



Australian  
Competition &  
Consumer  
Commission

# ACCCOUNT

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

1 January to 31 March 2010

Australian Competition and Consumer Commission

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

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# 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 March 2010 quarter, the ACCC undertook a range of activities that benefited both businesses and consumers.

The ACCC continued to hold companies accountable for the claims they make on their product labels. During the March 2010 quarter, the ACCC accepted a court enforceable undertaking from Heinz after they continued to sell Golden Circle products with the representation 'Proudly Australian Owned', although Heinz acquired Golden Circle in 2008. The results of the ACCC's action included Heinz donating an estimated \$1.8 million worth of Golden Circle products to charity.

The ACCC's ongoing campaign to lift standards in the telecommunications sector featured two significant outcomes during the quarter. The Federal Court found that Star Promotions engaged in misleading and deceptive conduct in their 'scratch cards' promotion of mobile premium services. A court-enforceable undertaking was also accepted from Vodafone Hutchison Australia after the ACCC raised concerns about representations made about consumers' rights to a remedy for faulty mobile phones.

United States based company DRS C3 agreed to pay \$1 million in penalties after admitting it engaged in cartel behaviour in the international military defence training systems industry. The resolution of this matter took into account the fact that the conduct was an isolated incident over a confined period of time and did not cause any evident loss or damage to the Australian Department of Defence. However, this outcome clearly demonstrates the ACCC's commitment to tackling cartel conduct, whatever the circumstances.

In total, the ACCC instituted four litigation proceedings on enforcement matters during the March 2010 quarter. Five litigation proceedings were also concluded. These matters varied in nature; representations made about carbon credits, non-compliance with prescribed product safety standards and allegations of price fixing in the market for the international carriage of air cargo were some of the matters litigated.

The March 2010 quarter was also a particularly busy period for the ACCC in its role of reviewing mergers and acquisitions. During this time, the ACCC decided to oppose Cargill Australia's proposed acquisition of Goodman Fielder's commercial fats and oils business, as well as Link Market Services' proposed acquisition of Newreg. Statements of issues were also issued for the separate proposals of AMP and National Australia Bank to acquire AXA Asia Pacific Holdings as well as BHP's proposed joint venture with Rio Tinto.

In regulatory matters, the ACCC released its annual report on airport performance. The report particularly raised concerns about Sydney Airport, as the other monitored

airports reported more passengers than the previous year but increased service quality.

The ACCC provided further policy advice relating to rules under the *Water Act 2007*. During the quarter, the Minister for Climate Change, Energy Efficiency and Water was provided with the ACCC's final advice on the proposed amendments to the Water Market Rules 2009 and the Water Charge (Termination Fees) Rules 2009, as well as advice on the accreditation of state regulators under the proposed Water Charge (Infrastructure) Rules. Final advice about the development of water trading rules as part of the Basin Plan was also provided to the Murray–Darling Basin Authority.

The March 2010 quarter also saw the ACCC able to investigate irrigation infrastructure operators for breaches of the Water Market Rules 2009, after the transitional period of the rules ended. The ACCC is actively monitoring compliance with these rules.

# 1 Enforcement and compliance

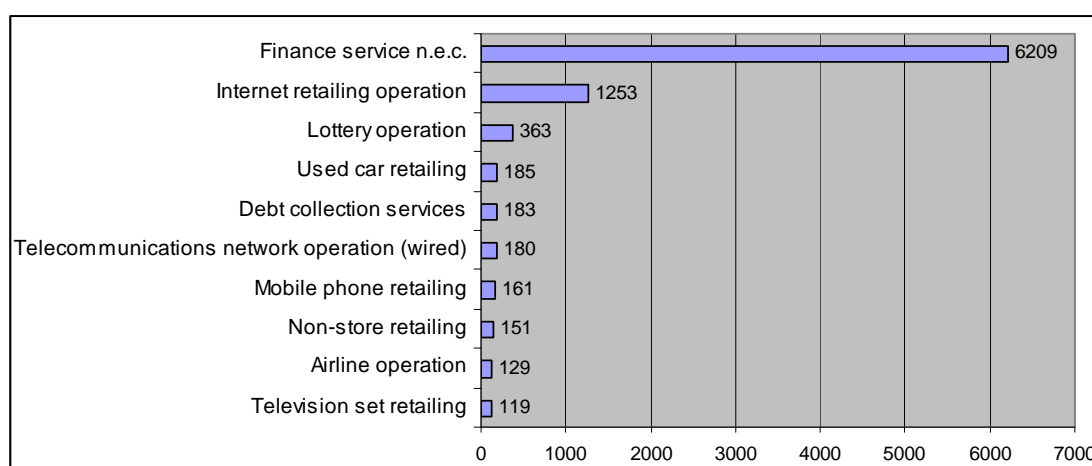
Maintaining and enhancing compliance with the Trade Practices Act is a key objective of the ACCC. It does this by promoting competition and informing markets, encouraging fair trading and protecting consumers. The enforcement function of the ACCC, including litigation, is well supported by its liaison,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

## Complaints and inquiries

During the March 2010 quarter, the ACCC Infocentre received 35 965 complaints and inquiries from businesses and consumers (email: 8164; telephone: 27 271; letter correspondence: 530). Of these complaints and inquiries, 22 032 (61 per cent) were entered into the ACCC's TRACKIT database.

Major drivers of these contact levels include concerns about scam based activity, requests for warranty and refunds advice, and complaints about the internet retailing sector. The Infocentre categorised 508 complaints and inquiries as 'Under Assessment' for further consideration during the March 2010 quarter.

**Chart 1.1: The 10 industries attracting the most complaints**



The category 'Finance service n.e.c.' in the above chart 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, 82 per cent related to consumer protection matters. This is a higher proportion than the 2009 quarterly average of 79 per cent. Competition matters accounted for 3.5 per cent of contacts, which was lower than the quarterly average figure of 5 per cent reported in 2009. Other matters accounted for 14.5 per cent, down from the 2009 quarterly average of 16 per cent.

## 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 commenced four first-instance enforcement litigation proceedings in the Federal Court of Australia during the March 2010 quarter for breaches of the Trade Practices Act.

#### **Darryl Peter Jones**

Commenced 24 February 2010; QUD54/2010

Proceedings under Part V for alleged misleading or deceptive conduct in connection with a cancer treatment program.

#### **Korean Air Lines Co. Ltd**

Commenced 5 March 2010; NSD220/2010

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

#### **Lift Shop & Anor**

Commenced 26 March 2010; NSD318/2010 (fast track list)

Proceedings under Part V for alleged misleading or deceptive conduct in connection with the supply of platform lifts.

#### **Alvaton Holdings Pty Ltd**

Commenced 26 March 2010; WAD66/2010

Proceedings under Part V for alleged non-compliance with the prescribed consumer product safety standard relating to toys for children up to the age of 36 months.

### **Proceedings concluded**

Five first-instance enforcement litigation proceedings were finalised during the March 2010 quarter.

#### **DRS C3 Systems Inc**

Commenced 18 June 2009; concluded 5 February 2010; NSD588/2009

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

Justice Edmonds, Federal Court Sydney

Outcome: injunctions, pecuniary penalty (\$1 million), supplement its existing corporate compliance program focusing on the provisions prohibiting anti-competitive agreements contained in the TPA, and costs (\$100 000).



### **Ozdirect Online Brands Pty Ltd & Anor**

Commenced 13 July 2009; concluded 23 February 2010; NSD704/2009

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

Justice Rares, Federal Court Sydney

Outcome: declarations, injunctions and costs.

### **Star Promotions Club Pty Ltd**

Commenced 24 July 2009; concluded 3 March 2010; NSD760/2009

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

Justice Rares, Federal Court Sydney (fast track list)

Outcome: declarations, injunctions, correctives by way of advertisements to be published in the relevant publications into which the scratch cards were inserted, and an SMS to be sent to all subscribers (both current and former) of the mobile premium service advising of the outcome of the proceedings, and costs (\$20 000).

### **Prime Carbon & Anor**

Commenced 18 December 2009; concluded 9 March 2010; QUD305/2009

Proceedings under Part V for alleged false and misleading representations about the availability and saleability of carbon credits and regulation of these credits by the Australian Government.

Justice Spender, Federal Court Brisbane

Outcome: declarations, injunctions, trade practices compliance training, advise purchasers of carbon credits and landholders who signed up to the program of the outcome of the court proceedings and provide the names and addresses of these individuals or businesses to the ACCC, publish a corrective notice on its website, and costs (\$15 000).

