the December 2009 quarter for breaches of the Trade Practices Act.

Wilson Parking Australia 1992 Pty Ltd

Commenced 7 October 2009 | WAD175/2009

Proceedings under Part V for alleged misrepresentations regarding the number of mobile security patrol inspection services provided to certain customers.

Refund Home Loans Pty Ltd & Anor

Commenced 12 October 2009 | QUD249/2009

Proceedings under Part V for alleged false and misleading representations about Refund Home Loans having a special relationship with the ACCC.

Thai Airways International PCL

Commenced 28 October 2009 | NSD1213/2009

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

Jetplace Pty Ltd & Ors

Commenced 4 November 2009 | WAD196/2009

Proceedings under Part V for alleged misleading or deceptive conduct by operators of a dating website in relation to creation of fictional profiles. The fictional profiles were used to send 'flirt' and other messages to registered users.

Panasonic Australia Pty Ltd

Commenced 18 December 2009 | SAD193/2009

Proceedings under Part V for alleged misleading or deceptive conduct in offering bonus Nintendo Wiis with the purchase of Plasma televisions.

Prime Carbon Pty Ltd & Anor

Commenced 18 December 2009 | QUD305/2009

Proceedings under Part V for alleged false and misleading representations about the features of a carbon credit registry and the regulation of the registry, and carbon credits listed on the registry, by the Australian Government.

Mailpost Australia Limited

Commenced 23 December 2009 | NSD1474/2009

Proceedings under Parts IVB and V for alleged failure to comply with the Franchising Code of Conduct and alleged false, misleading or deceptive representations about the mailpost business.

Proceedings concluded

Ten first-instance enforcement litigation proceedings were finalised during the December 2009 quarter.

Zanok Technologies Pty Ltd & Ors

Commenced | 7 May 2009 | Concluded | 2 October 2009 NSD385/2009

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

Justice Edmonds | Federal Court Sydney

Outcome | declarations, injunctions and costs.

Burnan Pty Ltd & Ors

Commenced | 23 April 2009 | Concluded | 2 October 2009 QUD99/2009

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

Justice McKerracher | Federal Court Perth

Outcome | declarations, injunctions, disclosure orders and costs.

Craftmatic Australia Pty Ltd & Ors

Commenced | 6 April 2009 | Concluded | 14 October 2009 QUD99/2009

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

Justice Logan | Federal Court Brisbane

Outcome |

- Wayne Lugg (15 May 2009): declarations, injunctions and costs.
- Craftmatic Australia Pty Ltd (19 June 2009): declarations, injunctions and costs.
- Ashley Day (14 October 2009): orders by consent accepting undertakings not to engage in particular conduct for 3 years, and costs.

Vanderfield Pty Ltd & Ors

Commenced | 1 July 2009 | Concluded | 3 November 2009 QUD163/2009

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

Justice Dowsett | Federal Court Brisbane

Outcome | declarations, pecuniary penalties (corporate respondents: total of \$1.0m, individual respondents: total of \$90,000), and costs (corporate respondents: total of \$100,000).

Australian Karting Association & Ors

Commenced | 9 June 2009 | Concluded | 6 November 2009 NSD548/2009

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

Justice Bennett | Federal Court Sydney (Fast track list)

Outcome |

- 1st respondent: declarations, injunctions, trade practices compliance program, inform members of outcome of proceedings, and costs.
 - 2nd to 7th respondents: declarations and injunctions.
-

Personalised Chocolates 4 U Pty Ltd & Anor

Commenced | 13 July 2009 | Concluded | 30 November 2009 NSD709/2009

Proceedings under Parts IVB and V 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.

Justice Perram | Federal Court Sydney

Outcome | declarations, injunctions, corrective advertising, implement a trade practices compliance program, inform franchisees of outcome of proceedings, and costs.

Cosic Holdings Pty Ltd

Commenced | 6 May 2009 | Concluded | 8 December 2009 WAD70/2009

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

Justice Barker | Federal Court Perth

Outcome | declarations, injunctions, corrective advertising and costs.

Wilson Parking Australia 1992 Pty Ltd

Commenced | 7 October 2009 | Concluded | 15 December 2009 WAD175/2009

Proceedings under Part V for alleged misrepresentations regarding the number of mobile security patrol inspection services provided to certain customers.

Justice Barker | Federal Court Perth

Outcome | declarations, injunctions, inform customers of outcome of proceedings, trade practices compliance program and costs.

Australian Dreamtime Creations Pty Ltd & Anor

Commenced | 15 June 2009 | Concluded | 21 December 2009 SAD89/2009

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

Clarion Marketing Australia Pty Ltd

Commenced | 27 May 2009 | Concluded | 22 December 2009 NSD486/2009

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

Justice Nicholas | Federal Court Sydney

Outcome | declarations, injunctions, inform subscribers of proceedings, publication orders, order to maintain a summary of communications with customers regarding scratch cards, and costs.

Section 87B undertakings accepted

The ACCC accepted 15 enforcement s. 87B undertakings during the December 2009 quarter.

Competition

International Beauty Supplies Pty Ltd

International Beauty Supplies Pty Ltd has provided court enforceable undertakings to the ACCC in relation to resale price maintenance conduct within the retail beauty product industry. International Beauty Supplies Pty Ltd has undertaken to:

- write to its distributors advising them of the ACCC's concerns and that they are free to determine the prices at which they advertise and sell IBS goods
- vary the Distributor Agreement to delete the 'Prices' clause
- review its existing trade practices compliance program.

Australian United Retailers Ltd trading as Foodworks

Australian United Retailers Ltd trading as Foodworks has provided court enforceable undertakings to the ACCC in relation to the use of restrictive covenants in leases between Foodworks and shopping centre operators. Australian United Retailers Ltd has 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.

SPAR Australia Ltd

SPAR Australia Ltd has provided court enforceable undertakings to the ACCC in relation to the use of restrictive covenants in leases between SPAR and shopping centre operators. Spar Australia Ltd has undertaken:

- not to enter into or give effect to a lease agreement that includes one or more restrictive provisions.

Franklins Pty Ltd

Franklins Pty Ltd has provided court enforceable undertakings to the ACCC in relation to the use of restrictive covenants in leases between Franklins and shopping centre operators. Franklins Pty Ltd has undertaken:

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

Metcash Ltd

Metcash Ltd has provided court enforceable undertakings to the ACCC in relation to the use of restrictive covenants in leases between Metcash and shopping centre operators. Metcash Ltd has undertaken:

- (subject to any contractual obligations to its sub-lessees), not to give effect to, or threaten to give effect to, a restrictive provision in a lease agreement that is in operation as at the commencement of the undertaking after a period of five years from the date at which the relevant supermarket commenced trading
- not to enter into, or facilitate a party entering into, a lease agreement that includes one or more restrictive provisions
- to use its best endeavours to obtain an undertaking from all sub-lessees that the supermarket operator will not exercise any contractual rights under the sub-lease agreement that would require Metcash to give effect to, or threaten to give effect to, a restrictive provision contained in a lease agreement that is in operation as at the commencement of the undertaking, after a period of five years from the date at which the relevant supermarket commenced trading.

Aldi Foods Pty Ltd

Aldi Foods Pty Ltd has provided court enforceable undertakings to the ACCC in relation to the use of restrictive covenants in leases between Aldi and shopping centre operators. Aldi Foods Pty Ltd has undertaken:

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

Consumer protection

IGA Distribution Pty Limited

IGA Distribution Pty Limited has provided court enforceable undertakings to the ACCC in relation to misleading representations about the quality of an IGA corporate brand olive oil. IGA Distribution Pty Limited has undertaken to:

- refrain from representing that any IGA corporate brand edible oil is extra virgin olive oil when it does not meet certain specified criteria for extra virgin olive oil contained in the International Olive Council (IOC) Trade Standard Applying to Olive Oils and Olive-Pomace Oils (IOC Standard)
- require each of its existing and new suppliers of IGA corporate brand extra virgin olive oil to provide IGA Distribution with a test report, issued by a National Association of Testing Authorities (NATA) or IOC accredited laboratory, demonstrating compliance of its product with certain specified criteria for extra virgin olive oil contained in the IOC Standard.

Auction Alliance Pty Ltd

Auction Alliance Pty Ltd has provided court enforceable undertakings to the ACCC in relation to the warranty and returns policy of the online department store www.dealsdirect.com.au. Auction Alliance Pty Ltd has undertaken to:

- amend its warranties and returns policy and place notices on its website and in its daily e-newsletters explaining its conduct
- consider warranty claims for faulty products purchased since 1 September 2008 where consumers may not have pursued a remedy because of Auction Alliance's admitted false and misleading statements
- write to consumers who purchased 'Ultimate Pilates Workout Chair' and offer to either provide a warranty on the same terms as the Guthy-Renker warranty or provide a full refund of the purchase price (including postage).

Snooze Management Pty Ltd

Snooze Management Pty Ltd has provided court enforceable undertakings to the ACCC in relation to misleading or deceptive 'Was/Now' comparison pricing of bedding retail products. Snooze Management Pty Ltd has undertaken to:

- refrain from engaging in similar conduct
- display in-store corrective notices
- publish an information notice in *FB Magazine*
- write an apology letter to customers known to have purchased a product promoted in-store by 'Was/Now' pricing during their October campaign and offer them a \$50 gift voucher
- establish and implement a trade practices compliance program
- write a letter to franchisees offering trade practices compliance training.

Yarrabee Investments Pty Ltd

Yarrabee Investments Pty Ltd has provided court enforceable undertakings to the ACCC in relation to the misleading or deceptive 'Was/Now' comparison

pricing of bedding retail products. Yarrabee Investments Pty Ltd has undertaken to:

- refrain from promoting or offering any goods for sale using comparative price representations that refer to a recommended retail price (RRP) unless the stated RRP is a genuine RRP issued by an independent importer or manufacturer of the goods
- refrain from promoting or offering any goods for sale using comparative price representations (other than using RRP) unless those goods have been offered for sale or sold at the higher price in reasonable quantities for a reasonable amount of time immediately prior to the commencement of the promotion or offer
- ensure that all future advertising and other forms of promotion by Yarrabee Investments comply with Part V of the Act
- implement a trade practices compliance program.

Mercy Ministries Incorporated / Mercy Ministries Ltd

Mark Anton Zschech, Mark Caldwell, Stephen Max Crouch, Darlene Joyce Zschech and Clark Pearson, former directors of Mercy Ministries Incorporated and/or Mercy Ministries Ltd, have provided court enforceable undertakings to the ACCC in relation to representations made by those entities. As part of the undertaking, each of the former directors:

- acknowledge that they were persons ultimately responsible for the conduct of Mercy Ministries, and admit its conduct was false, misleading and deceptive, and likely to contravene ss. 52, 53(aa) and 53(e) of the *Trade Practices Act 1974*
- signed a joint letter of apology to past residents in the relevant period
- will offer a payment of \$1050 to each of the past residents in the relevant period
- will attend annual trade practices compliance training for three years.

