Australian Competition & Consumer Commission

update

QUARTERLY NEWS FROM THE AUSTRALIAN COMPETITION & CONSUMER COMMISSION

ISSUE 28 › APRIL 2010

Why are energy prices under pressure?

Editorial

'If you prick us, do we not bleed? If you tickle us, do we not laugh? If you poison us, do we not die? If we are like you in the rest, we will resemble you in that.'

SHYLOCK'S WORDS in *The Merchant of Venice* may well have applied to scammers—they do not stick out from the crowd; they look like you and me.

Some Australians believe that scammers are disorganised and unintelligent and that highly educated individuals rarely fall victim to scams. But a recent study by researchers at the University of Exeter put the kybosh on that theory.

'Victims are not, in general, poor decision-makers'.

'A good background knowledge of the subject of a scam offer, such as experience of investments, may actually increase the risk of becoming a victim through over-confidence', the researchers reported. 'Victims are not, in general, poor decision-makers'.

This edition of *Update* deals with the rise of online scamming and provides tips on how to avoid being caught. Complaints about these types of scams have increased by 16 per cent over the past year.

Update also goes behind the scenes in the energy market to explain why energy prices are on the rise. Deteriorating networks and the huge demand for air conditioning have been significant contributors to spiralling costs.

And *Update* reviews the state of grocery competition in Australia and poses the question: are consumers being ripped off by an increasingly powerful duopoly of Coles and Woolworths? What is the ACCC doing to encourage competition?

We take a look at the major players in the grocery sector—and the emergence of retailers such as ALDI—and what measures have been taken to boost competition.

Another topical issue is the growth of 'green' advertising claims as a method of selling goods and services. *Update* looks at how some companies have contravened the Trade Practices Act—and the importance of companies being able to back up their 'green' claims.

We then take you on a drive through the rental car industry and the legal requirement for this and other industries to comply with the new section 53C (component pricing) of the Act.

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Australian Competition and Consumer Commission

23 Marcus Clarke Street, Canberra
Australian Capital Territory 2601

Cartoons by Pat Campbell
Design by GRi.D Communications

ISSN 1443–0681

ACCC 03/10_29404

Print Post approved PP255003/04404

accc.gov.au

COVER STORY

Energy prices: Reliable supplies come at a price

There have been stories in recent months about rising electricity prices. There have been claims that power prices are set to skyrocket across the country. What is really going on?

AROUND AUSTRALIA, retail energy prices have been rising due to higher supply costs. A typical Australian household spends about three per cent of its weekly goods and services budget on electricity and gas. This increases to four per cent for low-income families.

Consumers buy electricity from retailers such as AGL, Origin, EnergyAustralia, Country Energy, Integral, TRUenergy and Simply Energy. The prices that consumers pay are determined in different ways. In Victoria retail prices are determined in a competitive market but with government oversight. Most other jurisdictions also have competitive arrangements but with 'safety net' prices set by government or a local regulator.

Whether retail prices are determined through competition or by a regulator, they reflect the underlying costs the retailer must pay to supply energy. More than 40 per cent of a typical household electricity bill covers wholesale electricity costs, and almost 50 per cent covers the costs of using networks (power lines for electricity, pipelines for gas) to deliver energy to homes.

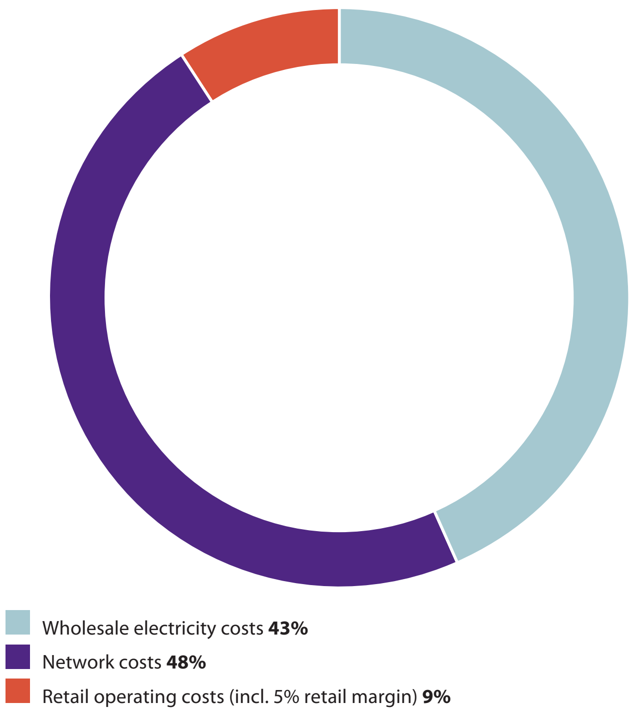
The balance covers retailers' operating costs and profit. Figure 1 shows an approximate breakdown for Queensland. The numbers are similar for other states.

The two largest components of retail prices are: (1) the wholesale costs of energy and (2) network charges.

Wholesale electricity prices have been fairly stable over the past 18 months.

South Australia has been an exception to this pattern, with unusually high summer prices. There has been a general shift

Figure 1
Composition of electricity retail prices—Queensland 2009



Note: Figures represent the composition of estimated costs for an electricity retailer.

to more volatile conditions, with prices shifting between $40 a megawatt hour and $10 000 a megawatt hour in the space of a single day. Retailers take out insurance to protect themselves and their customers from these fluctuations.

Network charges have had the biggest impact on retail prices. The Australian Energy Regulator approves the revenues or prices the networks can charge to deliver energy to customers. This prevents the businesses from setting unfair prices. But network costs are on the rise across Australia for quite legitimate reasons. The main reasons are:

- Some networks have deteriorated over time (many were built more than 40 years ago) and new investment is needed to avoid serious power outages for customers.
- State governments are setting stricter laws for networks to provide reliable services. Some networks need new investment to be able to meet these laws.
- The growing appetite of consumers for air conditioners—which are energy hungry—puts a huge strain on the networks and requires new investment to keep up with demand.

These costs are starting to flow through to retail prices. The New South Wales regulator (IPART) announced in 2009 that retail electricity prices would rise by around 20 per cent.

About half of this increase was due to higher network charges. The Queensland regulator (QCA) recently proposed that retail prices increase by nearly 14 per cent from July 2010. The biggest single factor was higher network charges. The benefit to consumers of these price increases should be more reliable energy supplies and fewer power outages.

Governments are looking at other ways to make energy networks more effective.

Several states are introducing or trialling smart meters that would allow consumers to better manage their energy use. While smart meters cost more than traditional meters, they will allow for better service, for example, through more accurate billing and faster detection and correction of faults.

Eventually, they will benefit consumers by providing them with information to better manage electricity use, for example by running appliances such as washing machines at off-peak times when prices are lower.

In summary, while retail prices are rising—caused mainly by increasing network costs to deliver energy to homes—there are benefits for consumers.

Higher retail prices will pay for new investment in energy networks. This will make power supplies more reliable and help transport more electricity on peak summer days for air conditioning. The new smart meters will also provide consumers with more information and help them use energy more efficiently.

These improvements will place consumers in a better position to manage their electricity consumption into the future.