### **Refund Home Loans Pty Ltd**

Commenced 12 October 2009; concluded 12 March 2010; QUD249/2009

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

Justice Logan, Federal Court Brisbane (fast track list)

Outcome: declarations, injunctions, corrective statements to all current and some former franchisees and the implementation of a trade practice law compliance program, including training for Mr Ormond, and costs.

## **Section 87B undertakings accepted**

The ACCC accepted 13 enforcement s. 87B undertakings during the March 2010 quarter.

### **Apollo Bicycle Co Pty Ltd**

Apollo Bicycle Co Pty Ltd has provided court enforceable undertakings to the ACCC in relation to alleged non-compliance with the mandatory standard for pedal bicycles. Apollo Bicycle Co has undertaken to:

- not supply any bicycles to which the mandatory standard applies unless those bicycles comply with the mandatory standard
- supply the missing components to retailers of the bicycle and advise retailers to contact customers and arrange to have the missing components fitted
- cause an informational notice to be displayed at each of the retail outlets that sold the bicycle and on its website [www.apollobikes.com](http://www.apollobikes.com)
- conduct an audit of its range of bicycles to identify any bicycles which do not comply with the mandatory standard
- develop and implement a trade practices compliance program to ensure awareness of its responsibilities and obligations under the Trade Practices Act.

### **ATQOL Pty Ltd**

ATQOL Pty Ltd has provided court enforceable undertakings to the ACCC in relation to representations about a product called the Anti-Snor Therapeutic Ring. ATQOL has undertaken to:

- not make absolute representations as to the efficacy of the Anti-Snor Therapeutic Ring
- not make representations that the Anti-Snor Therapeutic Ring has a 'proven history of successful drug free treatment of snoring' unless it has caused clinical trials to be undertaken to prove such a history
- not make any representation that the Anti-Snor Therapeutic Ring has been tested, approved or recommended by a health professional unless that health professional has undertaken testing in accordance with accepted standards for the designing, conducting, recording and reporting of clinical trials
- amend the ATQOL website and any current and/or future advertisements or publications to remove the representations of concern
- ensure that all future representations made in the promotion and/or sale of the Anti-Snor Therapeutic Ring comply with Part V of the Trade

Practices Act, and establish and implement a trade practices compliance program.

### **Austar Port Lincoln Pty Ltd**

Austar Port Lincoln Pty Ltd, trading as Austar Seafood Warehouse, has provided court enforceable undertakings to the ACCC in relation to alleged misleading claims made about the place of origin of some of its seafood. Austar Port Lincoln has undertaken to:

- refrain for a period of three years from representing that its seafood products are sourced locally from Port Lincoln in circumstances where those products are imported from overseas or not sourced from the local Port Lincoln area
- publish a corrective notice in a Thursday edition of the *Port Lincoln Times* newspaper
- establish and implement a trade practices compliance program.

### **Australian Opal Cutters Pty Ltd**

Australian Opal Cutters Pty Ltd (AOC) has provided court enforceable undertakings to the ACCC in relation to misleading price comparisons and the display of an ACCC letter in its promotional material. AOC has undertaken to:

- no longer refer to 'normal retail prices' in its advertising or in any invoices provided by AOC to its customers
- remove all copies of the ACCC letter from material accessible by its customers
- not advise its customers that AOC has been 'cleared', 'previously cleared' or 'checked out' by the ACCC
- establish and implement a trade practices compliance program
- place a notice acknowledging the conduct on its websites and at its premises.

### **Esel Pty Ltd**

Esel Pty Ltd, trading as Mwave, has provided court enforceable undertakings to the ACCC in relation to misleading and false information about consumers' warranty and refund rights. Esel has undertaken to:

- refrain from making false or misleading representations concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy including any representation that:
  - the implied warranties arising from the Trade Practices Act do not apply to contracts between Mwave and its customers
  - if consumers purchase certain items they will not be entitled to a refund, return or exchange

- consumers must pay shipping costs to return faulty items to Mwave.

### **H.J. Heinz Company Australia Ltd**

H.J. Heinz Company Australia Ltd (Heinz Australia) has provided court enforceable undertakings to the ACCC in relation to misleading country ownership claims. Heinz Australia has undertaken to:

- cease supplying Golden Circle branded products with Australian-owned representations
- use its best endeavours to ensure that in-store corrective signage continues to appear next to Golden Circle products on supermarket shelves
- publish corrective advertisements in major newspapers throughout Australia.

### **Kincrome Pty Ltd**

Kincrome Pty Ltd has provided court enforceable undertakings to the ACCC in relation to non-compliance with the mandatory product safety standard for bunk beds. Kincrome has undertaken to:

- not, in trade or commerce, represent to consumers, either directly or indirectly, that any tools sold by Kincrome are Australian if those tools have not been manufactured or substantially transformed in Australia
- not create the overall impression that any tools sold by Kincrome are Australian if those tools have not been manufactured or substantially transformed in Australia
- not publish, or cause to be published, any advertisements that mislead or deceive, or are likely to mislead or deceive, consumers about the country of origin of the tools sold by Kincrome
- publish corrective advertisements and establish and implement a trade practices compliance program.

### **Linksea Pty Ltd**

Linksea Pty Ltd has provided court enforceable undertakings to the ACCC in relation to non-compliance with the mandatory product safety standard for bunk beds. Linksea has undertaken to establish and implement a trade practices compliance program.

### **People Telecom Ltd**

People Telecom Ltd has provided court enforceable undertakings to the ACCC in relation to misleading or deceptive conduct in its telemarketing and door-to-door sales of telecommunications services. People Telecom has undertaken to:

- not make misrepresentations of the kinds outlined in the undertaking

- write to affected customers, and place a notice on its website, offering to allow them to terminate their contract without penalty, and refund or waive certain debts arising from the misrepresentations
- monitor the conduct of its agents and ensure they comply with the scripts provided by People Telecom
- establish and implement a trade practices compliance program, including a complaints handling system that will be integrated with the credit management process.

### **Sony Trading Pty Ltd**

Sony Trading Pty Ltd has provided court enforceable undertakings to the ACCC in relation to the importation of banned mini jelly cup products containing konjac. Sony Trading has undertaken to:

- refrain from importing or supplying products containing konjac that are the subject of a permanent ban under s. 65C of the Trade Practices Act
- refrain from exporting products containing konjac unless the Minister has approved such exportation in writing
- publish a recall notice
- dispose of or destroy any remaining stock of Wong Coco jelly products
- establish and implement a trade practices compliance program.

### **Vinetex & Co Pty Ltd**

Vinetex & Co Pty Ltd has provided court enforceable undertakings to the ACCC in relation to the supply of children's nightwear products that carried an incorrect fire warning label. Vinetex & Co has undertaken to refrain from supplying children's nightwear products that do not comply with the relevant standard and establish a trade practices compliance program.

### **Vodafone Hutchison Australia**

Vodafone Hutchison Australia has provided court enforceable undertakings to the ACCC in relation to alleged misrepresentations about consumers' rights to a remedy for faulty mobile phones. Vodafone Hutchison Australia has undertaken to:

- extend the 'early life failure' period during which replacement mobile phones are provided to consumers for faulty mobile phones manufactured by Nokia, Apple, INQ and Research in Motion (Blackberry) from 14 days to 28 days after purchase
- provide all customers who acquired a mobile phone (except for mobile phones manufactured by Apple) in conjunction with a service contract on or after 1 December 2009 with an express repair warranty for the entire length of the customers' service contract. That means a customer on a 24-month service contract will receive free, unlimited repairs if their handset is faulty for the entire two-year period

- provide all active pre-paid customers who acquired their handset on or after 1 January 2010 with an express repair warranty for 24 months
- provide all active pre-paid customers who purchased their mobile phone prior to 31 December 2009 with an express repair warranty for a period of 12 months from the date of purchase
- take all reasonable steps to provide a loan phone to customers while their faulty phones are being repaired
- take all reasonable steps to ensure repairs are completed in a timely manner.