In a related undertaking, Young Pil Sohn, a former director of Mercy Ministries Incorporated and/or Mercy Ministries Ltd, provided court enforceable undertakings to the ACCC in relation to representations made by those entities. As part of the undertaking, Young Pil Sohn:

- acknowledges he was a person ultimately responsible for the conduct of Mercy Ministries, and admits its conduct was false, misleading and deceptive, and likely to contravene ss. 52, 53(aa) and 53(e) of the *Trade Practices Act 1974*
- signed a joint letter of apology to past residents in the relevant period
- will offer a payment of \$1050 to each of the past residents in the relevant period
- will attend annual trade practices compliance training for three years.

TMJ Pty Ltd trading as Premier Blinds & Awnings

TMJ Pty Ltd trading as Premier Blinds & Awnings has provided court enforceable undertakings to the ACCC in relation to misleading comparative pricing practices. TMJ Pty Ltd has undertaken to:

- not make any misleading price representations for a period of three years
- publish corrective notices on its website, at its office and in *The Sunday Mail* newspaper
- implement and maintain a trade practices compliance program for a period of three years.

WTH Pty Ltd trading as Avis Australia

WTH Pty Ltd trading as Avis Australia has provided court enforceable undertakings to the ACCC in relation to misleading pricing. WTH Pty Ltd has undertaken to:

- change its website so that all mandatory fees and charges are included in the quoted price
 - write to all affected customers and refund additional fees and taxes paid by the customer which were not disclosed at the time of making the reservation
 - place a corrective notice on its website for a period of four weeks
 - ensure its senior executives receive practical trade practices law training.
-

Global Green Plan Ltd, Mr Henry Clement Hewett and Mr Donald Raymond Hewett

Global Green Plan Ltd, Mr Henry Clement Hewett and Mr Donald Raymond Hewett have provided court enforceable undertakings to the ACCC in relation to misleading representations made about renewable energy purchases and accreditation by GreenSwitch. Global Green Plan Ltd has undertaken to purchase and surrender a total of 4137 Renewable Energy Certificates. Mr Henry Hewett and Mr Donald Hewett have each undertaken to attend a trade practices compliance seminar.

2. Communicating with businesses and consumers

The ACCC continues its strong commitment to liaise, consult and inform businesses and consumers about their rights and obligations under the Trade Practices Act.

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 December 2009 quarter, the ACCC:

- attended 98 meetings with government and industry representatives, small business operators and consumer groups nationally
- participated in 13 small business and franchising expos and field days
- conducted 132 presentations to small business operators, industry associations and consumer groups on topics including their advertising and selling practices (particularly in relation to s. 53C), the Franchising Code of Conduct, scams and cartel conduct and government procurement
- published 12 SCAMwatch radar alerts on the ACCC's SCAMwatch website including warnings for travellers to the United States about fake visa processing services, carefully checking the validity of discount accommodation vouchers and bogus anti-virus alerts
- posted on the ACCC website new information for consumers on such issues as the accuracy of organic food claims, reverse auctions, pram and stroller safety and warnings about toys with unsafe lead levels.

International Consumer Protection Enforcement Network

As 2009–10 International Consumer Protection Enforcement Network (ICPEN) President, the ACCC hosted the November 2009 meeting and ICPEN Best Practice Workshop.

Sessions were held focusing on maximising enforcement impact, particularly looking at the role of intelligence gathering and sharing at the international level, cross-border ticketing scams and online consumer issues.

Unit pricing guidance for industry and consumers

The Unit Pricing Code commenced on 1 December 2009. In the lead-up to its introduction, the ACCC worked with industry stakeholders to raise awareness of and compliance with the code. The unit pricing messages, using the Unit Man mascot, were promoted in grocery catalogues, websites, consumer brochures and check-out counter screens.

The ACCC liaised extensively with consumer groups during this period regarding the ACCC's role in providing clear and consistent guidance to retailers, coordinating consumer education strategies and identifying any potential breaches of the code.

Information about unit pricing can be found on the ACCC's website.

Franchising rights and obligations

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

- participation in Australian Defence Force career transition seminars
- presentations to business enterprise centres, small business centres, Tax Basics seminars and Government Business Information Network meetings.

Trade Practices Act seminars

The ACCC continues to work with other agencies and industry associations to address relevant trade practices issues. During this quarter, activities included:

- liaison meetings with major retail groups to encourage compliance with the Trade Practices Act. These meetings included consideration of concerns and trends identified from ACCC contacts, discussions around component and unit pricing practices and warranty and refund policies
- meetings advising local governments in New South Wales, Queensland and South Australia of the potential for cartel conduct affecting the procurement process and ways that this could be avoided.

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 December 2009 quarter, the ACCC provided guidance to industry and government regarding several national voluntary industry codes of conduct, including:

- the Jewellery Industry Code of Conduct
- the Motor Vehicle Insurance and Repair Industry Code of Conduct
- the Sports News Reporting Code of Practice.

Product safety

The ACCC 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: www.recalls.gov.au. 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 is progressing a range of product safety reforms approved by the Council of Australian Governments that will lead to a more streamlined product safety system by the end of 2010:

- During the December 2009 quarter, the ACCC became the chair of the Ministerial Council for Consumer Affairs / Standing Committee of Officials of Consumer Affairs, sponsored Harmonisation of Bans and Standards working group. The ACCC will now lead the harmonisation of product safety regulations across the various jurisdictions in preparation for the 2011 implementation of 'single law' regulation making under the Australian Consumer Law reforms.
- It is anticipated that an improved product safety website will be launched in March 2010. The website will be a single entry point for product safety information in Australia, with information for business and consumers on current product hazards and regulatory information. The Emerging Hazards Clearinghouse is to be incrementally introduced during the March 2010 quarter. The clearinghouse 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.
- A review of recall effectiveness was completed during the December 2009 quarter. The review considered the effectiveness of the consumer product recall mechanism in removing unsafe consumer products from the sale and post-sale environment, and looked at whether the current system can be improved.

Mandatory standards and bans

During the quarter, activities concerning mandatory standards and bans have included:

- declaring an interim ban on toy-like novelty cigarette lighters
- developing the Regulatory Impact Statement (RIS) process for the development of mandatory standards in relation to magnets in toys, portable soccer goal posts, projectile toys, blind and curtain cords, and suction outlets in pools and spas
- finalising a mandatory standards review of bicycle helmets

- commencing or progressing mandatory standards reviews of vehicle jacks, portable ramps, care labelling, bunk beds, disposable cigarette lighters and hot water bottles.

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 December 2009 quarter:

- David Jones Limited, Target Australia Pty Ltd and Little Smiles Pty Ltd conducted voluntary recalls of Infantino Clack & Teethe toys after the ACCC identified potential choking hazards in the toys it tested.
- The supply and exportation of sky lanterns was banned in Australia in September 2009. During the December quarter, an Australian supplier of sky lanterns agreed to cease exporting sky lanterns after the ACCC brought the prohibition on the exportation of banned products to its attention.
- A consumer recall and modification program was implemented by a supplier of children's bicycles that failed the mandatory safety standard.

Consumer awareness activities

Education remains a key component of promoting awareness of product safety issues and reducing the likelihood of accidents or injuries.

- A key education focus this quarter was a national curtain and blind cord education campaign to warn parents about the strangulation risk to children presented by loose curtain and blind cords.

3. Mergers

In assessing mergers, acquisitions and asset sales under s. 50 of the Trade Practices Act, the ACCC conducts thorough and rigorous processes to ensure transactions do not lead to a substantial lessening of competition in the marketplace.

Merger reviews

Recently the ACCC refined its reporting processes to distinguish between matters that did not require investigation and review because no competition concerns were evident ('pre-assessed matters') and matters that required review.

Pre-assessed matters were often referred to the ACCC by other parties or agencies, such as the Foreign Investment Review Board, as a courtesy because ACCC clearance was not requested.

In the December 2009 quarter, 39 matters were pre-assessed by the ACCC. Also during that period, the ACCC reviewed 41 matters, including confidential and public merger reviews. Of the matters reviewed, 88 per cent of merger proposals were not opposed.

The ACCC expressed serious competition concerns over one confidential review proposal and opposed four public proposals outright. Section 87B undertakings were accepted for two merger proposals during the quarter. No decisions were made in two

reviews, either because the proposal was withdrawn or because a view could not be formed on a confidential basis.

Table 1 Merger review outcomes—1 October to 31 December 2009

| | Confidential | Public | Total |
|--|--------------|--------|-------|
| Matters pre-assessed—no review required | 39 | 0 | 39 |
| Total reviews undertaken | 9 | 32 | 41 |
| This total can be broken down into the following categories | | | |
| Not opposed | 6 | 26 | 32 |
| Finished—no decision (including withdrawn) ¹ | 2 | 0 | 2 |
| Opposed outright | 0 | 4 | 4 |
| Confidential review—ACCC concerns expressed | 1 | 0 | 1 |
| Resolved through undertakings ² | 0 | 2 | 2 |
| Variation to undertaking accepted | 0 | 0 | 0 |

Notes

- 1 These are matters where no decisions were made. They are not included in the timings in Table 2 below.
- 2 Only public matters can be resolved through undertakings.

Time taken to assess mergers

Table 2 breaks down the time taken by the ACCC to assess merger proposals completed. This does not include the 39 pre-assessed matters or the two matters where no decisions were made.

Six reviews of completed mergers were conducted during the quarter. Reviews of completed mergers are not subject to the same timeframes 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 to assess mergers—1 October to 31 December 2009¹

| Time taken to undertake merger reviews (cumulative) | Number of reviews ² | Percentage of mergers (%) |
|---|--------------------------------|---------------------------|
| Two weeks or less | 2 | 6 |
| Four weeks or less | 13 | 46 |
| Six weeks or less | 9 | 73 |
| Eight weeks or less | 5 | 88 |
| More than eight weeks | 4 | 12 |

Note

- 1 This table does not include the 39 matters pre-assessed as not requiring a review. All these decisions were made in less than two weeks.
- 2 These do not include two matters where no decisions were made or six reviews of completed mergers.

Statements of issues

Two statements of issues were released during the December quarter:

- Gunns Ltd—proposed acquisition of ITC Timber Pty Ltd—28 October 2009
- Woolworths Ltd—Lowe's Companies Inc—proposed acquisition of Danks Holdings Ltd – 16 October 2009.

Public competition assessments

To provide an enhanced level of transparency in its decision making, the ACCC provides public competition assessments outlining how decisions are reached on matters of particular public interest or that have important precedence value.

The ACCC issued four public competition assessments during the December 2009 quarter:

- Gunns Ltd—proposed acquisition of ITC Timber Pty Ltd—24 December 2009
- Thomson Reuters (Professional) Australia Limited—proposed acquisition of Ernst and Young's tax compliance software products—19 November 2009—tax compliance software products
- Pfizer Inc—proposed merger with Wyeth Corp—18 November 2009—human and animal pharmaceuticals
- National Australia Bank Ltd (NAB)—proposed acquisition of mortgage management business from Challenger Financial Services Group Ltd—13 November 2009—mortgage management.