Inside the ACCC

The Australian Energy Regulator (AER) is Australia's independent national energy market regulator. The AER, which began operation in 2005, is an independent statutory authority and part of the ACCC. It regulates electricity networks and gas pipelines in southern and eastern Australia, enforces energy market law and monitors wholesale energy markets. The AER will also take on a number of roles in retail energy markets under new legislation expected to be introduced in 2010.

A RELIABLE SUPPLY of energy is essential to modern life. While power blackouts are rare, they remind us of how much we rely on electricity when we turn on a light or appliance. Parts of Australia also rely on natural gas for essential services such as cooking and heating.

The energy industry requires a substantial amount of new investment each year to maintain a high level of service. It is important that an independent body apply consistent rules to ensure there is adequate investment to maintain reliable supply. At the same time, it is important that consumers pay a fair price for electricity and gas. The Commonwealth and the states and territories set up a national body—the AER—to monitor these things in an independent and consistent way.

The supply of electricity begins with *generation* in power stations (Figure 1).

The bulk of Australia's electricity is produced from coal-fired generators, but new investment in the past decade has increasingly turned to gas and wind as energy sources. Electricity is transported to households via power lines. High-voltage transmission lines move electricity to the outskirts of cities and towns, where it is converted to lower voltages and transported to households along suburban distribution networks.

The supply of natural gas follows a similar chain, with pipelines shipping gas from gas production facilities to customers (Figure 2).

The AER does not control wholesale energy prices.

In electricity, these prices are determined through supply and demand in a spot market—in much the same way as share prices are determined on the stock exchange—and can fluctuate from hour to hour. Victoria has similar market arrangements in gas. New South Wales and South Australia are introducing spot markets for wholesale gas in 2010.

While the AER does not control wholesale prices, it monitors the markets to ensure they are behaving as they should. The wholesale markets are set up to be competitive, but under certain conditions a generator may be able to push prices very high. This sometimes happens on very hot days, when the use of air conditioners drives high demand for electricity.

The AER investigates all cases of irregular market activity and high prices. It conducts regular audits of generators and network businesses and takes enforcement action if there is evidence of a potential breach of the energy laws that may harm consumers or threaten system security. For example, the AER instigated proceedings against a Queensland generator in the Federal Court in 2009.

> The AER investigates all cases of irregular market activity and high prices.

One of the AER's most demanding roles is to approve the prices that electricity network businesses may charge for the use of power lines that are needed to move electricity to customers. The AER undertakes a similar role for gas pipelines.

It is important that an independent regulator scrutinise network prices because the businesses are monopolies that could otherwise charge unnecessarily high prices for an essential service. The AER aims to ensure the businesses earn enough revenue to cover their efficient operating costs and provide for adequate new investment to maintain the networks' safe and reliable operation.

The supply chain for both electricity and gas is completed by *retailers* such as AGL, Origin,

Figure 1

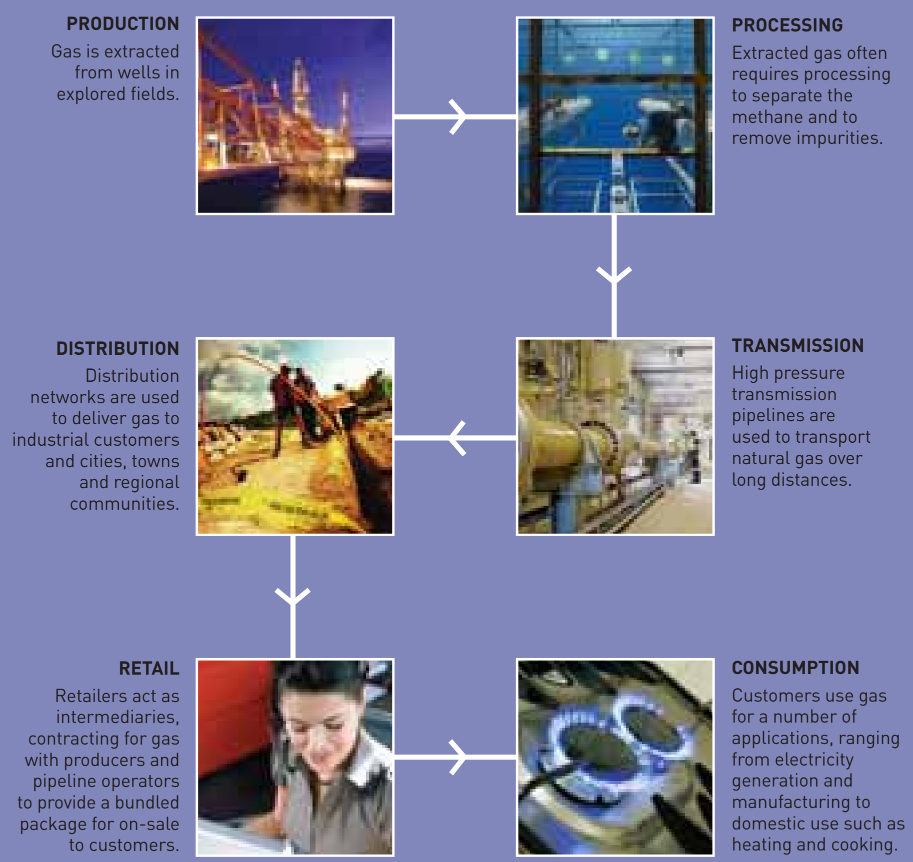
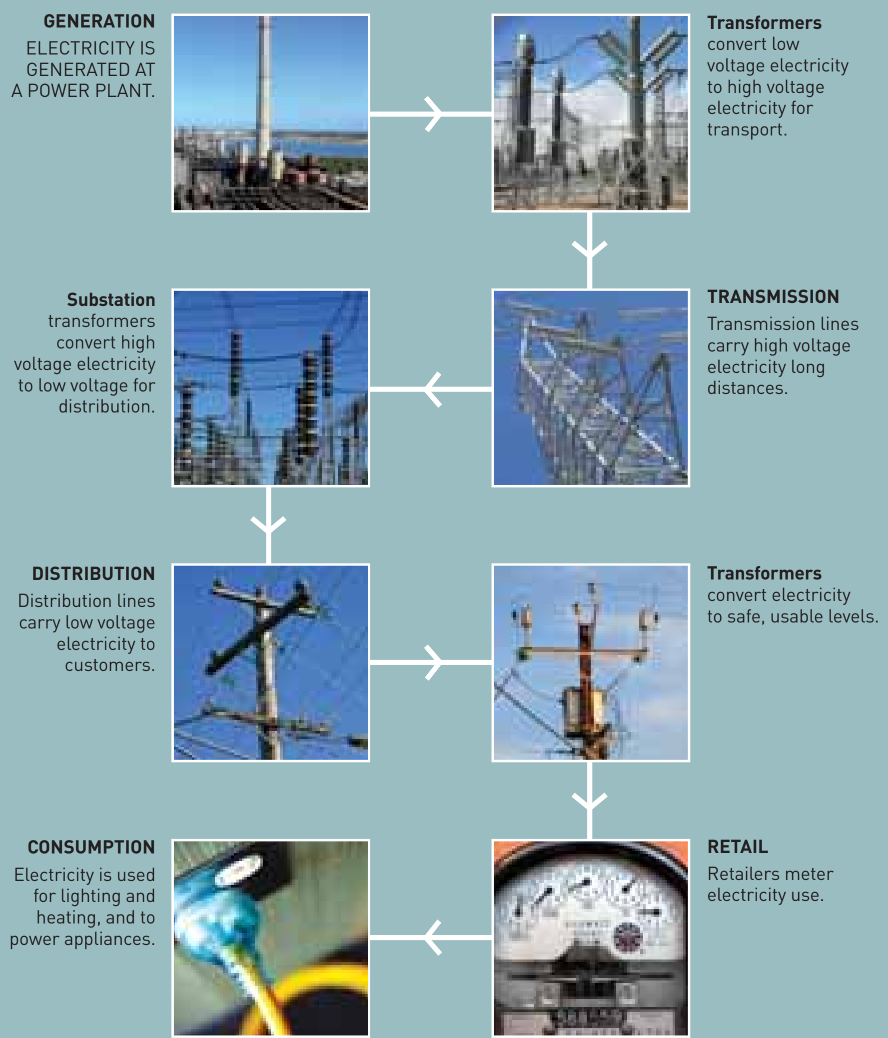