### **Woolworths Limited**

Woolworths Limited, trading as Big W, has provided court enforceable undertakings to the ACCC in relation to the supply of children's nightwear products that carried an incorrect fire warning label. Woolworths undertook a voluntary recall of 27 lines of garments on 26 September 2009 and an additional eight lines on 7 October 2009. Big W also issued a public apology notice on 12 December 2009. Big W commissioned a review by PricewaterhouseCoopers (PwC) to determine why the labelling error on the garments occurred and the adequacy of its buying and quality assurance and control procedures. Woolworths has undertaken to:

- refrain from supplying children's nightwear products that do not comply with the standard
- implement an 'Action Plan' developed by Big W in response to the PwC review
- conduct a review of its recall procedures
- develop and implement a training program for its buying and quality assurance staff for the purpose of ensuring compliance with the standard
- provide \$200 000 towards a research project into the standard
- donate \$200 000 to the Sydney Children's Hospital, Randwick.

## **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 March 2010 quarter, the ACCC:

- attended 40 meetings with government and industry representatives, small business operators and consumer groups nationally
- called for expressions of interest in membership of its small business and franchising committees. Committee memberships will be finalised shortly.
- participated in four small business and franchising expos and field days
- conducted 16 presentations to small business operators, industry associations and consumer groups on topics including the Franchising Code of Conduct, scams, trade practices issues affecting small business and the Horticulture Code of Conduct
- published 12 SCAMwatch radar alerts on the ACCC's SCAMwatch website, including warnings for travellers to the United States about fake visa processing services, advice about carefully checking the validity of discount accommodation vouchers and warnings about bogus anti-virus alerts
- posted on the ACCC website new information for consumers on issues such as tips for shopping online and digital TV
- met with representatives of the NSW Office of Water to consider proposed changes to New South Wales legislation to ensure New South Wales water trusts and private irrigation districts are subject to the requirements of the Water Market Rules 2009 and Water Charge (Termination Fees) Rules 2009.

### **Trade Practices Act awareness**

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

- liaison meetings with major retail groups to encourage compliance with the Trade Practices Act. These meetings included the consideration of concerns and trends identified from ACCC contacts, discussions about component and unit pricing practices, and warranty and refund policies

- a mail-out to more than 70 rental vehicle companies to remind that industry of its trade practices obligations, particularly in relation to the component pricing requirements of s. 53C of the Trade Practices Act, and to provide copies of the ACCC publication *Fair trading in the rental car sector*
- presentations to prospective small businesses through the New Enterprise Incentive Scheme to outline the rights and obligations afforded by the Trade Practices Act
- distribution of an article highlighting the potential risks associated with some bundled telecommunications products and advice on how to manage those risks to more than 900 small business stakeholders, including industry associations, local government and business enterprise centres.

### **Australian consumer law—unfair contract terms guidance for industry and consumers**

To assist stakeholders to understand their responsibilities under the unfair contract terms laws, the ACCC, ASIC and state and territory consumer protection agencies have developed a national guidance document, *Australian Consumer Law: a guide to unfair contract terms*. The ACCC, on behalf of ASIC and state and territory consumer protection agencies, commenced consultation on the draft guide in March. The guide will be published in June.

### **Australasian Consumer Fraud Taskforce**

As a member of the Australasian Consumer Fraud Taskforce (ACFT), the ACCC conducted its annual scam education and awareness campaign in March. The education and awareness campaign, *Online Offensive: Fighting Fraud Online*, focused on online consumer fraud. During the campaign, the ACCC launched a new online shopping factsheet and a 'Small business scams' factsheet. The ACCC also conducted an interagency forum with ACFT members, focusing on disruption of scams and enforcement.

## **Codes of conduct**

### **Mandatory codes of conduct**

The rights and obligations under the mandatory codes of conduct within the Trade Practices Act—in particular, the Franchising Code of Conduct and the Horticulture Code of Conduct—remained the subject of considerable ACCC educative efforts during the quarter. Activities included:

- ACCC attendance at the Sydney Franchising and Business Opportunities Expo to speak to prospective and current franchisees and franchisors and to distribute ACCC educative materials about the Franchising Code of Conduct
- participation in Australian Defence Force career transition seminars
- joint presentations in the Northern Territory on compliance with the Horticulture Code of Conduct in conjunction with the Horticulture



Mediation Advisor and the Department of Agriculture, Fisheries and Forestry.

## **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 Safety Recalls Australia website ([www.recalls.gov.au](http://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.

- The work on harmonising the standards and bans in force in different jurisdictions continued. The ACCC has been working to implement the standards and bans that the Commonwealth and state/territory governments have agreed should be in place under the new product safety regime. The first of the harmonisation regulations has been finalised for Ministerial consideration, with a further 12 recommendations for regulation currently being progressed/finalised for consideration by the Minister over the next quarter.
- The Product Safety Australia website was substantially progressed in the first quarter and will be launched in April 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 has been implemented and is awaiting further refinements, including enhanced automation and reporting facilities. The clearinghouse staff have been using the system to gather data and assess potential hazards.

The Standing Committee of Officials of Consumer Affairs has undertaken a major review of its responsibilities in preparation for the implementation of the single Australian Consumer Law from 1 January 2011. To complement these revised arrangements, the ACCC has established a new Product Safety Consultative Committee (PSCC) with a view to ensuring strong cooperation and collaboration with state and territory counterparts, in order to streamline the implementation of the changes brought about by the Australian Consumer Law.

## **Mandatory standards and bans**

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

- declaring a temporary ban on certain children's products that contain more than 1 per cent by weight diethylhexyl phthalate (DEHP) intended for children up to and including 36 months of age who can readily suck and/or chew them

- declaring mandatory standards for children's toys containing magnets, vehicle jacks and portable ramps for vehicles
- developing Regulatory Impact Statements (RIS) for mandatory standards covering portable soccer goalposts, projectile toys, blind and curtain cords, motor vehicle recovery straps and suction outlets in pools and spas
- progressing RIS relating to mandatory standards reviews of baby walkers, bunk beds, care labelling, 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 March 2010 quarter.

- A number of suppliers recalled various toy products following a joint surveillance operation by the ACCC and the Australian Customs and Border Protection Service. In a pre-Christmas strike that was also part of the National Toy Strategy, a total of 4918 toys with excess lead levels were seized and destruction was arranged.
- Woolworths Limited, trading as Big W, will make a contribution of \$200 000 to the Sydney Children's Hospital, Randwick, and fund a \$200 000 research program into the mandatory safety standard for children's nightwear under the terms of a court enforceable undertaking provided to the ACCC.

The undertakings were given to the ACCC by Woolworths, and its supplier Vinetex & Co Pty Ltd, following a major recall by the companies of children's nightwear items. The companies had supplied and sold a range of children's nightwear products that were incorrectly labelled as 'low fire danger' when flammability testing showed they should have been labelled 'high fire danger'.

- A children's bicycle missing three required safety components was withdrawn from sale nationally following concerns raised by the ACCC. Apollo Bicycle Co Pty Ltd provided court enforceable undertakings to the ACCC that included the display of information notices at all retail outlets and on its website, the supply and fitting of the missing components to all bicycles, and the implementation of a trade practices compliance program.
- Court enforceable undertakings were offered to the ACCC by importer and distributor Sony Trading Pty Ltd after supplying banned mini jelly cups containing konjac at Asian grocery retailers in the Sydney metropolitan and New South Wales central coast regions. A full product recall of the jelly products was conducted.
- Bunk bed importer Linksea Pty Ltd undertook to modify its designs and monitor the quality of bunk beds it imports as part of court enforceable undertakings it provided to the ACCC. Linksea recalled its Snow Bunk model after testing found that later production lines of the bunk bed did not comply with the mandatory standard.

- A voluntary recall of Aquaseat Bath Aids was conducted by Bebe-Jou because it did not comply with the requirements of the mandatory standard. A safety warning label was missing on the packaging and a warning label that was attached to the bottom of the baby bath seat was not visible to the user.
- Jairus Pty Ltd, trading as 'mooo', conducted a voluntary recall of toy wooden name puzzles after the ACCC identified a potential safety hazard where the pegs attached to the letters may become detached and present a choking hazard to young children.
- Bensons Trading Co Pty Ltd conducted a voluntary recall of Light Chaser toys after the ACCC identified small parts that may present a choking hazard for young children.

### Recalls and emerging hazards identification

A key component of the ACCC's product safety responsibilities is the identification of emerging hazards and the management of product recalls. During the March 2010 quarter, there were a total of 50 consumer product recalls, down slightly from the 53 during the December 2009 quarter. During the March quarter, the majority of recalls were in the categories of children's products (such as kids' furniture, toys and books) and business/industry (such as farming equipment). In line with the ACCC's movement towards electronic submission of recall notices, this quarter saw a significant increase in the number of recall notices lodged electronically by suppliers via the [www.recalls.gov.au](http://www.recalls.gov.au) website.