Section 87B undertakings

Two s. 87B undertakings were accepted in the December quarter:

- Woolworths Ltd—proposed acquisition of Danks Holdings Ltd—11 November 2009
- Schering-Plough Corporation and Merck & Co Inc—proposed merger between international pharmaceutical manufacturers—11 October 2009.

Major matters

Major matters decided during the December 2009 quarter included:

- Woolworths Limited—proposed acquisition of Danks Holdings Ltd—11 November 2009
- Gunns Limited—proposed acquisition of ITC Timber Pty Ltd—27 November 2009
- Caltex Australia Limited—proposed acquisition of the retail assets of Mobil Oil Australia Pty Ltd—2 December 2009
- GUD Holdings Limited—proposed acquisition of Breville Group Limited—16 December 2009.

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

Woolworths Limited / Lowe's Companies Incorporated—proposed acquisition of Danks Holdings Limited

Result | On 11 November 2009, the ACCC decided not to oppose the proposed acquisition following the acceptance of court enforceable undertakings.

Summary | On 3 September 2009, the ACCC commenced a review of the proposed acquisition. Danks Holdings Ltd (Danks) is a wholesaler and distributor of hardware products and related services to independent retailers. Woolworths and Lowe's, a United States home improvement retailer, planned to develop a network of company-owned big box home improvement stores as part of the joint venture's entry into the Australian hardware sector.

The ACCC conducted market inquiries with a range of interested parties including Danks member stores, other retailers, wholesale suppliers of hardware products, manufacturers, buying groups, building industry associations and other interested parties. The ACCC released a Statement of Issues on 16 October 2009 seeking further information from interested parties regarding two issues.

The ACCC was concerned that the proposed acquisition might enable the joint venture to discriminate against some of its wholesale customers, namely hardware retailers supplied by Danks, which are also its retail competitors. The ACCC was also concerned that the proposed acquisition might result in reduced competition at the retail level in some local markets due to a reduction in the number of participants at the wholesale level.

Woolworths and its joint venture offered undertakings to address these concerns. In summary, the undertakings imposed requirements that will lower barriers faced by independent hardware stores supplied by Danks in switching to alternative suppliers. The undertakings also alleviated concerns that Danks stores in close proximity to joint venture stores would be treated less favourably by the joint venture than other Danks stores.

On 11 November 2009, the ACCC accepted the undertakings and announced that it would not oppose the proposed acquisition. On 14 January 2010 the ACCC released a Public Competition Assessment in relation to this matter.

Gunns Limited—proposed acquisition of ITC Timber Pty Limited

Result | On 25 November 2009, the ACCC announced its decision to oppose the proposed acquisition. The ACCC subsequently announced on 27 November 2009 that it would not oppose the revised proposed acquisition of ITC Timber by Gunns Ltd which excluded the SmartFibre Pty Ltd wood chip joint venture asset.

Summary | On 14 September 2009, the ACCC commenced a review of the proposed acquisition. In acquiring ITC Timber Pty Ltd (ITC Timber), Gunns Ltd (Gunns) would have obtained a 50 per cent stake in the SmartFibre Pty Ltd (SmartFibre) wood chip joint venture. This would have reduced the number of significant independent acquirers of hardwood pulpwood in north-eastern Tasmania from three to two.

The ACCC's market inquiries indicated that suppliers of hardwood pulpwood in north-eastern Tasmania—in particular, farmers and private plantation owners—would face lower prices for their timber if the proposed acquisition were allowed to proceed, given that the remaining competitor to the merged firm was unlikely to provide an effective competitive constraint. The ACCC therefore concluded that the proposed acquisition was likely to substantially lessen competition in the market for the acquisition of hardwood pulpwood in north-eastern Tasmania.

To address the ACCC's competition concerns, the parties submitted a revised proposal on 26 November 2009 whereby Gunns would not acquire ITC Timber's stake in SmartFibre. As a result of this restructure, SmartFibre would remain an independent competitor to Gunns in the acquisition of pulpwood, and Tasmanian farmers and plantation owners would continue to receive competitive prices for the pulpwood they supplied. Competition in the north-eastern Tasmanian market for the acquisition of another wood-chipping input, residual timber, would also be maintained as a result of the restructure.

The ACCC also considered the proposed acquisition and the revised proposed acquisition in the context of the following relevant markets:

- the national market for the supply of appearance grade hardwood timber products
- the national market for the supply of structural grade timber products (comprising both softwood and hardwood structural timber products)
- the global market for the manufacture and supply of wood chips
- the separate north-eastern Tasmanian and southern Tasmanian markets for the acquisition of hardwood sawlog suitable for the manufacture of appearance grade hardwood timber products.

The ACCC concluded that both the proposed acquisition and revised proposed acquisition would be unlikely to result in a substantial lessening of competition in the markets for the acquisition of hardwood sawlog in southern and north-eastern Tasmania or any of the other relevant markets identified. The ACCC's inquiries indicated that there would remain alternative buyers in each market for the acquisition of hardwood sawlog with the capacity and the willingness to acquire more from suppliers. The principal supplier of hardwood sawlogs, Forestry Tasmania, would also be able to bypass Gunns if Gunns attempted to reduce prices. Similarly, the ACCC's inquiries indicated that there would remain alternative suppliers in the markets for the appearance and structural grade timber products and wood chips which would continue to provide an effective competitive constraint.

The ACCC was therefore satisfied that the revised proposed acquisition of ITC Timber by Gunns, after taking account of the exclusion of the stake in the SmartFibre wood chip joint venture, was unlikely to substantially lessen competition in any market. Accordingly, the ACCC announced on 27 November 2009 that it would not oppose the revised proposed acquisition of ITC Timber by Gunns.

Caltex Australia Limited—proposed acquisition of the retail assets of Mobil Oil Australia Pty Ltd

Result | On 2 December 2009, the ACCC announced its decision to oppose the proposed acquisition.

Summary | On 27 May 2009, Caltex publicly announced its proposed acquisition of 302 Mobil service station sites located in metropolitan areas in SA, Queensland, NSW, Victoria and ACT, subject to ACCC clearance.

On 9 June 2009, the ACCC commenced its review of the proposed acquisition. As part of the proposal, Caltex would take supply of fuel products at Mobil terminals in Melbourne and Adelaide sufficient to support the operation of the sale sites in those regions. Caltex would also use hosting services sufficient to support the supply of the sale sites at terminals in which Mobil had an interest in Brisbane, Newcastle, Sydney, Melbourne and Adelaide.

Extensive market inquiries were conducted with market participants, including retail and wholesale competitors of the merger parties and independent retailers and distributors. On 2 September 2009, the ACCC released a Statement of Issues in relation to the matter.

The Statement of Issues set out the ACCC's preliminary views that the proposed acquisition was likely to substantially lessen competition in:

- wholesale petrol and diesel markets in NSW and Queensland
- certain retail petrol, diesel and LPG markets across Queensland, NSW, ACT, Victoria and South Australia.

The ACCC established that, if 53 Mobil sites were acquired by Caltex, it would be likely to result in a substantial lessening of competition in the retail markets for the supply of petrol, diesel or automotive LPG. The ACCC also had broader concerns about the effect of the proposed acquisition on the stability and effectiveness of coordination between the major fuel retailers in determining petrol prices.

The ACCC considered that an acquisition under a likely counterfactual would result in a significant number of sites being acquired by retailers that did not lead prices up in the restoration phase of the price cycle and that instead lagged. The ACCC considered that this would have the effect of creating uncertainty among retailers in their attempts to coordinate price rises. This would be exacerbated where sites were acquired by retailers that lagged and were also not subscribers to Informed Sources. The effect of increased uncertainty could be, for example, more failed price restorations.

On 14 January 2010, the ACCC released a Public Competition Assessment in relation to this matter.

GUD Holdings Limited—proposed acquisition of Breville Group Limited

Result | On 16 December 2009, the ACCC announced its decision to oppose the proposed acquisition.

Summary | On 9 October 2009, the ACCC commenced its review of GUD Holdings Limited's (GUD) proposed acquisition of Breville Group Limited (BRG). The ACCC did not release a Statement of Issues in relation to this matter.

The ACCC concluded that the proposed transaction would be likely to result in a substantial lessening of competition in national wholesale markets for beverage makers, cooking equipment, food preparation equipment and home appliances.

The ACCC noted that there were some arguments for defining the product dimension of the market more broadly (such as a broad market for the national wholesale supply of small electrical appliances) or more narrowly. The ACCC considered that it was not necessary to form a definitive view as to whether the markets should be more narrowly or more broadly defined in this matter, as it would not impact on the competition analysis undertaken.

The ACCC found that the proposed acquisition would be likely to substantially lessen competition because, among other things:

- there would be a significant increase in market concentration, irrespective of the market definition adopted
- GUD and BRG were each other's closest competitors
- the merged firm could reposition the BRG or GUD brands so as to avoid direct competition between them

- the merged firm could reduce the quality of its products or reduce investment in product design and innovation
- the merged firm could extract trading terms which were less favourable to retailers and/or might offer less generous warranty terms to consumers as a result of its increased market power
- other wholesale suppliers would be unlikely to reposition their brands or expand their range of products to effectively constrain the merged firm
- new entry was unlikely to provide an effective constraint given that barriers to entry were high (primarily as a result of the importance of brand)
- retailers could not credibly threaten to bypass the merged firm.

After being advised of the ACCC's decision to oppose the transaction, GUD announced that it would extend its takeover offer until 5 February 2010 and would make a decision about whether to pursue the proposed acquisition after reviewing the ACCC's Public Competition Assessment. The proposed acquisition remained conditional on obtaining ACCC clearance. GUD provided an undertaking to the ACCC that it would not waive this condition or declare the takeover bid free from this condition without first providing the ACCC with notice of its intention to do so.

On 22 January 2010, the ACCC released a Public Competition Assessment in relation to this matter. On 27 January 2010 GUD announced that it would allow its takeover offer on Breville to lapse.

4. Adjudication

Authorisations

During the December 2009 quarter, the ACCC received 15 new authorisation applications, covering 10 projects.

At 31 December 2009 a total of 26 authorisation applications, covering 12 projects, were being considered by the ACCC.

Where matters in this section have two lodgement dates, the second date reflects where a second application was made to take account of the amendments to the Trade Practices Act by provisions of the *Trade Practices Amendment (Cartel Conduct and Other Measures) Act 2009* which began on 24 July 2009.

Matters finalised

Chevron Australia Pty Ltd & Ors—A91139–A91140 & A91160–A91161

Summary | On 20 May and 24 July 2009 the applicants, together with potential future equity partners¹ 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/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 the following:

- until customer agreements have been reached for the sale of 2000PJ of domgas
- 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.