Figure 2



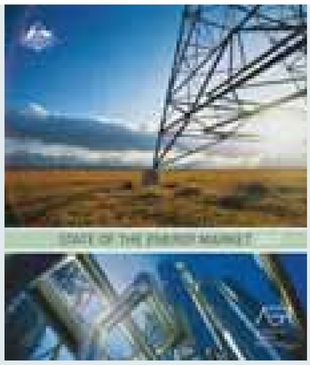


Figure 1 images: Consumption, Jessica Shapiro (Fairfaxphotos); Other, Mark Wilson.
Figure 2 images: Production, Woodside; Processing, Matthias Kulka (Corbis); Transmission, Jemena; Retail, Sadie Dayton (Corbis); Consumption, Vito Elefante (iStockphoto.com).

EnergyAustralia, Country Energy, Integral, TRUenergy and Simply Energy. Retailers buy wholesale energy and package it with transmission and distribution services for sale to customers. The prices households pay for energy reflect the costs retailers must pay for network charges and wholesale energy. Australian households spend over $13 billion a year on energy services.

The AER does not regulate retail energy markets, but new legislation is likely to give the AER a range of retail responsibilities in the near future, including consumer protection.

The AER publishes an annual report on the energy market in December each year. The *State of the energy market 2009* report (Figure 3) is available on the AER website at www.aer.gov.au. You can call the ACCC Infocentre on 1300 302 502 to inquire about obtaining printed copies of the report.

Green claims: Companies must not mislead

AS ENVIRONMENTAL concerns grow, consumers are increasingly considering environmental benefits as a factor in their purchasing decisions.

This, in turn, has seen businesses seeking to promote their 'green' credentials to differentiate themselves and their products from the competition.

Where businesses are taking genuine steps to reduce their impact on the environment, they deserve to be able to promote these to their customers. In doing so, however, they should ensure their claims are accurate, scientifically sound and appropriately substantiated. This is more than just good business practice—it is required by law.

The Australian Competition and Consumer Commission enforces the *Trade Practices Act 1974*, which states that businesses must not mislead or deceive consumers in any way. This can include misleading them through silence, if in all the circumstances there is an obligation to reveal a particular fact or issue, or through the making of predictions where there is no reasonable basis for doing so.

It is also important to remember that an intention to mislead is not necessary. Businesses with the best of intentions have potentially misled their customers—and so breached the Act—by not adequately considering the ways their branding or product could be perceived.

The Act also prohibits a variety of false or misleading representations about specific aspects of goods and services.

Those most relevant to environmental claims include that a business must not falsely represent goods as being of a particular standard, composition or model or as having a particular history or previous use. Businesses must also not represent that goods have sponsorship, approval, uses or benefits that they do not have.

Using endorsements or logos can be misleading or simply confusing if they are not well known or recognisable. Any claims of compliance with a certification must be verifiable.

Some of the greatest concerns in the green marketing sphere are about ambiguous naming of products and about relatively meaningless claims. Very few consumers are atmospheric scientists, and they cannot be expected to know when environmental claims are likely to be untrue. This is why the ACCC is particularly concerned about such claims.

In April 2008, the ACCC accepted court enforceable undertakings from De Longhi Australia that it would refrain from making misleading claims for its portable airconditioning products that use harmful greenhouse gases and an 'ECO' model cooler that uses a low-impact global warming gas.

The ACCC was concerned that the company's environmental claims were misleading and gave the impression that the coolers and their component gases were 'environmentally friendly' when they were not. De Longhi agreed to refrain from using unqualified claims that its products are 'environmentally friendly', amended its advertising and published corrective notices.

More recently, in January 2010, the ACCC obtained court enforceable undertakings against Global Green Plan, a former GreenPower retailer, which said it would purchase more than 4000 renewable energy certificates it had failed to buy on behalf of customers in 2007 and 2008 under the government's national GreenPower accreditation program.

While operating GreenSwitch, Global Green Plan accepted payments from customers on the proviso that the money would be used to purchase certificates. However, not all of the money customers provided to Global Green Plan was used to purchase the certificates as promised.

The ACCC also recently instituted proceedings against Prime Carbon Pty Ltd, alleging that the company made false or misleading representations about the National Environment Registry (NER) and the National Stock Exchange of Australia Ltd (NSX).

In addition to taking enforcement action, the ACCC provides businesses with guidance on ways to ensure their advertising and marketing materials do not fall foul of the Act.

Other examples of enforcement action taken against companies for misleading or deceptive green claims include:

- In December 2008, the Federal Court declared that biodegradability claims made by **SeNevens International Ltd** in relation to a disposable nappy product were false and misleading because the product contained plastic components that were not capable of being broken down by the biological activity of living organisms. The court ordered corrective advertising and imposed injunctions against the company engaging in similar conduct in the future.
- **SAAB/General Motors**—GM Holden as an agent for SAAB was found to have misled the public in a 2007 advertising campaign over the effect of planting of native trees to offset carbon dioxide emissions for the life of SAAB cars. GM Holden has advised that it is planting an extra 2500 trees to offset emissions for the life of all SAAB cars sold during the *Grrrrreen!* campaign.

The ACCC has produced a guide to help businesses understand their obligations under the Trade Practices Act when making green claims. It is available from the ACCC website: ***www.accc.gov.au/content/index.phtml?itemId=815763***

Some of the greatest concerns in the green marketing sphere are about ambiguous naming of products and about relatively meaningless claims.

IN SUMMARY, when making green or any other claims, businesses should remember that:

- claims must be accurate
- claims should be able to be substantiated
- claims should be specific, not unqualified and/or general statements
- claims should be in plain language
- claims should only be made for a real benefit
- claims must not overstate a benefit
- claims should make it clear whether benefits refer to packaging or content
- claims should consider the whole product life cycle.

Watchdog pounds a bigger beat

Australia's navigation of the global financial storm has been aided by its open and competitive marketplace.

THE FOUNDATIONS were laid in 1974, when the Trade Practices Act was introduced.

Further changes saw the opening up of financial markets in the 1980s, the implementation of the national competition policy reforms in the mid-1990s, and the creation of the Australian Competition and Consumer Commission in 1995.