The following provides some more specific examples of the ACCC's product safety work during the March quarter.

- The ACCC worked closely with the Australian Customs and Border Protection Service, state and territory WorkCover and WorkSafe agencies, and state and territory consumer product regulators following the possible identification of tremolite asbestos in stone tiles. In this instance, Customs identified the possible safety hazard and all relevant agencies worked together to clarify the extent of any hazard and implement steps to minimise any risk to consumers.
- Major consumer product recalls notified to the ACCC included the global recall of some vehicles from the Toyota Prius range, with 2378 Australian cars potentially involved. Also on global recalls, approximately 8212 Infantino Sling Rider baby slings were recalled in Australia following the deaths of three infants in the United States. Parenting blogs and other web forums were buzzing with details of the recall and possible safety hazards, and in response the ACCC made its first foray into the blogosphere to ensure parents knew where to find further information on the Australian recall.
- It is uncommon for a book to be recalled, but *The happy baby cookbook*, published by ACP Magazines Limited, was voluntarily recalled because some of the recipes contained ingredients which were inconsistent with health recommendations for pregnant women. Approximately 12 500 cookbooks were affected by this recall.

## **Supplier education and consumer awareness activities**

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

- The national curtain and blind cord education campaign concluded, with a final report currently being prepared. The campaign, which involved a number of key stakeholders, focused on warning parents about the strangulation risk to children presented by loose curtain and blind cords and received good coverage in many states and territories.
- Following the declaration of a new interim ban on children's products containing more than one per cent by weight DEHP, a product safety bulletin and supplier's guide were published on the ACCC website and distributed at the Australian Toy Fair exhibition.
- A supplier's guide providing a summary of the mandatory requirements for the supply of reduced fire risk cigarettes was published on the ACCC website.
- A product safety bulletin on household cots with wooden drop sides was published on the ACCC website to alert consumers and suppliers about performance safety issues that may develop over time and with normal use of the product.

### 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 considered likely ('pre-assessed matters') and matters that required review.

The matters that were pre-assessed as not requiring review are often referred to the ACCC by other parties or agencies, such as the Foreign Investment Review Board, as a courtesy, because ACCC clearance is not requested. These pre-assessed matters also result from the ACCC's intelligence activities.

In the March 2010 quarter, 30 matters were pre-assessed by the ACCC. Also during that period, the ACCC reviewed 31 matters, including confidential and public merger reviews. Of the matters reviewed, 71 per cent of merger proposals were cleared unconditionally by the ACCC.

The ACCC opposed two public merger proposals outright. One s. 87B undertaking was accepted in relation to a merger proposal. For one previous matter, variations to existing s. 87B undertakings were accepted. No decisions were made in five reviews, either because the proposal was withdrawn or because a view could not be formed on a confidential basis.

**Table 3.1: Merger review outcomes: 1 January to 31 March 2010**

	Confidential	Public	Total
Matters pre-assessed—no review required	30	0	30
Total reviews undertaken	8	23	31
<i>This total can be broken down into the following categories:</i>			
Not opposed	6	16	22
Finished—no decision (including withdrawn) <sup>1</sup>	2	3	5
Opposed outright	0	2	2
Confidential review—ACCC concerns expressed	0	0	0
Resolved through undertakings <sup>2</sup>	0	1	1
Variation to undertaking accepted	0	1	1

Notes:

1 These are matters where no decisions were made. They are not included in the timings in table 3.2 below.

2 Only public matters can be resolved through undertakings.

## Time taken to assess mergers

Table 3.2 breaks down the time taken by the ACCC to assess merger proposals completed. This does not include the 30 pre-assessed matters, the five matters where no decisions were made or the matter in which variations to existing undertakings were accepted.

**Table 3.2: Time taken to assess mergers: 1 January to 31 March 2010**

Time taken to undertake merger reviews (cumulative)	Number of reviews <sup>2</sup>	Percentage of mergers (%)
Two weeks or less	2	8
Four weeks or less	7	36
Six weeks or less	8	68
Eight weeks or less	2	76
More than eight weeks	6	24

Notes:

- 1 This table does not include the 30 matters pre-assessed as not requiring a review. All these decisions were made in less than two weeks.
- 2 These do not include five matters where no decisions were made or one variation to existing undertakings.

## Statements of issues

Four statements of issues were released during the March 2010 quarter:

- BHP Billiton Ltd and Rio Tinto Ltd—joint venture in Western Australian iron ore production (25 March 2010)
- Cargill Australia Ltd—proposed acquisition of Goodman Fielder's commercial fats and oils business (18 February 2010)
- AMP Limited and National Australia Bank Ltd—proposed acquisition of AXA Asia Pacific Holdings Limited (10 February 2010)
- Link Market Services Limited—proposed acquisition of Newreg Pty Limited (2 February 2010).

## 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 three public competition assessments during the March 2010 quarter:

- Caltex Australia Limited—proposed acquisition of the retail assets of Mobil Oil Australia Pty Ltd (9 February 2010)

- GUD Holdings Limited—proposed acquisition of Breville Group Limited (22 January 2010)
- Woolworths Limited—proposed acquisition of Danks Holdings Limited (14 January 2010).

## **Section 87B undertakings**

One s. 87B undertaking was accepted in the March 2010 quarter. This was in relation to Agilent Technologies Inc's proposed acquisition of Varian Inc. The undertaking was accepted on 31 March 2010.

## **Major matters**

Major matters decided during the March 2010 quarter included:

- Cargill Australia Ltd—proposed acquisition of Goodman Fielder's commercial fats and oils business (31 March 2010)
- Agilent Technologies Inc—proposed acquisition of Varian Inc (31 March 2010)
- Link Market Services Limited—proposed acquisition of Newreg Pty Limited (24 March 2010).

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

### **Cargill Australia Ltd—proposed acquisition of Goodman Fielder's commercial fats and oils business**

Result: On 31 March 2010, the ACCC decided to oppose the proposed acquisition.

Summary: On 10 December 2009, the ACCC commenced a review of the proposed acquisition of Goodman Fielder's commercial fats and oils business by Cargill Australia Ltd. Goodman Fielder is a manufacturer and supplier of a range of consumer food products, including bakery goods, spreads and oils, cooking oils and smallgoods under a number of consumer product brands. Goodman Fielder is the largest supplier of edible fats and oils in Australia. Cargill Australia is a vertically integrated supplier of edible fats and oils, operating a number of oil seed crushing facilities and one vertically integrated crushing and refining facility.

The ACCC conducted market inquiries with a range of interested parties, including customers, competitors, potential entrants, suppliers, logistics providers and other interested parties. The ACCC released a statement of issues on 18 February 2010 seeking further information regarding its preliminary competition concerns.

The ACCC was concerned that the proposed acquisition would reduce the number of competitors supplying a wide range of refined edible fats and oils products. In addition, the ACCC was concerned that any potential competitors would face difficulties in viably obtaining certain inputs necessary to supply a number of fats and oils products, limiting their ability to provide an effective competitive constraint post acquisition.

A public competition assessment in relation to this matter will be released in due course.



## **Agilent Technologies Inc—proposed acquisition of Varian Inc**

Result: On 31 March 2010, the ACCC decided not to oppose the proposed acquisition following the acceptance of a court enforceable undertaking.

Summary: On 29 October 2009, the ACCC commenced a review of the proposed acquisition. Varian Inc is headquartered in the United States and designs, develops, manufactures, markets, sells and services scientific instruments (including laboratory analytical and life science instruments) and vacuum products. Agilent Technologies Inc is headquartered in the United States and designs, develops, manufactures, markets, sells and services electronic and bio-analytical measurement products (including laboratory analytical and life science instruments).

The ACCC conducted market inquiries with a range of interested parties, including laboratories, mining companies, universities and research institutions, government agencies, other manufacturers and interested parties. The ACCC also liaised closely with the European Commission (EC) and the Federal Trade Commission in the United States throughout its review of the proposed acquisition.