On 5 November 2009 the ACCC released a determination granting authorisation to the arrangements until 31 December 2010, conditional on a number of ring-fencing requirements being met.

¹ Future equity partners' is 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.

Australian Amalgamated Terminals Pty Limited—A91141–A91142 & A91181–A91182

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

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

On 3 December 2009, the ACCC issued a determination granting conditional authorisation to AAT's joint venture arrangements until 31 December 2019. Broadly the conditions:

- provide a mechanism for stevedores to seek access to AAT's terminals
- impose a process for independent review of AAT's price increases to end users
- require AAT to provide end users with a dispute resolution process for non-price disputes.

Southern Sydney Regional Organisation of Councils—A91143 & A91167

Summary | On 18 June and 24 July 2009, Southern Sydney Regional Organisation of Councils (SSROC) 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 was made on behalf of Ashfield, Botany Bay, Burwood, Canada Bay, City of Sydney, Leichhardt, Marrickville, Randwick, Waverley and Woollahra councils.

On 22 October 2009, the ACCC issued a determination granting authorisation until 31 December 2027.

The University of Melbourne & Ors—A91144–A91145 & A91178

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

- Preference Policy:
Under the Preference Policy, applicants submit a single application to the Graduate Australian Medical School Admissions Centre, listing in order of preference the medical schools to which they wish to apply. The number of preferences is set out in the current *Admission guide* (three for students commencing in 2010). Where an applicant is not selected for an interview, the school must pass the application to that applicant's next preferred school.
- One Interview Policy:
Under the One Interview Policy, medical school applicants will receive only one offer for an interview. Interviews are awarded based upon a selection process used by each school. An applicant whose ranking is not high enough for them to be offered an interview at their first preference medical school or an applicant

interviewed but not selected is passed onto the applicant's next preferred medical school.

On 26 November 2009, the ACCC released a determination granting authorisation to the consortium for five years.

Port Waratah Coal Services Limited & Ors—A91147–A91149 & A91168–A91169

Summary | On 29 June and 24 July 2009, Port Waratah Coal Services, Newcastle Coal Infrastructure Group and Newcastle Port Corporation (the applicants) applied for authorisation of certain aspects of the long-term solution to the capacity constraints in the Hunter Valley coal chain.

Specifically, the applicants sought authorisation to make and give effect to a contract, arrangement or understanding which involves proposed conduct set out in the long-term Capacity Framework Arrangements.

On 22 July 2009, the ACCC granted interim authorisation to allow the applicants to commence the implementation of the Capacity Framework Arrangements. Interim authorisation was subject to a condition that the applicants execute their respective capacity framework documents by 31 August 2009. The ACCC revoked interim authorisation on 1 September 2009 after one party failed to meet the deadline.

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

On 9 December 2009, the ACCC released a determination granting authorisation to the Capacity Framework Arrangements until 31 December 2024.

Medicines Australia Limited—A91150 & A91155–A91156 & A91183–A91184

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

The code sets standards for the marketing and promotion of prescription pharmaceutical products in Australia. All member companies of Medicines Australia must adhere to the code. Membership of Medicines Australia is voluntary.

On 3 December 2009, the ACCC issued a determination granting authorisation to Medicines Australia for its code of conduct (edition 16) until 31 December 2014.

Virgin Blue Airlines Pty Ltd & Ors—A91151–A91152 & A91172–A91173

Summary | On 9 July and 24 July 2009, the Virgin Blue Group and Delta sought authorisation to make and give effect to the 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 seek to establish a commercial relationship in order to provide customers with a broad and coordinated trans-Pacific air passenger network (being those routes between Australia and mainland United States).

The Virgin Blue / Delta Joint Venture contemplates coordination and agreement between the applicants on trans-Pacific routes in relation 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.

On 10 December 2009, the ACCC issued a determination granting authorisation for a period of 5½ years.

Virgin Blue and Delta have sought antitrust immunity from the US Department of Transportation. Implementation of the joint venture is subject to the decision of the US Department of Transportation.

Australian Payments Clearing Association Limited—A91153–A91154

Summary | On 13 July 2009, the Australian Payments Clearing Association Limited (APCA) applied for revocation and substitution of authorisations A30228 and A30229. APCA applied for replacement authorisations for certain provisions contained within the Consumer Electronic Clearing System (CECS) Regulations and Manual relating to the certification of participants in CECS and suspension and termination of CECS membership.

On 16 December 2009, the ACCC issued a determination reauthorising the arrangements for five years.

Hurstville City Council & Ors—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 the respective local government areas.

The councils also requested immediate interim authorisation in order to commence the joint tender process.

On 26 August 2009, the ACCC granted interim authorisation to the councils 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.

On 6 November 2009, the ACCC issued a determination granting authorisation to the councils until 31 December 2029.

Other draft determinations issued

Cuscal Limited & Ors—A91175–A91177

Summary | On 28 July 2009, Cuscal Limited, National Australia Bank Limited and rediATM network members (Members) applied for, in broad terms, the applicants (as well as each future Member) to make and give effect to arrangements between Cuscal and the 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 which exceeds the Maximum Direct Charge for the supply of ATM transaction services at a rediATM as set by Cuscal in consultation with the 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 granted interim authorisation on 21 August 2009. On 29 October 2009, the ACCC issued a draft determination proposing to grant authorisation in respect of the proposed arrangements for five years. A pre-decision conference was held on 7 December 2009.

The ACCC subsequently released a determination granting authorisation to Cuscal's arrangements for five years on 27 January 2010.

Other applications lodged

Qantas Airways Limited & British Airways plc—A91195

Summary | On 16 October 2009, Qantas and British Airways applied for reauthorisation of authorisations A30226 and A30227 in relation to the Restated Joint Services Agreement dated 3 April 2000 (as amended) and related and consequential coordination of schedules and pricing.

The Joint Services Agreement has been in operation for 14 years and provides for a joint venture service in the form of air transportation, primarily on services between Australia and Europe.

The ACCC released a draft determination on 4 February 2010 proposing to reauthorise the Joint Services Agreement for another five years. The ACCC also granted interim authorisation at that time. The ACCC has sought submissions from interested parties in relation to its draft determination and expects to release a final decision in March/April 2010.

Tasmanian Farmers and Graziers Association—A91197

Summary | On 13 November 2009, the Tasmanian Farmers and Graziers Association lodged an application for reauthorisation of an arrangement between present and future vegetable grower members to collectively negotiate the terms and conditions of growing contracts with processors and to assist vegetable grower members in their negotiations.

The ACCC has sought submissions from interested parties. On 4 December 2009 the ACCC granted interim authorisation to the arrangements. The ACCC anticipates releasing a draft determination in February 2010.

Board of Airline Representatives of Australia Incorporated—A91200

Summary | On 26 November 2009 the Board of Airline Representatives of Australia Incorporated (BARA) applied for reauthorisation to negotiate and bargain collectively, on behalf of BARA's member airlines from time to time, with airport operators and providers of other essential airport services, and agree on terms and conditions of acquisition of such services, including prices, on an airport-by-airport basis.

The ACCC has sought submissions from interested parties. The ACCC anticipates that a draft determination will be released in March 2010.

Macquarie Generation & Ors—A91198–A91199

Summary | On 27 November 2009, authorisation was sought for a co-insurance arrangement developed pursuant to the disaggregation of electricity generation portfolios in NSW.

The NSW Government proposes to disaggregate its three existing electricity generation portfolios into five Gentrader contract bundles. Under the co-insurance arrangements, a Gentrader that is unable to meet its firm capacity requirements will have the option of calling on co-insurance.

It is proposed that the co-insurance arrangements be implemented through a multiparty agreement between the Generators and the Gentraders who successfully bid for the electricity trading rights of the Generators.

Specifically, authorisation is sought for the following features of the co-insurance arrangements, to be made and given effect to through a compensation deed:

- the payment provisions, which specify the price payable (the compensation price) for the compensation that a Gentrader is able to call on when the Generator is unable to meet its firm capacity requirements
- the firm capacity provisions, which specify the quantity of firm capacity to be made available by each Generator to its Gentrader counterparty for the purpose of the co-insurance arrangement
- the allocation procedures and rules, which specify which Gentrader will be required to pay compensation and the amount of that compensation
- the supply and acquisition of the co-insurance is limited to the parties to the agreement.

The ACCC is currently considering submissions received from interested parties and expects to release a draft determination in March 2010.

Casuarina Precinct Stakeholders Committee—A91201–A91202

Summary | On 30 November 2009, the Casuarina Business Precinct Stakeholders Committee applied for authorisation to agree to restrict the supply of certain types of alcohol products to consumers (known as the Liquor Accord). The parties to the Liquor Accord are Casuarina All Sports Club Inc, GPT Group, The Village Shopping Centre, Coles Liquor and Woolworths Limited.

The ACCC is currently considering submissions received from interested parties. It anticipates releasing a draft determination in March 2010.

Australian Payments Clearing Association Limited—A91203

Summary | On 7 December 2009, the Australian Payments Clearing Association Limited (APCA) lodged an application for revocation and substitution of authorisations A90932 and A90933. APCA is seeking a replacement authorisation for provisions of the Australian Paper Clearing System (APCS) Regulations relating to suspension and termination of APCS members.

On 13 January 2010 the ACCC granted interim authorisation to the arrangements. The ACCC expects to release a draft determination in February 2010.

Media Entertainment and Arts Alliance—A91204

Summary | On 16 December 2009, the Media Entertainment and Arts Alliance applied for authorisation to collectively negotiate the terms of engagement for freelance journalists by Fairfax.

The ACCC is currently considering submissions received from interested parties and anticipates releasing a draft determination in March 2010.

Rio Tinto Aluminium & Ors—A91205-A91207

Summary | On 24 December 2009, Rio Tinto Aluminium Limited, as manager of the Gladstone Power Station Joint Venture, sought authorisation on behalf of itself and participants in the Gladstone Power Station Joint Venture—namely, GPS Energy Pty Limited, GPS Power Pty Limited, Sunshine State Power BV, Sunshine State Power (No. 2) BV, SLMA GPS Pty Ltd, Ryowa II GPS Pty Limited, YKK GPS (Queensland) Pty Limited—for arrangements under amended agreements in relation to electricity generated by the Gladstone Power Station and supplied to the Boyne Island Aluminium Smelter and the national electricity market.

Earlier agreements relating to the Gladstone Power Station were previously authorised by the ACCC in 1994. The applicants have amended the GPS agreements to accommodate certain changes to commercial arrangements which have occurred against the background of the introduction and operation of the national electricity market.

The ACCC has sought submissions from interested parties and anticipates releasing a draft determination in March/April 2010.