It's one of the reasons Australia now ranks as having the 15th most competitive and wealthy economy out of 133 countries, according to World Economic Forum data.

More changes have occurred or are about to occur—bringing the most significant reforms since the Act was introduced by the then Attorney-General, Senator the Hon. Lionel Murphy. These include:

Already in legislation

COMPONENT PRICING

If a business makes a representation about the price of a particular component of a product or service then it must also specify, in a prominent way, the single total price payable by consumers to purchase that product or service. The *Trade Practices Amendment (Clarity in Pricing) Act 2008* introduced a new section 53C, requiring corporations from 25 May 2009 to prominently specify the single price payable by consumers for their goods or services when making component price representations in, for example, advertising, quotes and contracts.

The reforms are all about providing clearer information for consumers.

UNIT PRICING

Unit pricing came into effect under the *Trade Practices (Industry Codes—Unit Pricing) Regulations 2009* and became mandatory on 1 December 2009. Under the code, larger supermarkets and online grocery retailers—as well as smaller stores that opt in—must label prices by a standard unit of measurement, such as by volume or weight.

Unit pricing involves displaying the price of a grocery item per standard unit of measurement alongside its selling price. This allows consumers to assess the price of a range of comparable items by using a common measure such as volume (per 100 ml) or weight (per 100 g).

CARTELS

Cartels are secret collusive agreements between competitors to fix prices, rig markets, allocate markets between each other and collusively bid.

From 24 July 2009, criminal sanctions for serious cartel conduct have been in force under amendments to the Act made by the *Trade Practices Amendment (Cartel Conduct and Other Measures) Act 2009*. This provides a dual criminal and civil cartel enforcement regime that will allow proportional punishment.

The criminal sanctions provide for jail sentences of up to 10 years and/or fines of up to $220 000 per offence for those involved in cartels. Under the civil prohibition, individuals may be liable for a pecuniary penalty of up to $500 000 per contravention.

For each contravention of the cartel offence or civil prohibition by a corporation, the fine or pecuniary penalty (respectively) can be up to the greater of:

- $10 million or
- three times the total value of the benefits obtained by one or more persons reasonably attributable to the commission of the offence/act in contravention of the civil prohibition or
- where the gain cannot be estimated, 10 per cent of the corporate group's annual turnover in a 12-month period when the contravention occurred.

Australia now has some of the toughest sanctions in the world.

WATER AND ENERGY

The past year also witnessed the ACCC's growing roles in water and energy regulation, in relation to the Murray–Darling Basin under the *Water Act 2007*, and in July, proceedings instituted by the Australian Energy Regulator (AER) in the Federal Court against Stanwell Corp Ltd for alleged contraventions of the National Electricity Rules.

This year parliament will consider the Trade Practices Amendment (Infrastructure Access) Bill 2009, which follows commitments made by the government to COAG in 2008. The bill proposes to amend Part IIIA of the Act to increase regulatory certainty in access to national infrastructure and to streamline the operation of the national access regime.

'Protecting the interests of Australians generally' is the fundamental principle at the very heart of the ACCC and the Trade Practices Act.

These reforms will test Australia's capacity to continue the reforms started 36 years ago, when Senator the Hon. Lionel Murphy said:

> *Restrictive trade practices have long been rife in Australia. Most of them are undesirable and have served the interests of the parties engaged in them, irrespective of whether those interests coincide with the interests of Australians generally.*

'Protecting the interests of Australians generally' is the fundamental principle at the very heart of the ACCC and the Trade Practices Act.

Forthcoming legislation

NATIONAL BROADBAND NETWORK

Parliament will also consider reforms to Australia's telecommunications structure and the framework for competition regulation. Last April, the Australian Government announced its National Broadband Network plan to connect 90 per cent of homes, schools and workplaces to a fibre to the premises (FTTP) network and the remaining 10 per cent to wireless and satellite broadband. The government has given responsibility for the rollout to its National Broadband Network company (NBN Co. Ltd), which the government has indicated will be a wholesale-only operator.

The ACCC will have the new role of regulating access to the National Broadband Network. The ACCC will administer its regulatory responsibilities in respect of the current regime and the new open-access National Broadband Network to promote enhanced competition in the Australian telecommunications industry.

Proposed amendments to the *Telecommunications Act 1997* allow for Telstra to voluntarily submit an enforceable undertaking to the ACCC to structurally separate its wholesale and retail businesses. If Telstra chooses not to structurally separate, the legislation provides for the government to impose a functional separation framework on Telstra.

AUSTRALIAN CONSUMER LAW

The recently passed Trade Practices Amendment (Australian Consumer Law) Bill 2009 is the first tranche of one of the most significant developments in consumer law in more than 36 years.

The amendment introduces a single national consumer law, unifying 13 sets of legislation across Australia. At present there are state, territory and federal laws that cover fair trading and consumer protection.

The law includes protection for consumers from unfair contract terms, and new remedies and powers for the ACCC. The new powers include civil pecuniary penalties, disqualification orders, infringement notices, substantiation notices, public warning powers and redress for non-party consumers.

The second tranche of the Australian Consumer Law will incorporate provisions into the Act based on best practices in state and territory consumer laws, as well as a new national product safety legislative and regulatory framework. These best practice reforms will cover issues like door-to-door sales, telemarketing, lay-by sales and pyramid selling. The Bill is scheduled to be introduced into parliament later this year.

Under Council of Australian Governments (COAG) guidelines, it is proposed that the states and territories will have introduced and passed application laws by December 2010 and that the Australian Consumer Law will be fully implemented from 1 January 2011.

The Productivity Commission has estimated that its recommended reforms to Australia's consumer laws could benefit the community by up to $4.5 billion each year.

Proposed legislative changes

FACILITATING PRACTICES

The ACCC is examining practices in various sectors whereby competitors signal prices and pricing intentions to dampen the normal competitive process. While such 'facilitating practices' can have outcomes similar to those of conventional cartels, they are most probably not unlawful under the Act. This issue is under consideration by the Australian Government.

Consumers' needs—a focus of mergers

A major focus for the Australian Competition and Consumer Commission in the past year has been mergers that directly affect consumers' hip pockets, especially significant decisions made in industries like petrol, hardware, telecommunications and electrical appliances.

KEY TO THE Australian Competition and Consumer Commission's analysis and decision making has been the capacity to make reasoned judgments about the state of competition, not only on current facts but as it might unfold in the medium to longer term.

This has been challenging, requiring intense scrutiny of issues and markets, but is critical to preserving healthy competition for the benefit of all 22 million Australians.

In a challenging economic environment, the ACCC has also been flexible in its process but rigorous in its investigation and analysis.

The merger law has proved to be adaptable and robust in dealing with a variety of issues.

Mergers affect not only the present but the future state of competition, so capacity in the law for forward-looking analysis that predicts the likely competitive effects of a merger is critical. This is particularly significant in a changing economic climate, where 'failing firm' claims become more frequent. In clearing the smallgoods merger of Primo and Hans, for example, it was a decisive factor that, but for the merger, the target company would go into liquidation and many of its assets leave the market.

The recent decision to oppose Caltex's proposed acquisition of over 300 retail petrol sites from Mobil shows how the merger law works to address local competitive concerns for each service station, as well as bigger picture issues like the potential impact of the merger on the weekly petrol price cycle that occurs generally across most metropolitan areas.