The ACCC identified a number of scientific product markets where divestitures were required to address competition concerns, including in relation to the Australian supply of laboratory gas chromatographs, micro-portable gas chromatographs, triple quadrupole gas chromatograph mass spectrometers and inductively coupled plasma mass spectrometers (the relevant markets). The ACCC was concerned that the proposed acquisition, in the absence of these divestitures, would have led to higher prices for key scientific instruments and reduced choice of suppliers for laboratories, mining companies, universities and research institutions.

In coming to its conclusions in relation to the relevant markets, the ACCC considered that the proposed acquisition would result in a significant increase in concentration among suppliers, with the merged firm possessing the largest installed base of customers of any individual supplier. The ACCC also considered that the merged firm would be unlikely to be effectively constrained by the presence of direct customer imports (as opposed to imports supplied via the original manufacturers), alternative Australian suppliers or the threat of new entry and expansion.

The EC also identified competition concerns arising from the proposed acquisition. In order to address competition concerns identified by the EC, Agilent agreed to divest its global micro-portable gas chromatography business and Varian's global laboratory gas chromatography, triple quadrupole gas chromatograph mass spectrometry and inductively coupled plasma mass spectrometry businesses.

To address the ACCC's concerns in the Australian context, the merger parties offered an enforceable undertaking under s. 87B of the Trade Practices Act, which gave effect to the global divestitures in Australia. The undertaking also provided upfront ACCC approval for the proposed purchasers of the global businesses to be divested—Inficon Inc as purchaser of Agilent's global micro-portable gas chromatograph business and Bruker Inc as purchaser of Varian's global laboratory gas chromatograph, triple quadrupole gas chromatograph mass spectrometer and inductively coupled plasma mass spectrometer businesses.

On 31 March 2010, the ACCC announced that it had accepted the undertaking offered by the merger parties and, subject to that undertaking, would not oppose the proposed acquisition.

A public competition assessment in relation to this matter will be released in due course.

### **Link Market Services Ltd—proposed acquisition of Newreg Pty Ltd**

Result: On 24 March 2010, the ACCC announced its decision to oppose the proposed acquisition.

Summary: On 22 December 2009, the ACCC commenced a review of the proposed acquisition of Newreg Pty Ltd (Newreg) (including Registries Ltd) by Link Market Services Ltd (Link). Link is a registry services provider based in Australia. Newreg was incorporated in 2007 for the sole purpose of acquiring Registries Ltd (Registries). Registries is a registry services provider which competes with Link.

The ACCC conducted market inquiries with a range of interested parties, including, among others, listed companies, registry service providers and the Australian Securities Exchange. The ACCC released a statement of issues on 2 February 2010 seeking further information regarding its preliminary competition concerns.

The ACCC was concerned that the proposed acquisition would significantly reduce the options available to a broad range of customers—in particular, medium-sized companies and large companies with simpler shareholder registers. The ACCC's inquiries revealed that Registries currently plays an important role in the market, aggressively marketing and discounting its services to attract new clients. Without the disruptive and aggressive competition provided by Registries, the ACCC considered that there would be a real chance of muted competition developing between Link and the other large provider, Computershare, after the merger. This concern is exacerbated by the low levels of customer switching between registry service providers and the existence of significant barriers facing both prospective new entrants and existing small competitors.

With little likelihood of new entry into the provision of registry services in the foreseeable future, the ACCC concluded that the proposed acquisition was likely to substantially lessen competition in the national market for the provision of securities registration and related services to listed companies and other entities with similar requirements.

A public competition assessment in relation to this matter will be released in due course.

## 4 Adjudication

### Authorisations

During the March 2010 quarter, the ACCC received 17 new authorisation applications, covering eight projects.

As at 31 March 2010, a total of 34 authorisation applications, covering 15 projects, were being considered by the ACCC.

### Matters finalised

#### **Cuscal Limited and Ors—A91175–A91177**

Summary: On 28 July 2009, Cuscal Limited, National Australia Bank Limited and rediATM network members (Members) applied for authorisation, in broad terms, for 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
- to not directly charge cardholders of the Members for the supply of ATM transaction services at a rediATM
- to not 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 and released a draft determination proposing to grant authorisation to the arrangements on 29 October 2009.

On 27 January 2010, the ACCC released a determination granting authorisation to Cuscal's arrangements for five years.

#### **Tasmanian Farmers & Graziers Association—A91197**

Summary: On 13 November 2009, the Tasmanian Farmers & Graziers Association lodged an application for re-authorisation of an arrangement between present and future vegetable grower members to collectively negotiate the terms and conditions of growing contracts with processors.

On 4 December 2009, the ACCC granted interim authorisation to the arrangements and on 24 February 2010 a draft determination proposing to grant authorisation to the arrangements was released.

On 25 March 2010, the ACCC released a determination granting authorisation to the arrangements for five years.

### **Benaris International Pty Ltd & Ors—A91135 and A91157**

Summary: On 15 December 2010, Benaris International Pty Ltd, Origin Energy Resources Ltd and Woodside Energy Ltd applied for a minor variation to authorisations A91135 and A91157.

In September 2009, the ACCC 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. Since then, Origin and Benaris have agreed to buy Woodside's interest in the venture. A minor variation to the authorisation was sought to allow Origin and Benaris, rather than Origin and Woodside, to jointly market their shares.

The ACCC released a determination on 4 February 2010 granting the minor variation to the authorisations.

### **Australian Amalgamated Terminals Pty Ltd (AAT)—A91141–A91142 and A91181–A91182**

Summary: On 27 January 2010, AAT applied for a minor variation to authorisations A91141–911422 and A91181–A91182. The authorisations were previously granted on 3 December 2009 to AAT, P&O Wharf Management Pty Limited and Plzen Pty Limited to give effect to section 2 of the Shareholders Agreement, together with the other provisions of the Shareholders Agreement and the Constitution of AAT, being provisions that establish and constitute the AAT joint venture until 31 December 2019. Authorisation was only to the extent that those provisions allow the parties to engage in the conduct at the terminals as set out in clause 5.9 of the authorisation. The authorisation was granted subject to conditions.

In its application for a minor variation, AAT sought an amendment to clause 2.2.1(a) of the conditions of authorisation extending the time period within which AAT must identify and notify the ACCC of a proposed independent price expert by three weeks.

On 9 February 2010, the ACCC issued a determination varying the authorisations to amend the clause by extending the time period until 17 February 2010, or such later date as required by the ACCC.

### **Qantas Airways Limited and British Airways plc—A91195–A91196**

Summary: On 16 October 2009, Qantas and British Airways applied for re-authorisation 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 re-authorise the Joint Services Agreement. The ACCC also granted interim authorisation at that time.

On 31 March 2010 the ACCC issued a determination granting authorisation to the Qantas and British Airways Joint Services Agreement for five years.

## **Draft determinations issued (not otherwise appearing above)**

### **Macquarie Generation and 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 New South Wales.

The New South Wales 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 which 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 provisions which limit supply and acquisition of the co-insurance to the parties to the agreement.

On 25 March 2010, the ACCC issued a draft determination proposing to deny authorisation to the arrangements. The ACCC is currently seeking submissions on the draft determination and expects to release a final decision in May 2010.

### **Casuarina Business Precinct Stakeholders Committee—A91201–A91202**

Summary: On 30 November and 11 December 2009, the Casuarina Business Precinct Stakeholders Committee lodged related applications 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.

On 25 March 2010, the ACCC released a draft determination proposing to grant conditional authorisation to the supply restrictions within the proposed Liquor Accord, including any variation to those supply restrictions, for a period of three years. Interim authorisation was also granted at that time.

The ACCC is currently seeking submissions in response to its draft determination and expects to issue a final decision in either April or May 2010.

### **Gladstone Ports Corporation Limited and 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.

On 24 March 2010, the ACCC issued a draft determination proposing to grant authorisation to the arrangements for five years. The ACCC is currently seeking submissions in relation to the draft determination. It expects to release a final decision in either April or May 2010.

### **Board of Airline Representatives of Australia Inc—A91200**

Summary: On 26 November 2009, the Board of Airline Representatives of Australia Inc (BARA) applied for re-authorisation 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.

On 24 March 2010, the ACCC issued a draft determination proposing to grant authorisation to the arrangements for five years. The ACCC is currently seeking submissions in relation to the draft determination and expects to release a final decision in either April or May 2010.

### **Victorian Farmers Federation—A91214**

Summary: On 18 February 2010, the Victorian Farmers Federation (VFF) applied to revoke authorisation A40093 and to substitute a new authorisation on substantially the same terms, for a further five years.