Gladstone Ports Corporation Limited & Ors—A91208

Summary | On 24 December 2009, Gladstone Ports Corporation Limited (GPC), Wiggins Island Coal Export Terminal Pty Limited (WICET) and WICET Holdings Pty Limited (WICET Holdings) applied for authorisation to make contracts, arrangements or understandings between the applicants and the State of Queensland to:

- reallocate from the Barney Point Coal Terminal (which is owned and operated by GPC) to the proposed Wiggins Island Terminal (which will be owned by WICET and operated by GPC) the portion of port terminal services, coal handling services and coal storage facilities (Tonnage Capacity) that GPC currently supplies to Wesfarmers
- reallocate from the Barney Point Coal Terminal to either the RG Tanna Coal Terminal (owned and operated by GPC) or the proposed Wiggins Island Coal Terminal the portion of Tonnage Capacity that GPC currently supplies to the Dawson Joint Venture.

The ACCC has invited submissions from interested parties and the matter is currently under consideration. The ACCC anticipates releasing a draft determination in March 2010.

Benaris International Pty Ltd & Ors—A91135 & A91157

Summary | On 15 December 2009, Benaris International Pty Ltd, Origin Energy Resources Ltd and Woodside Energy Ltd applied for a minor variation to authorisations A91135 and A91157.

On 2 September 2009 the ACCC previously granted authorisation to Benaris and Woodside to jointly sell their shares of the Otway Gas Project joint venture's LPG to a common customer or common customers, until 31 December 2012. Origin and Benaris have agreed to buy Woodside's interest in the venture and Benaris, Origin and Woodside now apply for Origin and Benaris, rather than Origin and Woodside, to jointly market their shares.

The ACCC released a determination on 4 February 2009 granting the minor variation to the authorisations.

Collective bargaining notifications

The ACCC received two collective bargaining notifications during the December 2009 quarter.

Summaries of these notifications are provided below.

Hertz Australia Pty Ltd—CB000138

Summary | On 11 November 2009, Hertz, Thrifty, Avis, Budget and Europcar notified a proposal to collectively bargain with Mackay Airport in relation to the terms and conditions of the acquisition of facilities associated with the provision of rental car services at the airport (counter space and car park space).

The ACCC sought submissions from interested parties prior to allowing the notification to stand on 7 December 2009.

Chess Moving Australia Pty Ltd—CB000139

Summary | On 2 December 2009, Chess Moving Australia Pty Ltd, a federation of furniture removal and storage companies, notified a proposal to collectively bargain on behalf of its members with Asciano Services Pty Ltd (trading as Pacific National) in relation to the provision of rail line haul freight services, including pricing and an annual volume rebate.

The ACCC sought submissions from interested parties prior to allowing the notification to stand on 16 December 2009.

Exclusive dealing notifications

During the December 2009 quarter, the ACCC received 189 new notifications across 91 matters.

Notifications of interest considered during the quarter include the following.

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.

On 4 December 2009 the ACCC issued a draft notice proposing to revoke notification N94049. A pre-decision conference was requested and held in Sydney on 21 January 2010. The ACCC is currently considering further submissions prior to releasing a final decision.

eDosh Pty Ltd—N94164

Summary | On 14 September 2009, eDosh lodged a notification relating to offering the following member services to persons who subscribe for eDosh's services:

- the provision of commissions and rebates to members who purchase products and services through those third party suppliers
- 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
- provision of those commissions and rebates by way of loyalty points or credits (eDosh dollars), by direct payment or other means
- 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 listed above on the condition that:

- the member acquires goods or services from Coles Group Ltd or Gotalk Communications Pty Ltd (third party suppliers)
- eDosh receives a commission or a rebate from the third party supplier.

eDosh also proposes to supply the member services set out above 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.

On 22 October 2009 the ACCC issued a draft notice proposing to revoke the notification. The ACCC is currently considering further submissions prior to issuing a final decision.

Invalid exclusive dealing notification

On 24 February 2010, Dr Richard Chadwick, General Manager, Adjudication Branch, signed a section 93(2B) notice advising Geneen Street Pty Ltd that the exclusive dealing notification purported to be lodged for Jaspen Pty Ltd as trustee for the Jaspen Family Trust on 23 February 2010 was invalid because the arrangements described in the notifications did not identify the conduct which may be third line forcing conduct or conduct of a kind referred to in sections 47(2), (3), (4) or (5) of the Act. The purported notification did not therefore comply with the requirements for a valid notification under section 93(1) of the Act.

5. Regulatory affairs

The ACCC and Australia Energy Regulator (AER) both have roles in promoting competition in network industries: communications, energy, water and transport. Both regulators 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 December 2009 quarter, the ACCC:

- commenced a public inquiry into a variation of the service description for the domestic transmission capacity service (DTCS)
- varied class exemptions for wholesale voice services
- determined to maintain the current pricing principles and indicative prices for the six fixed-line services until 31 December 2010
- commenced a fundamental review of the 1997 Access Pricing Principles for fixed-line services
- commenced arbitration of a new access dispute and extended the operation of an interim determination
- published data on take-up of broadband access services
- issued the quarterly report for the June 2009 quarter under the accounting separation regime for Telstra.

Declarations

Part XIC of the *Trade Practices Act 1974* enables the ACCC to declare telecommunications services. Once declared, the access provider is obliged to supply the services to an access seeker upon request.

ACCC commences review to vary DTCS service description

During the December 2009 quarter, the ACCC commenced a public inquiry into a variation of the service description for the DTCS.

The DTCS declaration is intended to cover all transmission interface protocols commonly used over the Australian network. The ACCC is conducting the present inquiry to clarify the scope of the DTCS service description.

Submissions closed on 25 January 2010.

Exemptions

ACCC varies class exemption for wholesale voice services

During the December 2009 quarter, the ACCC issued its final decision varying the class exemptions granted in August and October 2008 for the wholesale line rental (WLR) service, local carriage service (LCS) and public switched telephone network originating access (PSTN OA) service.

The ACCC's decision to vary the class exemptions will ensure consistency with the individual exemptions granted to Telstra in recent Australian Competition Tribunal proceedings. As a result, all access providers of the WLR, LCS and PSTN OA services will have the same access obligations in any given service area.

Access terms and conditions—indicative prices, undertakings and disputes

Access pricing

ACCC launches review into telecommunications access pricing and holds current levels

In the December 2009 quarter, the ACCC commenced a review of access pricing principles for telecommunications services and determined to maintain the current pricing principles and indicative prices for the fixed-line services (i.e. unconditioned local loop service (ULLS), line sharing service (LSS), public switched telephone network originating and terminating access (PSTN OTA) services, LCS and WLR service) until 31 December 2010.

These services enable Telstra's competitors to provide fixed and broadband services over Telstra's copper network.

Access undertakings

Telstra's ULLS undertaking

On 28 April 2009, the ACCC issued a final decision to reject Telstra's undertaking that proposed a \$30 monthly charge for the ULLS in metropolitan areas. The charge relates to the rental price Telstra charges competitors for access to the copper wire from the telephone exchange to a house or office.

The matter was subsequently appealed by Telstra to the Australian Competition Tribunal and a decision is pending.

Access disputes

The ACCC is vested with powers to arbitrate telecommunications access disputes on declared services and 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 December 2009 quarter, a new access dispute was notified to the ACCC by Vodafone Network Pty Ltd with Telstra in relation to mobile terminating access service (MTAS). Four access disputes in relation to MTAS were withdrawn. These were between:

- Optus Mobile (access seeker) and Telstra (access provider)
- Optus Networks (access seeker) and Telstra (access provider)
- Telstra (access seeker) and Optus Mobile (access provider)
- Telstra (access seeker) and Optus Networks (access provider).

With these changes, the ACCC continues to arbitrate 39 access disputes.

Interim and final determinations

During the December 2009 quarter, the ACCC extended the operation of an existing interim determination. The interim determination relates to an access dispute between Amcom Pty Ltd and Telstra over the supply of the ULLS. The ACCC did not make any further interim or final determinations in the December 2009 quarter.

Published determinations

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

Table 3 summarises the position in relation to access disputes during the December 2009 quarter.

Table 3 Access disputes—1 October to 31 December 2009

| | Total |
|---|-------|
| Active disputes at 31 December 2009 | 39 |
| Decisions subject to appeal to the ACT | 1 |
| New arbitrations commenced | 1 |
| Interim and final determinations issued | 0 |
| Disputes withdrawn | 4 |
| Published determinations | 0 |

Other developments

ACCC publishes information on take-up of broadband access services

During the December 2009 quarter, the ACCC published information concerning the number and distribution of services supplied over Telstra's widespread copper network. Data indicate that in the two years to September 2009, the number of broadband services supplied by internet service providers through direct access to Telstra copper loops, coupled with investment in their own equipment, has more than doubled to reach 1.3 million services.

Reports

In the December 2009 quarter, the ACCC issued the *Imputation and non-price terms and conditions report* for the June 2009 quarter.

Australian Energy Regulator

The December 2009 quarter saw the AER release its third edition of the *State of the energy market* report. It also released its final determination on the Advanced Metering Infrastructure Victoria rollout, approved tariffs for Victorian electricity and gas distribution businesses and released its energy compliance report for the quarter. The AER also published the results of its investigation of Babcock & Brown Power and its compliance with the National Electricity Rules.

The AER continued its price–revenue review process for the Queensland and South Australian electricity distribution network businesses, as well as its price review process for gas distribution access arrangements for the New South Wales and Australian Capital Territory gas networks. It commenced its price–revenue review process for the Victorian electricity distribution businesses.

As the national energy regulatory framework continues to develop, the AER has established the Consumer Consultative Group, consisting of nine consumer advocates and focusing on retail and non-price distribution issues.

Electricity network regulation matters

Final decision—applications for exclusion from the Victorian service incentives for supply reliability (supply interruptions in January–February 2009)

In December 2009 the AER released the final decision on applications for exclusion from the Victorian service incentives for supply reliability regarding supply interruptions in January–February 2009.

AER approves the 2010 electricity distribution and transmission tariffs for electricity distribution businesses in Victoria

The AER is responsible for approving the electricity distribution and transmission tariffs for the Victorian electricity distribution businesses CitiPower, Powercor, Jemena, SP AusNet and United Energy.

In December 2009 the AER approved the 2010 distribution and transmission tariffs for each of the Victorian electricity distribution businesses.

Approval of the proposed variation to the TUoS re-balancing constraint (Y factor) for Victorian electricity distribution businesses

As part of its responsibilities for approval of electricity distribution and transmission tariffs (see above item) the AER is responsible for approving the pass-through of transmission tariffs for the Victorian distribution businesses.

Changes to transmission tariffs are limited to a re-balancing constraint of $CPI + Z + Y$ per cent. The Z factor is calculated as the average annual increase in transmission costs up to an 18 per cent cap; and the Y factor is equal to 2 per cent.

The AER may adjust the re-balancing constraint that applies to transmission tariffs where it is satisfied that a distributor will not be able to recover its expected transmission-related costs even if all existing transmission tariffs are increased by the existing transmission control.

In November 2009, the AER considered the proposed variations to the transmission re-balancing constraint and approved increases in the re-balancing constraint for each business in 2010 to allow for the recovery of transmission-related costs.