A prospective analysis has been critical in examining issues in several matters. For example, a key element in the ACCC's decision not to oppose Vodafone's acquisition of Hutchison was that current competition from Vodafone and Hutchison in the mobile communications area was unlikely to continue in the foreseeable future. Without the merger, each firm was likely to be an increasingly weak competitor, leading to longer-term detrimental effects on competition.

> Forward-looking analysis that predicts the likely competitive effects of a merger is critical.

In considering Woolworths' and Lowe's joint acquisition of Danks wholesale hardware business, the ACCC was concerned that, given Woolworths' intention to establish retail hardware outlets in the future, control of Danks would be likely to raise significant competition concerns for the retail competitors that relied on Danks for supplies. For this reason, the ACCC accepted undertakings aimed at protecting these competitors, often independent retailers, from discriminatory practices—enhancing their ability to find new suppliers if they were not satisfied with a Woolworths-controlled Danks.

This matter illustrates the clear need for likely future events to be taken into account in the decision-making process.

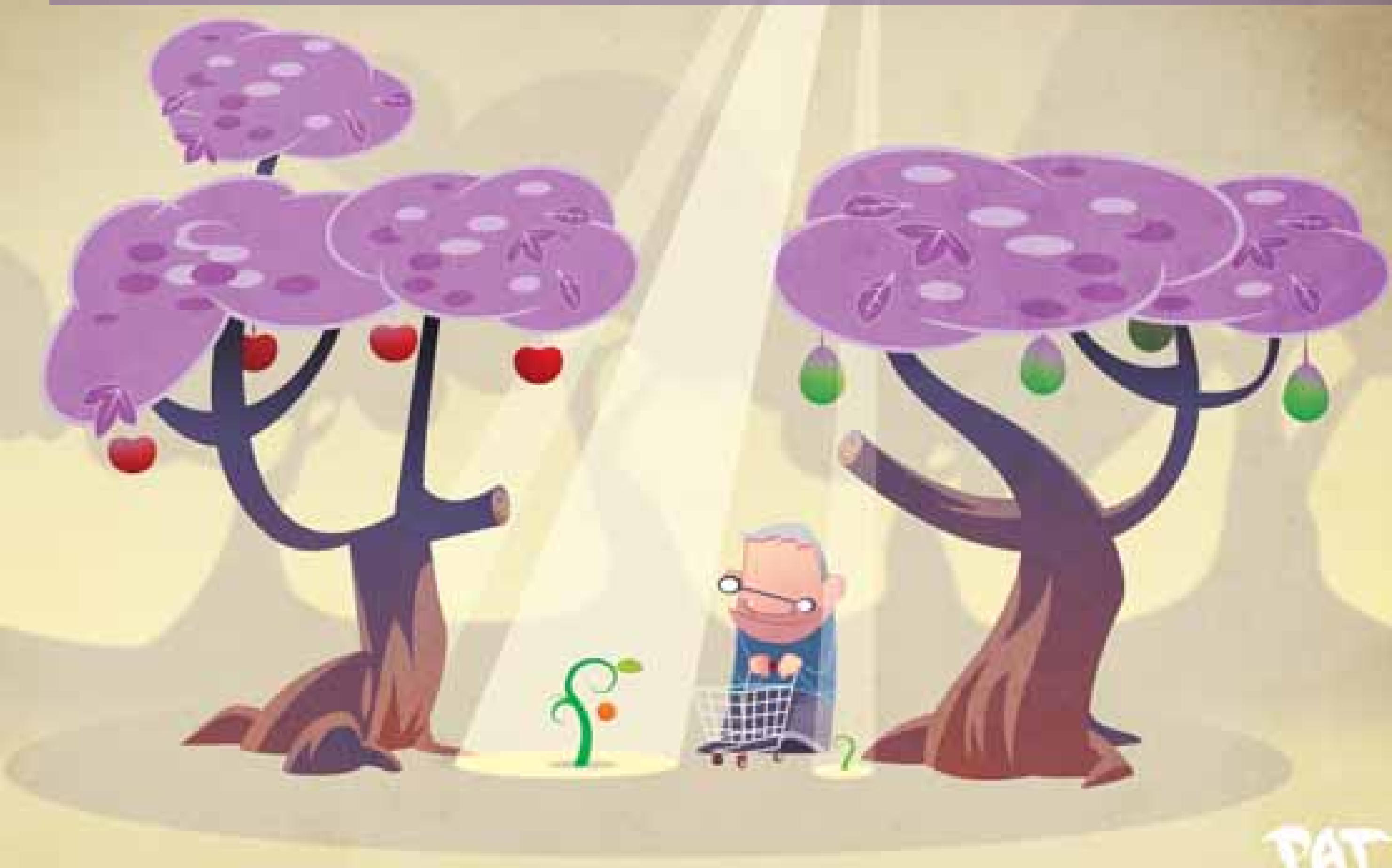
International liaison has also played an important role in the merger review process in 2009. For example, when examining Pfizer's proposal to divest assets in the United States in the animal health care industry to address concerns about its proposed acquisition of Wyeth, the ACCC consulted closely with its counterpart agencies in the United States to ensure that the new owner would be able to compete in Australia.

In a somewhat turbulent economic environment, the ACCC's merger review process has continued to operate well, providing a timely and transparent process while offering flexibility when needed.

The ACCC consults widely on merger matters in forming its views and flexibly engages with parties where appropriate to find practical, workable solutions to competition issues arising from mergers. Nevertheless, when the ACCC is not satisfied that a proposed solution will alleviate its concerns, it will not hesitate to oppose a transaction outright.

With the shadow of the global financial crisis drifting slowly away and activity picking up, the ACCC expects to be increasingly active in the mergers sphere in 2010. Australians can be confident that the law and its processes are robust and responsive to the increasingly diverse range of merger issues.

The grocery game in Australia



What is happening in the grocery game in Australia? Are consumers being ripped off by an increasingly powerful duopoly of Coles and Woolworths?

ARE PRICES in this country soaring ahead of inflation—and at a faster rate than those in other nations?

Who are the main players?

What is the Australian Competition and Consumer Commission doing to encourage competition between stores and to hold down prices?

WHAT IS HAPPENING IN THE GROCERY GAME IN AUSTRALIA?

The 2008 *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries* provides the most recent authoritative snapshot of the grocery game.

The grocery inquiry found Australia had a 'workably competitive' market that could do with more competition. And competition is emerging from ALDI, which has at least 200 supermarkets and plans to expand to about 700, and Costco, the giant US operator, which opened its first warehouse in Melbourne last August. Costco also plans to expand throughout Australia.

ARE CONSUMERS BEING RIPPED OFF BY AN INCREASINGLY POWERFUL DUOPOLY OF COLES AND WOOLWORTHS?

The grocery report found that a range of domestic and international factors contributed to food price inflation in Australia, including:

› Australian weather conditions, such as the current drought and cyclones

› the world commodities boom, increasing the input costs and prices at which some Australian farmers and food producers can sell their products to export markets.

The lack of strong price competition in retail groceries could have played only a very minor part in food price inflation.