In particular, authorisation is sought, on behalf of Victorian chicken grower groups, for each grower group to collectively bargain with the chicken meat processors to whom they supply growing services. The VFF requested the application be considered under the ACCC's streamlined process for considering collective bargaining authorisation applications.

On 18 March 2010, the ACCC released a draft determination proposing to re-authorise the arrangements for a further five years. The ACCC also granted interim authorisation at this time. The ACCC is currently seeking submissions from interested parties on the draft determination and expects to release a final decision in May 2010.

### **North West Iron Ore Alliance—A91212**

Summary: On 4 February 2010, the North West Iron Ore Alliance (NWIOA) applied for authorisation to collectively negotiate, on behalf of its shareholders, with BHP Billiton, Rio Tinto, Fortescue Metals Group (the service providers) and any similar provider in future in relation to the terms and conditions, including price, under which above rail haulage services and/or below rail access will be acquired in the Pilbara region in Western Australia.

NWIOA requested the application be considered under the ACCC's streamlined process for considering collective bargaining authorisation applications.

On 4 March 2010, the ACCC issued a draft determination proposing to grant conditional authorisation in respect of the proposed arrangements for 15 years. The ACCC expects to issue a final decision in April 2010.

### **Australian Payments Clearing Association Limited—A91203 and A91213**

Summary: On 7 December 2009, the Australian Payments Clearing Association Limited (APCA) lodged an application for the 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.

On 4 March 2010, the ACCC issued a draft determination proposing to grant authorisation to the arrangements for five years. The ACCC is currently seeking submissions on the draft determination and expects to release a final decision in April 2010.

### **Australasian Performing Rights Association Limited—A91887–A91194 and A91211**

Summary: On 30 September 2009, the Australasian Performing Rights Association Limited (APRA) applied for the revocation of its previous authorisations, due to expire on 30 March 2010, and their substitution with new authorisations (A91887–A91194 and A91211) on substantially the same terms, for a further six years.

The applications relate to APRA's standard arrangements for the acquisition and licensing of the performing rights in its music repertoire.

On 22 March 2010, the ACCC granted interim authorisation to the arrangements.

On 8 February 2010, the ACCC released a draft determination proposing to re-authorise the arrangements for a further three years, subject to a number of conditions.

The ACCC is currently seeking submissions on the draft determination and expects to release a final decision in April 2010.

## **Applications lodged (not otherwise appearing above)**

### **Media Entertainment and Arts Alliance—A91204**

Summary: On 16 December 2009, the Media Entertainment and Arts Alliance (the Alliance) applied for authorisation to collectively negotiate the terms of engagement for freelance journalists by Fairfax. On 19 February 2010, the Alliance amended the application to extend the arrangements to include negotiations with ACP Magazines, News Limited and Pacific Magazines.

The ACCC is currently considering submissions from interested parties and the Alliance prior to issuing a draft determination.

### **Rio Tinto Aluminium and 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 for arrangements under amended agreements for 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 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 is currently considering submissions from interested parties and the applicants prior to issuing a draft determination.

### **Australian Payments Clearing Association Limited—A92109–A91210**

Summary: On 7 January 2010, the Australian Payments Clearing Association Limited applied to revoke authorisation A90967 and A90968 and to substitute new authorisations in relation to the suspension and termination provisions of the Bulk Electronic Clearing System regulations.

The ACCC is currently considering submissions prior to releasing its draft determination.

### **Santos QNT Pty Ltd & Ors—A91215–A91216**

Summary: On 25 February 2010, Santos QNT Pty Ltd and 10 other Queensland oil producers (the applicants) applied for authorisation to:

- jointly discuss and negotiate common terms and conditions, including price, under which oil produced predominantly from the Surat Basin and Denison Trough in Queensland (Oil) will be offered for sale and sold by the applicants
- enter into and give effect to contracts by which Oil will be offered for sale by the applicants to buyers.

On 24 March 2010, the ACCC granted interim authorisation to the arrangements. Interim authorisation is conditional upon any sales agreement entered into containing



a provision that the agreement will immediately terminate should final authorisation not be granted by the ACCC.

The ACCC is currently considering submissions prior to releasing its draft determination.

#### **Vision Group Holdings Limited—A91217**

Summary: On 29 March 2010, Vision Group Holdings Limited, all employees engaged by Vision Group and all contractors engaged by Vision Group applied for authorisation to discuss and, if relevant, agree and implement fees to be charged to patients for ophthalmology services supplied at Vision Group branded clinics.

The ACCC is seeking submissions prior to issuing a draft determination.

#### **Generic Medicines Industry Association Pty Ltd—A91218–A91219**

Summary: On 31 March 2010, the Generic Medicines Industry Association Pty Ltd (GMiA) applied for authorisation of its Code of Practice (2nd edition) which includes provisions for taking disciplinary action against GMiA members who breach the code.

The ACCC is seeking submissions prior to issuing a draft determination.

#### **North West Shelf Project—A91229–A91223**

Summary: On 31 March 2010, the North West Shelf Project (the project) partners that are participants in the Domestic Gas Joint Venture (BHP Billiton Petroleum, BP Developments Australia, Chevron Australia, Shell Development (Australia) and Woodside Energy) and the Incremental Pipeline Gas Joint Venture (BHP Billiton Petroleum, BP Developments Australia, Chevron Australia, Shell Development (Australia), Japan Australia LNG (MIMI) and Woodside Energy), collectively the 'applicants', applied for authorisation to:

- jointly discuss and negotiate common terms and conditions (including price) and the methods by which domgas (natural gas supplied to customers in Western Australia) produced from the project will be offered for sale
- enter into contracts, arrangements or understandings between the applicants containing common terms and conditions (including price) upon which domgas produced from the project will be offered for sale and sold
- give effect to existing domgas contracts for their full term, including any extensions (this would also include giving effect to Domestic Gas Joint Venture gas supply contracts that may be assigned to the Incremental Pipeline Gas Joint Venture)
- give effect to domgas contracts entered into during the term of authorisation (or any extensions of such contracts) for a period of up to 25 years from the date of the first delivery of gas under those contracts.

Authorisation is sought until 31 December 2016.

The ACCC is seeking submissions prior to issuing a draft determination.

## Collective bargaining notifications

The ACCC received one collective bargaining notification during the March 2010 quarter.

### **APC Prosthetics Pty Ltd—CB000140**

Summary: On 15 January 2010, APC Prosthetics Pty Ltd, APC Prosthetics (Hunter) Pty Ltd, Premier Prosthetics and Orthotics Pty Ltd and Spooner Hart Prosthetics Pty Ltd notified a proposal to collectively bargain with NSW Health in relation to the terms and conditions (including capped prices) in a request for tender for the supply of lower limb interim prosthetics services.

The ACCC issued a draft objection notice on 28 January 2010. On 5 February 2010, the collective bargaining group withdrew the notification.

## Exclusive dealing notifications

During the March 2010 quarter, the ACCC received 181 new notifications across 72 matters. Some of these notifications are discussed below.

### **Brisbane International Speedway Ltd and Ors—N94032–N90034**

Summary: On 7 July 2009, Brisbane International Speedway Pty Ltd, Murray Bridge Sporting Car Club & Motorcycle Club Incorporated and Premier Speedway Club Warrnambool lodged notifications proposing to supply race services from time to time, including access to track facilities and race events, on condition that:

- the offeree has purchased a suitable licence from the National Association of Speedway Racing Pty Ltd (NASR) in order to compete at the track or
- the offeree has purchased a suitable licence from NASR in order to visit the racing pit area.

On 28 January 2010, the ACCC issued draft notices proposing to revoke the notifications.

On 22 February 2010, a pre-decision conference was held with respect to this matter. The ACCC sought further submissions from the notifying parties and interested parties, and the matter is currently under consideration.

### **eDosh Pty Ltd—N94164**

Summary: On 14 September 2009, eDosh lodged a notification relating to offering the following member services to persons who subscribe to 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 proposed 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 proposed 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. Following the provision of further information from eDosh, including changes to its promotional material, on 19 February 2010, the ACCC decided to take no further action to remove the immunity from the notification at that time.

#### **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.

On 2 March 2010, the ACCC issued a notice revoking the immunity provided by the notification. Following the expiration of the appeal period, the immunity will cease to be in force from 2 April 2010.