2010 gas reference tariffs and ancillary reference tariffs for gas distribution businesses in Victoria

The AER is responsible for approving the gas distribution reference tariffs and ancillary reference tariffs for the Victorian gas distribution businesses Multinet, Envestra Victoria, Envestra Albury and SP AusNet.

For 2010, the overall average price increase for each of the businesses is limited to a weighted average CPI – X price cap. In addition, a re-balancing constraint applies to each individual tariff.

In November 2009, the AER released the tariff schedules for the gas distribution businesses.

Draft distribution determination—ETSA Utilities, Energex and Ergon Energy

The AER is required, under chapter 6 of the National Electricity Rules, to make a distribution determination for the Queensland (Energex and Ergon Energy) and the South Australian (ETSA Utilities) electricity distributors. The distribution determination establishes a revenue requirement for each business for the 2010–15 regulatory control period.

The AER invited interested parties to make written submissions on each business's regulatory proposal and the AER's proposed negotiated distribution service criteria.

In November 2009, the AER made its draft determinations on the regulatory proposals submitted by ETSA Utilities, the South Australian electricity distributor, and Energex and Ergon Energy, the Queensland electricity distributors.

Victorian electricity distribution businesses comparative performance report 2008

In November 2009, the AER released the *Victorian electricity distribution businesses comparative performance report 2008*.

The report presents the 2008 financial and service quality performance of Victoria's five electricity Distribution Network Service Providers: CitiPower, Jemena Electricity Networks, Powercor, SP AusNet and United Energy. The report also provides details of the businesses' performance trends since 1999.

Final determination—Victorian Advanced Metering Infrastructure rollout

In October 2009, the AER released its final determination on the Advanced Metering Infrastructure (AMI) rollout, in relation to CitiPower, Jemena, Powercor, SP AusNet and United Energy Distribution's AMI budgets for 2009–11 and charges for 2010–11.

The final determination establishes the basis for the metering charges payable by Victorian consumers using less than 160MWh of electricity per annum for 2010 and 2011. It responds to issues raised in submissions on the draft determination, released on 31 July 2009.

Annual electricity performance report for transmission network service providers

In October 2009, the AER released its annual electricity performance report covering transmission network service providers in the national electricity market.

The report follows on from previous regulatory reports issued by the ACCC and AER, and provides revenue, profit, expenditure and service standards information on each of the transmission businesses for the 2007–08 financial reporting year. The businesses covered are ElectraNet, EnergyAustralia, Murraylink, Powerlink, SP AusNet, Transend, TransGrid and VENCORP.

APA Group's pass-through application for Directlink

On 6 October 2009, the AER received an application from the APA Group requesting approval to pass through costs associated with an insurance event that occurred on the Directlink transmission asset.

The application, including a notice of proposed pass-through, was made under the pass-through rules of the AER's 2006 revenue cap decision for Directlink. Interested parties were invited to make written submissions on the APA Group's pass-through application by 23 October 2009. No submissions were received.

Energy markets

State of the energy market 2009

In December 2009, the AER released the *State of the energy market 2009* report. The report provides an overview of Australia's electricity and natural gas markets. It supplements the more technical reports the AER publishes and is written for a wide audience including government, industry and the broader community.

The 2009 edition consists of a market overview, supported by 11 chapters on the electricity and natural gas sectors. The report also includes an essay—an assessment by EnergyQuest of the state of the natural gas industry, focusing on the growing integration of Australian and global energy markets.

This year's edition provides increased coverage of energy policy and regulatory developments, including the AER's recent activity. The market overview considers major issues across the energy sector over the past 12 to 18 months, including the implications of climate change policies and the global financial crisis.

Investigation into compliance with dispatch instructions—11 February 2009 and 17 March 2009

In December 2009, the AER published an investigation report into the compliance of Babcock & Brown Power (BBP) with two provisions of the National Electricity Rules, relating to the operation of two of its power stations—Playford in South Australia and Braemar in Queensland.

The report details the events of 11 February 2009, when Playford Power Station allegedly failed to follow dispatch targets issued by the Australian Energy Market Operator (AEMO). In addition to this, the AER alleged that, on this day, BBP also failed to notify AEMO of an event that was likely to change the operational availability of Playford.

The report also covers the events of 17 March 2009, when Braemar Power Station began producing electricity without first receiving a dispatch target from AEMO.

This completes the AER's investigation into these events and follows a decision of the AER in September 2009 to issue two infringement notices totalling \$40,000. The penalties relate to the alleged failure of Playford and Braemar power stations to follow dispatch instructions issued by AEMO. While an infringement notice was not issued in respect of BBP failing to notify AEMO of a change in Playford's operational availability, the AER obtained a commitment from BBP regarding the improvements it will make to its compliance systems in this area.

Quarterly compliance report for July to September 2009

In October, 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 enquiries undertaken by the AER during that quarter.

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.

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

Enforcement and monitoring activities under the Water Rules

Enforcement

On 23 June 2009, the Water Market Rules 2009 (WMR) and the Water Charge (Termination Fees) Rules 2009 (WCTFR) came into effect. Since this time, and particularly since the end of the transitional period for the WCTFR on 31 August 2009, the ACCC has completed a range of activities to ensure that operators are complying with the rules and advise operators of their obligations under the rules. This has included:

- releasing enforcement guidelines outlining the ACCC's approach to enforcing the WMR and the WCTFR (collectively the rules)
- completing information captures of operator websites to determine what information is being provided to irrigators
- attending information sessions to explain the requirements of the rules
- writing to various operators advising of their obligations under the rules and enclosing guidance material where appropriate.

Monitoring

The Water Act gives the ACCC responsibility for monitoring regulated water charges and compliance with the WMR and the WCTFR. The purpose of the ACCC undertaking monitoring is to inform the Minister for Climate Change and Water (the Minister) and stakeholders more broadly of regulated water charges and the degree of compliance with the rules.

The ACCC is required to provide the Minister with annual reports on the results of its monitoring, consistent with an agreement between the Minister and the ACCC. The ACCC will provide the Minister with the first report, covering the 2009–10 financial year, in early 2011.

To enable the ACCC to fulfil its monitoring obligations, the ACCC released a draft information request in August 2007. In response to stakeholder feedback and after further consideration, on 3 December 2009 the ACCC released an amended draft information request.

Submissions closed on 4 February 2010.

Policy development

Proposed amendments to the Water Market Rules 2009 and the Water Charge (Termination Fees) Rules 2009

On 30 September 2009, the Minister wrote to the ACCC requesting advice on amendments to the rules. The amendments proposed by the Minister related to technical issues identified in the process of implementing the rules. The Minister requested that this advice be provided by end of March 2010.

On 9 October 2009, the ACCC issued a notice of the Minister's request and invited submissions on the issues raised.

On 10 December 2009, the ACCC publicly released draft advice provided to the Minister on proposed amendments to the WMR and WCTFR, including recommended amendments to these rules. In drafting the advice, the ACCC had regard to stakeholder submissions and the policy intent of the ACCC's advice to the Minister on the rules, provided in December 2008.

Submissions about the draft advice closed on 8 February 2010.

Water trading rules

On 17 December 2009, the ACCC released its draft advice to the Murray–Darling Basin Authority on the development of the water trading rules.

The draft advice sets out advice and recommendations on a range of matters relating to water trading. These matters include restrictions on trade, administrative processes and information requirements for a functional water market.

Submissions commenting on the draft advice closed on 1 February 2010.

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.

On 6 November 2009, the ACCC released its draft advice and rules on the accreditation of state agencies by the ACCC under the Water Charge (Infrastructure) Rules. The ACCC sought submissions from interested parties on the draft advice and draft rules. Submissions to the draft advice closed on Friday 18 December 2009.

The draft advice sets out the ACCC's proposed framework for the accreditation of state agencies to carry out determinations and approvals of regulated charges for certain irrigation infrastructure operators and bulk water operators within the Murray–Darling Basin.

Transport and general prices oversight

Container stevedoring

On 10 November 2009, the ACCC released its container stevedoring monitoring report for the 2008–09 year. The ACCC, under a direction from the Treasurer pursuant to Part VIIA of the Trade Practices Act, monitors prices, costs and profits of container terminal operator companies at the ports of Adelaide, Brisbane, Burnie, Fremantle, Melbourne and Sydney.

This was the 11th annual report released by the ACCC. It showed that industry performance was affected by reduced demand for stevedoring services largely as a result of the global economic slowdown. Total industry revenues in 2008–09 decreased due to a decline in volumes. Average costs increased. Profits declined as a result of reduced earnings and continued investment by the stevedores. However, levels of profitability reported remain relatively high.

Ports are at various stages of providing additional capacity for an expected return to growth. There are now, more than ever before, encouraging signs that new entry into Australian stevedoring, particularly in the eastern seaboard container ports, is possible. Where opportunities for possible new entry are provided, this could lead to more intense competition and improve efficiency in the way that stevedoring services are provided.

Post

Assessment of draft price notification to increase reserved letter prices

On 8 December 2009, the ACCC issued its view objecting to Australia Post's draft proposal to increase the prices in 2010 of the letter services over which it has a statutory monopoly.

Australia Post's draft pricing proposal, which was provided to the ACCC on 24 July 2009, sought to increase the prices of a number of its Small, Large and PreSort letter services. Australia Post also sought to increase the basic postage rate from 55 to 60 cents.

The key issue overshadowing Australia Post's 2009 draft price notification was the significant fall in Australia Post's reserved letter volumes between the 2007–08 and 2008–09 financial years, and Australia Post's expectation of declining letter volumes into the future.

In objecting to Australia Post's proposal to increase prices, the ACCC considered that Australia Post had not demonstrated that it had fully exhausted cost-based responses to its expectation of declining letter volumes. As a result, the ACCC had significant concerns about the efficiency of Australia Post's forecast costs for the period 2008–09 to 2011–12. The ACCC also had concerns about the lack of transparency in Australia Post's approach to forecasting demand for its letter services.

Intellectual property—copyright proceedings

Australasian Performing Right Association Limited and Australasian Mechanical Copyright Owners Society Limited²

In late 2009, the ACCC appeared in proceedings before the Copyright Tribunal of Australia regarding the tariff paid by digital service providers (DSPs), such as Apple and Telstra, to copyright owners for the copyrighted material required to provide digital music services over the internet (such as music downloads from Apple iTunes, Telstra BigPond and other such internet platforms).

The copyright owner in this matter was the Australasian Performing Right Association of Australia Limited and the Australasian Mechanical Copyright Owners Society Limited (APRA–AMCOS), a music collecting society. APRA–AMCOS had filed a reference in the Copyright Tribunal in June 2007 seeking to bring into operation a new licence scheme and tariff rate for the use of that copyrighted material.

Apple, Telstra, Sony BMG and Universal Music all joined the reference as respondents.

APRA–AMCOS had sought an increase in the tariff rate from 8 per cent to 12 per cent of the retail price per permanent individual download.