At most, roughly one-twentieth of the increases in food prices in the five years before the grocery inquiry could potentially be attributable to increased gross margins of Coles, Woolworths and the wholesaler Metcash. However, over the

five-year period 2001–02 to 2006–07, the gross margins for these players increased by between 0.2 and 1.6 per cent.

The ACCC believes there is little evidence that any weakening of price competition in grocery retailing and wholesaling has played a significant role in explaining recent increases in food price inflation.

ARE PRICES IN THIS COUNTRY SOARING AHEAD OF INFLATION—AND AT A FASTER RATE THAN THOSE IN OTHER NATIONS?

Over the past 10 years food prices have been rising faster than general inflation in most Organisation for Economic Cooperation and Development (OECD) countries—and Australia is not special in that regard.

Over the last 10 years, the rate of food price inflation in Australia has been higher, as a whole, than the rate of general inflation.

Australia had the 10th highest food price inflation rate in 2009. Both Canada and the United Kingdom had higher rates of food price inflation. *(Statistics from the Organisation for Economic Cooperation and Development.)*

What is the Australian Competition and Consumer Commission doing to encourage competition between stores and to hold down prices?

THE ACCC HAS BEEN ENCOURAGING MORE COMPETITION IN THE SUPERMARKET SECTOR THROUGH A NUMBER OF MEASURES.

These include its scrutiny of anti-competitive mergers, the introduction of unit pricing to make it easier for consumers to compare prices, recommending changes to planning laws and opening shopping centres to a greater variety of stores by opposing restrictive leases.

1. Mergers and acquisitions

Section 50 of the *Trade Practices Act 1974* prohibits mergers and acquisitions that substantially lessen competition in a market or markets or are likely to do so.

The ACCC has assessed a number of recent mergers in the retail sector:

FoodWorks' acquisition of 45 supermarkets from Wesfarmers

- The ACCC concluded that FoodWorks' acquisition of 45 Coles/BiLo supermarkets was unlikely to result in a substantial lessening of competition in the relevant supermarket and liquor retail markets and in the relevant wholesale and procurement markets.

Woolworths' proposed acquisition of Karabar supermarket (Queanbeyan)

- The ACCC considered the likely future state of competition with and without the merger. The ACCC considered that, if the proposed acquisition did not proceed, an alternative acquirer was likely to purchase the Karabar supermarket and expand it to operate as a large-format, full-line supermarket.
- The ACCC considered that Woolworths' acquisition of the Karabar supermarket was likely to constitute a substantial lessening of competition in the local retail supermarket market and therefore opposed the acquisition.

2. Creeping acquisitions

Most new growth by Coles and Woolworths in recent years has not come from acquisitions of independent supermarkets.

Of all new store openings by Coles and Woolworths in the past two years, only 10 per cent have involved Coles or Woolworths acquiring or leasing a site where an independent supermarket previously operated. However, that figure has been significantly higher in the past.

In January 2010, the Australian Government announced plans to amend the Trade Practices Act to deal with creeping acquisitions.

This is intended to give the ACCC the power to reject acquisitions that would substantially lessen competition in any local, regional or national market.

The ACCC believes that its existing powers can be used to encourage competition and enhance dynamic change in grocery retailing.

3. Long-term structural change reduces barriers to entry

The key impediments to increased intensity in retail competition are:

- **access to suitable sites for alternative supermarkets**
- **access to competitive wholesale supply in packaged groceries for the independent supermarkets**.

The ACCC believes that its existing powers can be used to encourage competition and enhance dynamic change in grocery retailing.

This has been on our radar since the grocery inquiry, when the ACCC noted that it would '*… actively pursue such arrangements [supermarket site leases] where it considers that there is likely a breach of the substantial lessening of competition (SLC) test contained in the Act*'.

This issue is not restricted to Coles and Woolworths—it affects the entire grocery sector.

4. Access to sites

Developers and shopping centre managers prefer to lease space to Coles and Woolworths over other supermarkets given their reputation and brand recognition. This significantly impedes the ability of competing supermarkets to access prime locations.

Coles and Woolworths also include terms in their leases that effectively prevent centre managers leasing space in centres to competing supermarkets.

During the 2008 inquiry, the ACCC became aware of more than 700 lease or similar documents relating to restrictive arrangements.

The ACCC recently announced that both Coles and Woolworths had agreed to court enforceable undertakings to phase out all restrictive provisions in supermarket leases over the next five years.

The vast majority of leases will be free of these restrictive provisions immediately, and the rest will follow in due course. The ACCC has extended this arrangement to other supermarket players.

5. Planning and zoning

Zoning and planning issues act as an artificial barrier to new supermarkets establishing in some areas and have been recognised overseas as a major hurdle for new competitors entering the grocery sector.

Evidence provided to the 2008 grocery inquiry indicated that retailers regularly lodged planning objections to prevent competitive entry where the retailers had a commercial interest to protect.

The ACCC recommended that governments consider the ways in which planning laws and individual planning decisions impact on competition—in particular, whether they facilitate the entry of a supermarket operator not currently trading in an area.

COAG also approved implementation plans for competition reform relating to retail tenancy in December last year.

Scams snapshot of 2009

Complaints to the Australian Competition and Consumer Commission about scams climbed by 16 per cent in 2009. Many consumers reported substantial losses.

SCAMS CAN BE SOPHISTICATED and difficult to identify. Many victims feel embarrassed and can suffer considerable losses as they are 'fleeced' of many thousands of dollars.

Increasingly, victims are targeted online, which is why the Australasian Consumer Fraud Taskforce focused on this area for its 2010 Fraud Week campaign: Online Offensive—Fighting Online Fraud.

The taskforce, comprising 21 regulatory agencies and departments, is chaired by ACCC Deputy Chairman Peter Kell.

Online businesses have a particularly vital role to play in combating scams.

The online businesses that scammers may target (for example, dating websites, online auctions, classifieds and social networking websites) have great potential to assist in detecting new scams and alerting consumers most at risk.

As scams evolve, one of the key challenges is to detect them early. The ACCC will continue to work with other agencies to take enforcement action where possible and to implement educational strategies to help consumers identify and avoid emerging scams.

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- advance fee fraud (+8.8 per cent)
- online shopping (+102 per cent)
- unexpected prizes (+17.7 per cent)
- false billing (+59.5 per cent)
- banking and online (+38.6 per cent)
- dating and romance (+29.7 per cent)
- computer prediction software (+10.2 per cent)
- lottery and sweepstake (–27.8 per cent)
- job and employment (–20.2 per cent)
- mobile phone scams (–20.5 per cent)

www.scamwatch.gov.au
PROTECT YOURSELF
RECOGNISE SCAMMERS

During 2009, consumers reported to the Australian Competition and Consumer Commission scam losses of nearly $69.9 million.

Although this amount is unverified and based solely on information provided to the ACCC by complainants, it is likely to be only the tip of the iceberg. Many scams go unreported. And the ACCC is only one of many agencies that receive scam complaints.

Most contacts made with the ACCC concerning scam activity reported no financial loss. However, of those who did report losing money, the majority reported a loss of less than $1000.

More than 20 000 scam reports were made to the ACCC in 2009. This represents an approximate increase of 16 per cent when compared with 2008.

Each year, the ACCC receives numerous complaints about various issues; however, scam-related reports continue to make up a large proportion of total complaints and it is one of the fastest growing categories.