#### **Specialist Oncology Property Ltd—N94403**

Summary: On 5 January 2010, Specialist Oncology Property Ltd lodged a notification in relation to arrangements whereby it will lease a chemotherapy unit located in the medical centre strata suites adjacent to the Norwest Private Hospital (Unit) to Healthscope Limited on condition that all chemotherapy drugs administered by Healthscope at the Unit be obtained exclusively from McBeaths Pharmacy Westmead and that Healthscope enter into a licence agreement providing for McBeaths to occupy an area within the leased premises.

The ACCC invited submissions from interested parties in relation to the notified arrangements. On 25 March 2010, the ACCC decided to take no further action at that time.

## 5 Regulatory affairs

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

### Communications

In the March 2010 quarter, the ACCC:

- completed a review of the retail price control arrangements that apply to Telstra
- issued two quarterly reports for the September 2009 and December 2009 quarters under the accounting separation regime for Telstra.

### Declarations

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

### Review to vary domestic transmission capacity service description

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

In January 2010, the ACCC received submissions in response to its discussion paper, 'An ACCC *Discussion Paper* reviewing the declaration for the domestic transmission capacity service'.

### Access terms and conditions—indicative prices, undertakings and disputes

#### Access pricing

##### *ACCC review of telecommunications access pricing principles*

The ACCC is conducting a review of access pricing principles for regulated telecommunications services. In February 2010, the ACCC received submissions regarding its review of telecommunications access pricing principles.

##### *Telstra's unconditioned local loop service undertaking*

On 28 April 2009, the ACCC issued a final decision to reject Telstra's undertaking that proposed a \$30 monthly charge for the unconditioned local loop service (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 to make a final binding determination to resolve a dispute.

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

In the March 2010 quarter, no new access disputes were notified to the ACCC. Three access disputes were withdrawn. These were:

- Request Broadband (access seeker) and Telstra (access provider)—line sharing service (LSS)
- Request Broadband (access seeker) and Telstra (access provider)—ULLS
- PowerTel (access seeker) and Telstra (access provider)—ULLS.

With these changes, the ACCC continues to arbitrate 36 access disputes.

## Interim and final determinations

The ACCC did not issue any interim or final determinations in the March 2010 quarter.

## Published determinations

In the March 2010 quarter, the ACCC did not publish any determinations made in arbitrations concerning disputes over access to services.

The following table summarises the position in relation to access disputes during the March 2010 quarter.

**Table 5.1: Access disputes during the March 2010 quarter**

	Total
Active disputes as at 31 March 2010	36
Decisions subject to appeal to the Federal Court	0
New arbitrations commenced	0
Interim and final determinations issued	0
Disputes withdrawn	3
Published determinations	0

## Other developments

### Review of Telstra's price control arrangements

On 15 January 2010, the ACCC issued a discussion paper for review of Telstra's retail price control arrangements. Following a public consultation process, the ACCC completed the review of the retail price control arrangements that apply to Telstra.

The review was conducted under a direction made by the Minister for Broadband, Communications and the Digital Economy.

## **Reports**

On 20 January 2010, the ACCC issued the imputation testing and non-price terms and conditions report for the September 2009 quarter.

On 31 March 2010, the ACCC issued the imputation testing and non-price terms and conditions report for the December 2009 quarter.

## **Australian Energy Regulator**

### **Electricity network regulation matters**

#### **Variation of network support payment—Transend**

Consequent to the revised weighted average cost of capital determined in November 2009 by the Australian Competition Tribunal, Transend applied for an amended network support pass through amount to be recovered in 2010–11 in relation to Transend's appeal of the Australian Energy Regulator's (AER's) revenue determination.

On 12 March 2010, the AER approved an amended pass through amount of \$4 118 140 for network support costs incurred in 2008–09, to be recouped in 2010–11.

#### **Cost Allocation Methods—Jemena Electricity Networks**

On 26 February 2010, the AER approved Jemena Electricity Network's proposed Cost Allocation Method (CAM). The AER is required to assess CAMs proposed by distribution businesses in accordance with the requirements of the National Electricity Rules. The businesses were required to submit a proposed CAM to the AER together with their building block/revenue proposals.

#### **Cost Allocation Methods—SP AusNet and United Energy Distribution**

On 12 March 2010, the AER refused to approve SP AusNet and United Energy Distribution's (UED's) proposed CAMs. The AER has proposed amendments to SP AusNet and UED's CAMs and awaits submissions from SP AusNet and UED on the amendments.

#### **Cost Allocation Method—Powercor**

On 28 January 2010, the AER refused to approve Powercor's proposed CAM. The AER has proposed amendments to be made to Powercor's CAM and will have regard to Powercor's submission on the amendments prior to making a final decision on the CAM.

#### **Consultation paper—benchmark upstream augmentation charge rates for CitiPower's network (assessing new customers' connection charges)**

On 19 February 2010, the AER released a consultation paper regarding benchmark upstream augmentation charge rates for CitiPower's network.

This paper follows an earlier consultation on a proposed calculation method developed by the AER in July 2009 which sought stakeholders' comments on how to quantify the fair and reasonable rate for new customers to cover the upstream augmentation works in CitiPower's supply area.

Based on submissions received, the AER considers that its initial proposed calculation method requires modification to better take into account new connecting customers' prescribed connection life.

This consultation paper is available on the AER's website.

### **AER draft decision on EnergyAustralia's public lighting services proposal**

On 23 February 2010, the AER made its draft redetermination of EnergyAustralia's alternative control public lighting service. The determination was in accordance with the directions of the Australian Competition Tribunal made on 25 November 2009.

Among other things, the draft decision addressed the regulatory value of the public lighting assets, operating costs and residual value of assets retired prior to the end of their economic lives.

The AER is required to make its final decision by 15 April 2010.

### **Australian Competition Tribunal makes decision on AER determination for Victorian smart meter costs**

On 18 January 2010, the Australian Competition Tribunal handed down its decision on an appeal by United Energy Distribution (UED) and Jemena Electricity Networks (JEN) against the AER's October 2009 determination on Victorian Advanced Metering Infrastructure (AMI) budgets for 2009 to 2011 and metering charges for 2010 and 2011.

The Tribunal decided to vary the AER's determination by adding the management fees paid by UED and JEN to a related service provider (Jemena Asset Management) for the AMI roll-out to their approved budgets. This was on the basis that such fees were not outside the scope of the AMI roll-out under the Victorian Government's regulatory requirements, as specified in its Order in Council.

The amendments to the AER's determination and further details are available on the AER's website.

### **Revised regulatory proposals—Energex and Ergon Energy (Queensland) and ETSA Utilities (South Australia)**

On 14 January 2010, the AER received revised regulatory proposals together with supporting information from the Queensland and South Australian electricity distributors, Energex, Ergon Energy and ETSA Utilities. The AER made its draft determinations for the Queensland electricity distributors on 30 November 2009.

The determinations impose controls over the revenues that each business may recover over the period from 1 July 2010 to 30 June 2015. The AER will publish its final determinations on Thursday 6 May 2010.

## **Gas network regulation matters**

### **Access arrangement final decision—ACT, Queanbeyan and Palerang gas distribution network**

On 30 March 2010, the AER released its final decision for the ActewAGL Distribution ACT, Queanbeyan and Palerang gas distribution network's access arrangement proposal for the period from 1 July 2010 to 30 June 2015. The AER's final decision approves network charges and the terms and conditions of access for the ACT, Queanbeyan and Palerang gas distribution network for the period.

The final decision approves an average increase in reference tariffs in 2010–11 of 7 per cent for residential customers as at 1 July 2010. The higher network charges reflect the approved total revenue of \$278.7 million (2009–10).

The AER's final decision did not approve ActewAGL Distribution's revised access arrangement proposal, including the access arrangement information addendum.

The AER intends to approve its access arrangement proposal on 23 April 2010.

### **Access arrangement final decision—Wagga Wagga gas distribution network**

On 30 March 2010, the AER released its final decision for Country Energy's Wagga Wagga gas distribution access arrangement proposal for the period from 1 July 2010 to 30 June 2015. The AER's final decision approves network charges and the terms and conditions of access for the Wagga Wagga gas distribution network for the period.

There will be an average increase in network charges in 2010–11 of 17.8 per cent for most residential customers. The higher network charge will take effect from 1 July 2010. The higher network charges reflect higher total revenue of \$48.8 million (2009–10).