Where the ACCC joins a proceeding before the Copyright Tribunal, its role is to assist the tribunal in making its determination by providing an independent view of the economic arguments put by the parties to the proceedings, with the objective of promoting competition and consumer welfare.

In December 2009, the commercial parties reached a commercial settlement, proposing to the tribunal that it endorse a rate of 9 per cent of the retail price for digital downloads with a minimum tariff of 9 cents per single track download. In response to a request from the tribunal for its views on the public interest in confirming this rate, the ACCC submitted to the tribunal that it did not oppose the settlement, as it represented evidence of a market rate. The tribunal subsequently confirmed the new rate on 17 December 2009.

Price monitoring

Fuel monitoring

The ACCC monitors retail prices of petrol, diesel and automotive liquefied petroleum gas (LPG) in all capital cities and around 150 regional centres and country towns. Movements in international benchmark prices as well as international crude oil prices are monitored for these fuels. The ACCC closely follows developments in the petroleum industry.

Price movements in the December 2009 quarter

Petrol

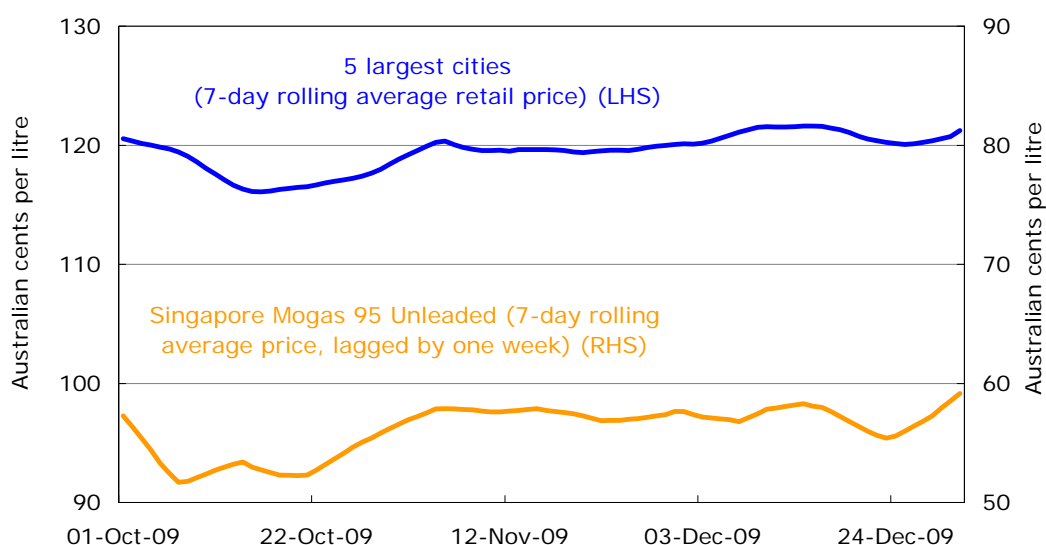
The ACCC examines movements in domestic retail petrol prices compared with movements in international benchmark prices. In the case of unleaded petrol, it examines movements in seven-day rolling average retail unleaded petrol prices in the five largest cities (Sydney, Melbourne, Brisbane, Adelaide and Perth) and seven-day

² [2009] ACopyT 2 (17 December 2009).

rolling average prices for Singapore Mogas 95 Unleaded (lagged one week) in Australian cents per litre (cpl).

Chart 2 shows movements in these prices over the period 1 October to 31 December 2009. Retail unleaded petrol prices are shown on the left-hand side of the chart and Singapore Mogas 95 Unleaded prices are shown on the right-hand side. It is important to remember that a comparison of these two prices is indicative, and 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 2 Price movements in retail unleaded petrol and Singapore Mogas 95 Unleaded—1 October to 31 December 2009



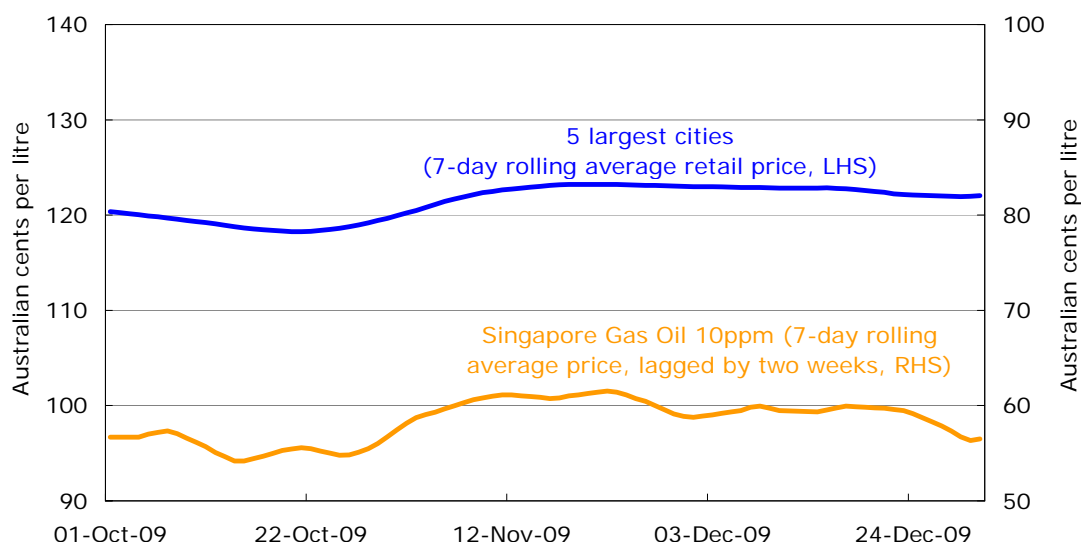
As illustrated in Chart 2, retail petrol prices broadly tracked movements in the benchmark prices in the December 2009 quarter. Over the period 1 October to 31 December 2009, average retail unleaded petrol prices across the five largest cities (on a seven-day rolling average basis) increased from 120.6 cents per litre (cpl) to 121.2 cpl, an increase of 0.6 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 Chart 3, 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. The chart illustrates that retail prices broadly tracked movements in the international benchmark price over the December 2009 quarter.

Over the December 2009 quarter, average retail diesel prices for the five largest cities (on a seven-day rolling average basis) increased by 1.6 cpl, from 120.4 cpl to 122.0 cpl.

Chart 3 Price movements in retail diesel and Singapore Gas Oil—1 October to 31 December 2009

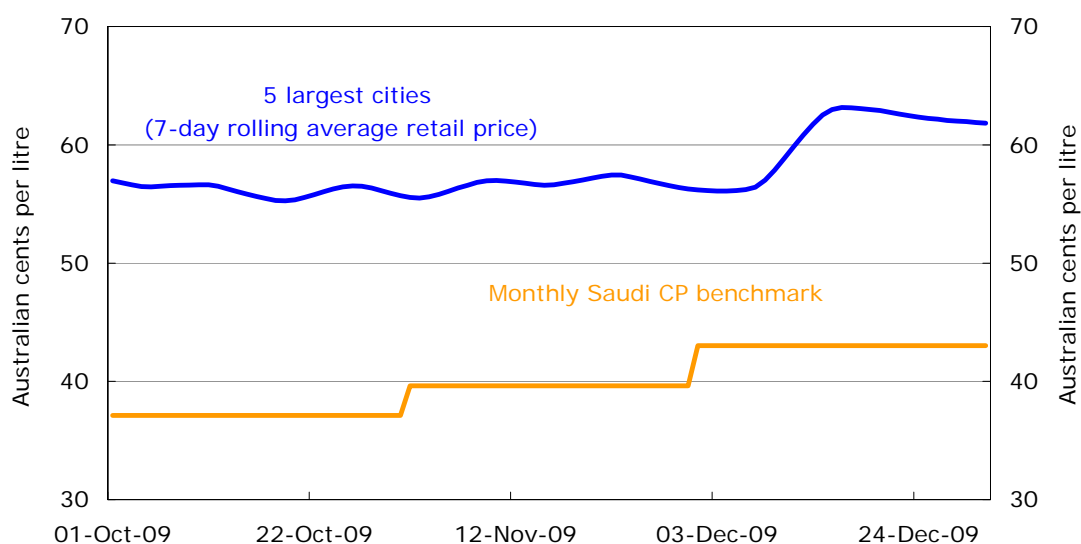


Automotive LPG

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. Chart 4 illustrates that retail prices broadly tracked movements in the international benchmark price over the December 2009 quarter.

Over the period 1 October to 31 December 2009, retail automotive LPG prices in the five largest cities (on a seven-day rolling average basis) increased by 4.8 cpl, from 57.0 cpl to 61.8 cpl. The higher retail prices reflected an increase in the Saudi benchmark price since September 2009.

Chart 4 Price movements in retail automotive LPG and Monthly Saudi CP—1 October to 31 December 2009



On 17 December 2007, the Australian Government directed the ACCC to formally monitor the prices, costs and profits relating to the supply of unleaded petrol products in the petroleum industry in Australia.

The second annual monitoring report, analysing prices in all capital cities and around 150 regional centres and country towns, was released in December 2009.

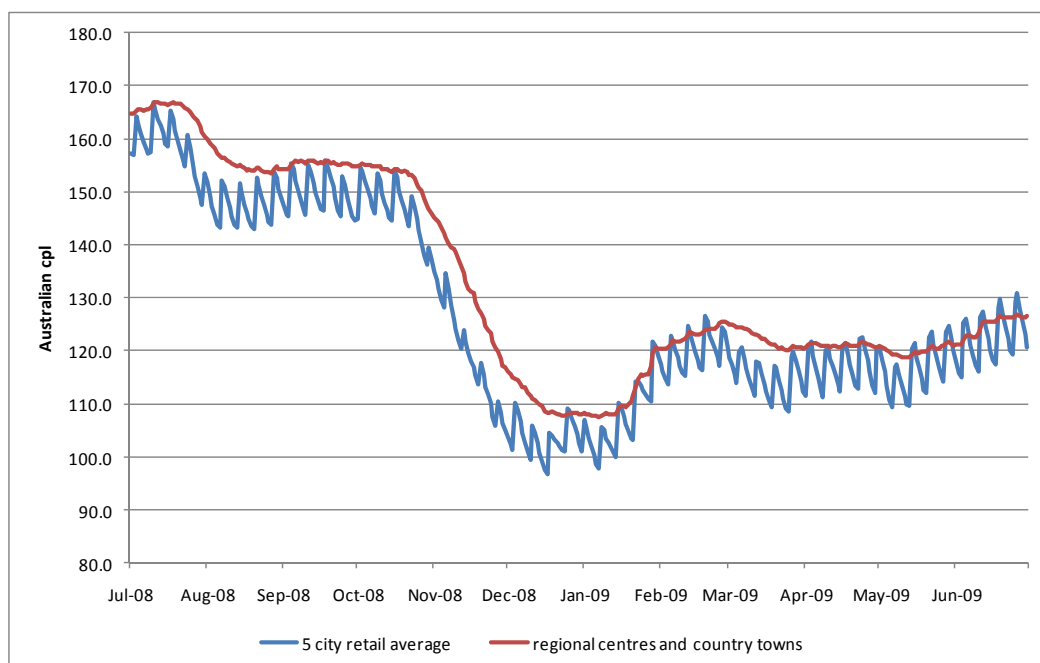
The report found that the most important influences on retail petrol prices were:

- the international price of refined petroleum (Mogas 95)
- the exchange rate of the Australian dollar against the US dollar
- the well-established weekly retail price cycles which operate in the large capital cities and affect the day-to-day prices of petrol.