When compared with the types of scams predominantly reported in 2008, the ACCC received an increased number of contacts relating to advance fee fraud (+8.8 per cent), online shopping (+102 per cent), unexpected prizes (+17.7 per cent), false billing (+59.5 per cent), banking and online (+38.6 per cent), dating and romance (+29.7 per cent) and computer prediction software (+10.2 per cent). The ACCC received a decreased number of reports relating to lottery and sweepstake (–27.8 per cent), job and employment (–20.2 per cent) and mobile phone scams (–20.5 per cent).

More than 54 per cent of the scam reports received by the ACCC concerned mass marketed advance fee fraud (MMAFF), making this the most complained about scam category in 2009. This scam category includes advance fee/up-front payment (Nigerian style), dating and romance, lottery and sweepstakes, and unexpected prize scams.

Scammers targeted individuals, regardless of age, gender, education or income level. Small businesses were also targets.

The ACCC observed an increase in reporting of scams targeting small business operators—for example, those promising business opportunities.

Additionally, consumers experiencing financial difficulty during the economic downturn are more vulnerable to job-related scams.

Important areas of responsibility for the ACCC include active raising of awareness and educating the community about scams.

The key pillars of the ACCC's education strategy include its SCAMwatch website (www.scamwatch.gov.au); outreach activities; and publications such as the *Little black book of scams* and scams fact sheets.

It is impossible to stop all scam activity or recover all moneys sent to scammers.

Many scammers are based overseas and can be hard to track, especially in the online environment. However, the ACCC works closely with a wide range of other agencies to disrupt scammers and inform consumers.

The ACCC's cooperative work with local and international agencies and private businesses is particularly important in the area of disruption and enforcement.

Working with providers of online classifieds to remove advertising for questionable business opportunities, rental scams and advertisements for non-existent pets resulted in positive outcomes in 2009.

Furthermore, international cooperation has resulted in swift detection of scams, resulting in, for example, the disabling of a bogus website purporting to sell soccer tickets.

Online scams were increasingly prevalent and scammers continued to concoct scams to take advantage of major events such as the global financial crisis, celebrity deaths and national and overseas natural disasters.

Emerging scam: 'Free' trial offers

THE ACCC has seen an increasing number of complaints about 'free' trial offers.

Consumers are offered a 'free' trial where only postage and handling are payable.

However, without clear disclosure, consumers subsequently receive unwanted goods and/or services from the business, have their credit card information transferred directly to another business and/or have regular deductions made from their credit card by an entity not related to the company from which the initial purchase was made.

Consumers have complained that it is extremely difficult to cancel the memberships, as telephone support is not available.

Losses in relation to this type of conduct range from $12 to $1000 per affected consumer.

Scams hit one in 20 Australians

AUSTRALIAN BUREAU OF STATISTICS figures suggest that around one in 20 Australians falls victim to some sort of consumer scam each year, with a direct cost to the community of about $1 billion. In Britain, almost 10 per cent of adults—more than four million people—say they have responded to a scam, according to the Office of Fair Trading. The UK's National Fraud Authority has estimated the cost of fraud—including scams, online theft, insurance cheats and tax fraud—at £30 billion each year in the UK.

Derryn sent money via Western Union after booking online an apartment in the heart of Manhattan's cultural district. The apartment did exist, but the people with whom he exchanged emails were not legitimate.

Derryn Hinch: I was a victim

Journalist and commentator Derryn Hinch was conned out of $4000 after answering an online advertisement for an apartment in New York. Derryn wrote of his experiences in the *Sunday Herald Sun* (24 January 2010). Derryn said that he sent money via Western Union after booking online an apartment in the heart of Manhattan's cultural district. The apartment did exist, but the people with whom he exchanged emails were not legitimate.

Scams hit all age groups

The ACCC received scam complaints and inquiries from consumers across a broad age range during 2009; however, almost three-quarters of complainants who provided their age were between 25 and 54 years old. Thirty per cent of complainants were in the 35 to 44 year range, 23 per cent in the 25 to 34 year range, and 20 per cent in the 45 to 54 year range. Five per cent of complaints were received from people over 65. While the provision of age data is voluntary, the statistics provide a useful indication of the trends observed.

The golden rules

The rise of the internet has opened up the world to millions of people. It is now possible to do things that were unheard of only 10 or even five years ago.

UNFORTUNATELY the internet is not free from scams and scammers.

Online scams now dominate the way criminals target their victims.

Some scams are especially designed to take advantage of the way the internet works.

A lot of internet scams take place without the victim even noticing. It is only when their credit card statement or phone bill arrives that the person realises that they might have been scammed.

It is impossible to stop all scam activity or recover all moneys sent to scammers. Many scammers are based overseas and can be hard to track, especially in the online environment.

There are, however, several ways to protect yourself from online scams.

Below are some golden rules to avoid being scammed online.

They are simple but essential precautions you can take because you often cannot be sure exactly who you are dealing with on the internet.

#1

Protect your personal details and your identity. Only give your details to someone you trust. Choose hard-to-crack passwords and regularly change them. Be extra careful with your credit card details: never give out your PIN and always check your bank statements.

#2

Delete suspicious emails without opening them. Don't reply to spam emails, even to unsubscribe, and do not click on any links or call any telephone number listed in a spam email.

#3

Stay protected with up-to-date anti-virus and anti-spyware software.

#4

Trade securely online—look for assurances that the website you give your credit card details to during a transaction will ensure they are kept secure. A good online trader will make sure your financial details are safe by encrypting them. Look for a padlock symbol and a web address starting with https://—this means a secure payment process is being used.

#5

Read the fine print. Know the terms and conditions including any refund, privacy or security policies in place.

#6

Do your research before agreeing to anything. Use external sources, such as online forums or news articles, to check the security and legitimacy of websites, traders and payment methods. Check to see whether a physical business location or a phone number has been provided and check if these are real.

#7

Be extra-vigilant when buying from overseas. If something does go wrong, your consumer rights may be different if you have bought from an overseas trader rather than an Australian trader. Consider paying by credit card with a low limit—this will limit any potential losses and you may be able to get your money back in certain circumstances.

#8

If you have ordered a product online and it doesn't arrive, contact your bank as soon as possible. Many institutions are able to put a stop on the payment or provide some type of remedy for the consumer.

#9

The Trade Practices Act makes it **unlawful for a seller in Australia to mislead or deceive** you about your purchase or the purchase price and requires a seller to supply goods that match the advertised description. If you buy at an online auction, your consumer rights may be more limited.

#10

If it looks too good to be true, it probably is. If a product is being sold way below its normal retail price, ask yourself or the trader why.

#11

Always get independent advice if an offer involves significant money, time or commitment. Remember there are no get-rich-quick schemes.

More information is available at www.accc.gov.au. Information about current scams can be found on the ACCC's Scamwatch website at www.scamwatch.gov.au.