Petrol price movements in the 2008–09 financial year

Retail petrol prices declined substantially in the second half of 2008. Prices then rose between January and March 2009 and were fairly stable for the remainder of the financial year. Retail petrol prices in Australia towards the end of the financial year were the fourth lowest in the OECD.

Chart 5 Daily average petrol retail across the five largest cities, regional centres and country towns—July 2008 to June 2009



Source: ACCC calculations based on Informed Sources data.

Petrol price cycles

A well-established and regular weekly price cycle is clearly evident in most capital cities. These cycles have become more stable and greater in magnitude in recent years.

There has been a change in the days of the week on which prices most commonly peak and trough in the petrol price cycle. The cheapest day in Sydney, Melbourne, Brisbane and Adelaide moved from Tuesday to Wednesday.

The ACCC also found that petrol price movements around public holidays were in line with regular price cycle movements.

Petrol company profitability for financial year 2008–09

Over the past seven years the net profit on petrol—this includes RULP, PULP and E10—for the combined refining, wholesale and retail sectors has typically been in the range of 2 cpl to 6 cpl. The average net profit for petrol over the whole seven-year period was 3.1 cpl.

In 2008–09 the petrol companies made a net loss of 2.3 cpl on petrol sales. That net loss in the financial year of 2008–09 equates to approximately \$480 million on the sale of petrol aggregated for all the petrol companies.

6. International activities

The ACCC's international activities support its work by promoting international enforcement assistance and best practice regulation, and also by developing and maintaining effective networks and links with international counterpart agencies. Core activities undertaken include:

- managing the ACCC's involvement at international forums, including coordinating and preparing contributions on issues of relevance to the ACCC
- coordinating information sharing and enforcement assistance with counterpart agencies
- managing the ACCC's technical assistance activities with developing economies
- assisting the ACCC to obtain advice on various global developments through research, analysis and reporting
- building and sustaining strong links with key international officials and organisations.

International forums

The ACCC participates in a variety of international forums throughout the year. It is an active member of International Competition Network (ICN) and is represented on its steering committee and a number of working groups, including some relating to mergers and cartels.

The ACCC is currently the President of the International Consumer Protection and Enforcement Network (ICPEN). The ACCC's work has involved developing ICPEN's future Strategic Plan and hosting their most recent conference in Sydney 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:

- highlights 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 December 2009 quarter, the ACCC:

- attended the World Forum on Energy Regulation in Athens, Greece
- attended and participated in the OECD Competition and the OECD Committee on Consumer Policy Meetings in Paris, France
- attended and presented at the International Competition Network Cartels Workshop in Cairo, Egypt
- attended and presented at an International Communications Conciliation Workshop in Seoul, South Korea

- presented at the OECD Regional Centre for Competition training course in Seoul, South Korea
- presented at the Singaporean Competition Commission's Distinguished Speaker Series
- attended and presented at the ASEAN Competition Policy workshop in Bangkok, Thailand
- attended the East Asia Pacific Infrastructure Regulatory Forum Meeting and Workshop in Hanoi, Vietnam
- attended and presented at the International Product Safety Workshop in Seoul, South Korea
- presented at the ASEAN Competition Conference in Nha Trang, Vietnam.

Free trade agreements

The ACCC continues to actively participate in the free trade agreement (FTA) 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 December 2009 quarter, the ACCC received and sought information from agencies in Canada, Chinese Taipei, the European Commission, France, Japan, New Zealand, Singapore, Spain, South Korea, the United States, the United Kingdom and Vietnam.

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

The ACCC made similar requests to its counterparts about merger inquiries, cartel investigations, mass-marketing fraud, regulatory functions, and general inquiries to assist enforcement investigations.

In conjunction with information requests, the ACCC meets with counterpart authorities to share experiences or provide its expertise to assist in the development of other authorities.

During the December 2009 quarter, the ACCC met with representatives of the following agencies:

- Competition Authority, Pakistan
- Competition Bureau, Canada

- Consumer Authority, Japan
- Department of Trade and Industry, South Africa
- Fair Competition Federation, South Korea
- Fair Trade Commission, Japan
- Fair Trade Commission, South Korea
- Independent Competition and Consumer Commission, Papua New Guinea
- Indonesian Commission for the Supervision of Business Competition
- Ministry for Domestic Trade, Malaysia
- Ministry of Trade and Commerce & Department of Consumer Affairs, Botswana (with the United Nations Conference on Trade and Development UNCTAD)
- National Credit Regulator, South Africa
- Netherlands Consumer Authority
- New Zealand Commerce Commission
- Office of Fair Trading, United Kingdom
- Office of Gas and Electricity Markets, United Kingdom
- State Administration for Industry and Commerce, People's Republic of China
- US Federal Trade Commission.

7. Reviews and inquiries

Legislative matters

The following legislation came before the Australian Parliament during the December 2009 quarter:

- *Federal Court of Australia Amendment (Criminal Jurisdiction) Act 2009*
The Federal Court of Australia Amendment (Criminal Jurisdiction) Bill 2008 was passed with amendments by the Senate on 17 September 2009. The House of Representatives agreed to the Senate's amendments on 19 October 2009. Royal assent was given on 6 November 2009. The Act will enable the Federal Court to apply uniform indictable criminal procedure across Australia to deal with serious cartel offences.

- Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009

The Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009 was passed by the House of Representatives on 22 October 2009. The Senate Environment, Communications and the Arts Legislation Committee inquiry into the Bill tabled its report on 26 October 2009. The Bill is currently being considered by the Senate.

If passed, the Bill will:

- 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.

Other developments

Franchising and unconscionable conduct

In November 2009, the Minister for Competition Policy and Consumer Affairs announced the establishment of an expert panel on franchising and unconscionable conduct. The panel will provide advice to the government on some outstanding issues raised in recent parliamentary inquiries into the Franchising Code of Conduct and the provisions of the TPA that prohibit unconscionable conduct.

2010 review of Telstra's price control arrangements

In December 2009, the Minister for Broadband, Communications and the Digital Economy issued a direction requiring the ACCC to hold a public inquiry into the retail price control arrangements that should apply to Telstra after the expiration of the current retail price control arrangements on 30 June 2010. The Minister has directed that the ACCC finalise the report by 12 March 2010.

Reports

The following reports were provided to the Minister for Competition Policy and Consumer Affairs during the December 2009 quarter:

- *ACCC annual report 2008–09*
- *Container stevedoring: monitoring report no. 11*
- *Monitoring of the Australian petroleum industry—report of the ACCC into the prices, costs and profits of unleaded petrol in Australia.*

Parliamentary inquiries

During the December 2009 quarter the ACCC appeared before four parliamentary inquiries:

- **Senate Economics Legislation Committee** | 5 October 2009 | Inquiry into the Trade Practices Amendment (Guaranteed Lowest Prices—Blacktown Amendment) Bill 2009
- **Senate Economics Legislation Committee** | 30 October 2009 | Inquiry into the Food Standards Amendment (Truth in Labelling Laws) Bill 2009
- **Senate Economics References Committee** | 28 October 2009 | Inquiry into the GROCERYchoice website
- **House of Representatives Standing Committee on Communications** | 18 November 2009 | Inquiry into cyber crime.

Consultative committees

Small Business Consultative Committee | met 23 October 2009 | issues discussed included:

- ACCC enforcement and compliance activities affecting small businesses
- changes to be brought about through the Australian Consumer Law and the ACCC's role in its administration
- recent amendments to the TPA, including clarity in pricing and the criminalisation of cartel conduct.

Franchising Consultative Committee | met 30 October 2009 | issues discussed included:

- recent ACCC franchising related enforcement and education activities and exclusive dealing notifications
- conflict resolution survey conducted by Griffith University
- new ACCC publication for industry associations.

Infrastructure Consultative Committee (ICC) | met 27 November 2009 | issues discussed included:

- current infrastructure issues
- proposed regulatory reforms

- new ICC project—state of market for corporate debt and impact of global financial crisis study.

AER Customer Consultative Group (CCG) | established November 2009, first meeting scheduled for February 2010 | role of CCG is to:

- provide advice in relation to the AER's functions under energy laws
- focus primarily on retail and non-price distribution issues.

Appendix

Speeches

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

Compliance makes good business

Ms Sarah Court, Commissioner

Australasian Compliance Institute Annual Conference, Sydney, 14 October 2009

Cartel reform and compliance with the Trade Practices Act

Mr Graeme Samuel, Chairman

Australian Corporate Lawyers Association Annual Conference, Melbourne, 13 November 2009

Regulatory changes in an NBN environment

Mr Ed Willett, Commissioner

Committee for Economic Development of Australia (CEDA) Discussion Forum, Hobart, 2 December 2009

News releases

During the December 2009 quarter, the ACCC issued 87 news releases and the Australian Energy Regulator issued nine news releases.

Publications

Publications released from 1 October to 31 December 2009

Corporate

ACCC annual report 2008-09

ACCC e-journal 63 to 64

ACCCCount—A report of the Australian Competition and Consumer Commission's activities, 1 July to 30 September 2009

ACCC Update issue 27, November 2009

For consumers

Blind and curtain cords, safety alert

Introducing unit pricing, consumer brochure

For business

Biodegradable, degradable and recyclable claims on plastic bags: News for business

Cartels: What you need to know: A guide for business

Children's portable folding cots—mandatory standards guide

Fair trading in the rental car sector

Guide to exclusive dealing notifications and excluding information from the public register

Component pricing, restaurants, cafés and hotels: News for business

Retail flash No. 12, December 2009

Unit pricing: a guide for grocery retailers—audio format

ACCC reports

Container stevedoring: monitoring report no. 11

Monitoring of the Australian petroleum industry—report of the ACCC into the formal monitoring of the prices, profits and costs of unleaded petrol in Australia, December 2009

Monitoring of the Australian petroleum industry—summary 2009

State of the energy market 2009

For regulated industries

Australian Competition and Consumer Commission Tenth ACCC Regulatory Conference: The regulation of infrastructure in a time of transition 30–31 July 2009, conference proceedings (on CD)

Draft advice for accreditation under the Water Infrastructure Charge Rules

Network 33–34

Water Infrastructure Charge Rules—draft advice for accreditation

Water trading rules draft advice—December 2009