FROM THE ACCC'S INFOCENTRE:

Real stories about online dating scams

CASE 1 (FEMALE)

I WAS CONTACTED by a man through an online dating site. He told me his name was Hans Andrews, import/exporter. It turned out that he'd assumed a stolen identity and used false images off the internet. In fact, he was from Nigeria, part of a well-organised crime syndicate operating between Nigeria, the United States and Australia. I received flowers. I spoke to him on the phone most days for six weeks. I am concerned the US number may be looped back to Nigeria. He eventually claimed to be in Ghana and unable to get one of his shipments processed and that he needed money because his wallet had been stolen, so he could get home. Whenever I sent money to him, something else came up and he needed more. In total, I paid $5836 via Western Union to help him. I have accepted that I will not get my money back, I want to protect other unwitting vulnerable women and try and put a stop to this in Australia.

“ ”
Whenever I sent money to him, something else came up and he needed more.

“ ”
I feel helpless and embarrassed and want these criminals caught and punished.

“ ”
I confronted him about all the things that didn't add up with his story and still he kept trying.

“ ”
I paid for visas, passport and airline tickets for Candice to come here from Manila to meet me.

CASE 2 (MALE)

I RECEIVED A MESSAGE from a lady to chat and then we exchanged email addresses. The lady claimed undying love and longed for a relationship. She claimed to have deceased parents and an inheritance in Nigeria which was left in security boxes and required a fee to be released. She asked for my home address and money to be sent by wire transfer to various accounts in Nigeria where she was stuck on family business. She claimed she actually lived in Albury, Australia, and wanted to visit me. I sent money via Western Union—$3247. I feel helpless and embarrassed and want these criminals caught and punished.

CASE 3 (FEMALE)

I WAS CONTACTED by 'Frank' on an online dating service. It said on his profile he was from Melbourne. We chatted the first night using the online chat line and then he sent me his email address. Frank's profile was really sad; he'd lost his father, mother and wife all in the last seven years. He was supposedly a property developer from Melbourne and had a contract to build classrooms in Ghana, arranged by a charity organisation in Canada. Once in Ghana, he said he was mugged and lost US$48 000 that he was using to pay the clearing agent to get his machinery from the port. I was contacted by another man saying that Frank was in a coma and they needed to know about his family. They asked me to forward US$400 to a man to pay for medicine. When he came out of hospital. Frank asked me again to send money to him as he had lost everything and his world was falling apart. I confronted him about all the things that didn't add up with his story and still he kept trying. I gave him more information than I should have and feel ridiculous that I let this happen to me.

CASE 4 (MALE)

I MET A WOMAN called Candice online. She lived in the Philippines. We struck up a friendship and after some time she wanted to visit me in Australia. I paid for visas, passport and airline tickets for Candice to come here from Manila to meet me. She didn't show and she gave me excuses that I fell for. I sent money a second time to get her here but again she never showed, and gave me more excuses. I don't know what to say but I know now I was being used. It is very upsetting; Candice used a man to get the money so I think he is involved in the scam as well. I can only send and receive text from her; I don't have her address, only a phone number and email address. I had been in contact with her online since August and was supposed to meet her the last time at Christmas Eve. She told me she was at Adelaide airport and I was texting her but did not find her. The time before she vanished for a week and I had been in contact with the man in the Philippines trying to find her. The man asked me to send him money to pay the airline ticket office for all her travel details and said he would send them to me so that I could track her and find out where she was. I sent $350 to him but got no info and then he claimed she came to Australia but was sent back. I haven't heard from her since Christmas Eve but the man has tried to call a couple of times but I didn't answer, I told Candice I was contacting the police.

If you believe you have been scammed, report it to the ACCC: contact 1300 302 502 or visit www.scamwatch.gov.au

CAR RENTALS:

Companies must show the total cost of hire

It is important that any representations made to the consumer are clear and accurate.

The car rental industry plays an important role in the Australian economy. Every day, thousands of Australians will rent motor vehicles for different uses—to go on holidays, to move house or for work.

IN MOST CASES, consumers want to pick up their vehicle in a quick and easy transaction so they can drive away and get on with their plans.

However, car rental contracts are usually detailed, lengthy documents designed to cover the range of issues that may arise during the rental period, such as accidents or breakdowns. It is important, then, that any representations made to the consumer, whether about price, vehicle condition or insurance are clear and accurate. This is not just good business practice—it is required by law, including the *Trade Practices Act 1974* and other fair trading legislation.

The Australian Competition and Consumer Commission recognises the challenges some motor vehicle rental businesses face in their dealings with consumers and their efforts to comply with the Act and other fair trading legislation.

To help businesses in the sector meet their obligations, the ACCC recently produced a publication called *Fair trading in the rental car sector*, which was developed with input from representatives of the rental car sector and state offices of fair trading.

The booklet sets out rental companies' obligations under the Act and provides suggestions and further information on how companies can ensure they meet those obligations.

The guidelines broadly cover trade practices related issues such as misleading and deceptive conduct, the full cash price and unconscionable conduct. They also address specific issues such as disclaimers and fine print, special offers and bait advertising, component pricing and optional extras, and hidden fees and charges. There is also a detailed section on car rental contracts and the myriad issues that can arise from them.

While it recognises the importance of providing guidance to businesses on their obligations, the ACCC will take enforcement action against conduct that breaches the Act. One such action, taken in December 2009, has resulted in Avis Australia providing the ACCC with court enforceable undertakings and changing its website advertising to ensure that all mandatory fees and charges are included in quoted prices.

Avis has acknowledged that it was likely to have contravened a recently amended section of the Act by not displaying the full price that would be payable for a hire vehicle.

The ACCC's concerns about Avis's pricing practices related to amendments to section 53C of the Act that took effect on 25 May 2009. Those amendments require businesses that use component pricing (that is, that show the cost of the various parts of a product or service) to also specify a single (total) price for the goods and services, including all mandatory charges quantifiable at that time.

Between 25 May 2009 and 30 October 2009, the reservation pages on the Avis website did not show or include mandatory fees and charges that would be added to the customer's bill when picking up the vehicle.

These mandatory fees and charges, including an administration fee and goods and services tax, were not included in quotes provided to customers.

In the undertaking provided to the ACCC on 24 December 2009, Avis agreed, in addition to changing its website, to write to all affected customers and refund the amount of the additional fees and taxes customers had paid which were not disclosed at the time of making the reservation.

Avis will also place a corrective notice on its website for a period of four weeks apologising to consumers and ensure its senior executives receive practical trade practices law training.

Fair trading in the rental car sector is available in hard copy from the ACCC's Infocentre by phoning 1300 302 502 or can be downloaded from the ACCC's website, **www.accc.gov.au**.

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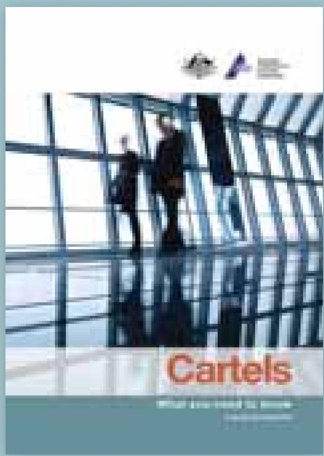

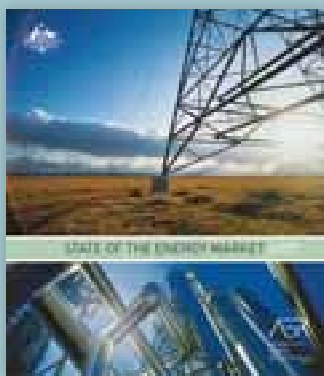

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