The AER's final decision did not approve Country Energy's revised access arrangement proposal, including the access arrangement information. Country Energy's revised access arrangement proposal did not fully meet the requirements of the AER's draft decision.

The AER intends to approve its access arrangement proposal on 23 April 2010.

### **Jemena Gas Network's revised access arrangement proposal**

On 10 February 2010, the AER released its draft decision on Jemena Gas Network's (JGN) access arrangement proposal for the period from 1 July 2010 to 30 June 2015. The draft decision did not approve JGN's access arrangement and required JGN to revise its access arrangement proposal for its New South Wales Gas Networks.

On 19 March 2010, JGN submitted a revised access arrangement proposal together with supporting information to the AER. Relevant information including a public version of JGN's revised proposal and the AER's draft decision was published on the AER's website, and interested parties were invited to make submissions by 28 April 2010.



## **Exemption of SPI Management Services and Data and Management Services from the annual compliance order**

On 18 February 2010, the AER granted SPI Management Services (SPIMS) and Data and Management Services (DMS) an exemption from the annual gas compliance reporting obligations following a request by SP AusNet. This was on the basis that there would be limited benefit from obliging SPIMS and DMS to comply as information provided by them under the annual compliance process would also be provided by SPI Networks (Gas) Pty Ltd.

## **Energy markets**

### **Draft regulatory investment test for transmission**

In March 2010, the AER commenced consultation for the draft regulatory investment test for transmission. Under the National Electricity Rules, the AER must publish the regulatory investment test for transmission (RIT-T) by 1 July 2010. The RIT-T will replace the existing regulatory test for electricity transmission investments and will commence on 1 August 2010. The existing regulatory test will continue to apply to projects which address a need on the distribution network.

The purpose of the RIT-T is to identify the transmission investment option which maximises net economic benefits and, where applicable, meets the relevant jurisdictional or National Electricity Rule based reliability standards. The RIT-T will provide a single framework for all transmission investments and remove the distinction in the regulatory test between reliability driven projects and projects motivated by the delivery of market benefits.

In conjunction with the RIT-T, the AER must develop and publish RIT-T application guidelines for the operation and application of the RIT-T (the application guidelines). The application guidelines are designed to provide guidance to businesses applying the RIT-T and enhance transparency and consistency in investment decision making.

The AER has prepared a draft RIT-T and application guideline as well as an explanatory statement, which are available on the AER's website, and interested parties are invited to make submissions by 14 May 2010.

### **Powerlink's proposal for early implementation of the market impacts parameter**

On 17 March 2010, Powerlink submitted a proposal for the early application of the market impact component of the electricity transmission service target performance incentive scheme (7 March 2008).

The market impact component of the scheme aims to provide incentives to transmission network service providers to minimise the number and duration of network outages which affect price outcomes in the electricity spot market. Powerlink seeks to have the scheme apply from 13 July 2010. Interested parties were invited to make submissions on Powerlink's proposal by 21 April 2010.

### **AER consultation—draft retailer authorisation guideline and draft pricing information guideline**

In March 2010, AER commenced preliminary consultation on various guidelines that it will be required to develop after the passage of the proposed National Energy Retail Law (Retail Law).

The draft retailer authorisation guideline and draft pricing information guideline, developed for preliminary consultation, are based on the second exposure draft of the National Energy Customer Framework (released November 2009) and will be updated following passage of the final framework.

Upon the passage of the Retail Law, the AER will be seeking stakeholder comment on the guidelines under the formal consultation process set out in the National Energy Retail Rules. This may have to occur within a tight time frame. Accordingly, the AER is undertaking preliminary consultation during 2010 to provide stakeholders with as much opportunity as possible to consider the key issues and comment on the preparation of draft guidelines.

### **Quarterly compliance report—October to December 2009**

In February 2010, the AER published its quarterly compliance report for the October to December 2009 quarter.

The report summarises the results of the AER's compliance monitoring and enforcement activities in both the electricity and gas industries during the period.

In particular, it provides an overview of the results of investigations (including special reports into significant market or power system events), compliance audits and targeted compliance reviews as well as electricity derogations and rebidding inquiries during the quarter.

### **Compliance bulletin—providing and updating market participant availability**

On 5 February 2010, the AER published a compliance bulletin dealing with the provision and updating of market participant availability. The bulletin sets out the AER's interpretation of the provisions of the National Electricity Rules that govern communication of the availability of market generators and scheduled network service providers.

The AER decided to publish this bulletin following a review of the system events on 29 and 30 January 2009. This review revealed a number of cases where the actions of market participants may have contributed to inefficient market outcomes, including failure to follow dispatch instructions and revisions to availability at short notice.

The compliance bulletin covers the main reporting requirements of chapters three and four of the National Electricity Rules, with particular emphasis on the short and medium term projected assessments of system adequacy, daily bid and pre-dispatch processes.

### **High-price events in the national electricity market**

From January to March 2010, the AER released seven 'prices above \$5000/MWh' reports. The reports related to events in:

- New South Wales on 7 and 17 December 2009 and 4 and 22 February 2010
- South Australia on 8 January 2010
- South Australia and Victoria on 11 January 2010

- Queensland on 18 January 2010.

In March, the AER released its first 'market ancillary service prices above \$5000/MW' report in relation to events in Tasmania on 31 December 2009.

In early April, the AER will release a 'prices above \$5000/MWh' report into events in South Australia on 8–10 February 2010, and Victoria on 8–9 February 2010.

## **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 for third party access to water-related infrastructure under Part IIIA of the Trade Practices Act.

### **Enforcement and monitoring activities under the water rules**

#### **Enforcement**

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

- 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 to stakeholders
- writing to various operators advising of their obligations under the rules and enclosing guidance material where appropriate.

Between 1 January and 31 March 2010, the ACCC received 44 contacts from irrigators and operators about the new rules. The ACCC is currently investigating a number of these matters for possible breaches of the rules. Investigations have focused on compliance with the termination fee rules.

#### **Monitoring**

The Water Act gives the ACCC responsibility for monitoring regulated water charges and compliance with the Water Market Rules and the Water Charge (Termination Fees) Rules. The purpose of the ACCC undertaking monitoring is to inform the Minister for Climate Change, Energy Efficiency and Water 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. The ACCC received four submissions and is in the process of finalising this information request. The ACCC is also finalising a further information request for release in April. This information request proposes reporting requirements in relation to bulk water charges, water planning and management charges and other infrastructure operator charges.

## **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 cover technical issues identified in the process of implementing the rules. The Minister requested that this advice be provided by the end of March 2010.

On 31 March 2010, the ACCC provided its advice and draft amendments to the rules.

### **Water trading rules**

On 17 December 2009, the ACCC released its draft advice to the Murray–Darling Basin Authority (MDBA) on the development of the water trading rules. The ACCC then undertook a public consultation process, with submissions commenting on the draft advice closing on 1 February 2010.

The ACCC received 17 submissions to the draft advice and also consulted with all Murray–Darling Basin state government water departments, Department of the Environment, Water, Heritage and the Arts, large infrastructure operators, peak representative bodies and other interested parties.

The final advice sets out rule advice and recommendations on a range of matters relating to water trading. These include restrictions on trade of water access rights, water delivery rights and irrigation rights, approval processes and information requirements for a functional water market.

The ACCC presented its final advice on the development of the water trading rules to the MDBA on 24 March 2010. The ACCC's final advice will be made public by the MDBA when the draft Basin Plan is released for public consultation in mid-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 ACCC provided its final advice and draft rules to the Minister on 19 February 2010.

The final 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**

### **Draft decision on the Hunter Valley access undertaking**

On 5 March 2010, the ACCC issued a draft decision to not accept the proposed access undertaking lodged by the Australian Rail Track Corporation (ARTC) for the Hunter Valley rail network on the basis that it was unlikely to be appropriate under Part IIIA of the Trade Practices Act in its current form.

In the interests of expediting the assessment of the undertaking and facilitating industry discussion, the ACCC issued a position paper on the non-price aspects of the undertaking on 10 February 2010.

The Hunter Valley rail network is managed by ARTC and is a key component of an overall coal export supply chain, delivering coal from mines in the Hunter Valley to the Port of Newcastle for export. The rail network also carries passenger trains and non-coal freight trains.

The draft decision emphasised the need for the Hunter Valley rail network to contribute to the long-term solution for the Hunter Valley coal supply chain and noted the necessity for the rail access arrangements to align with other components of the chain, thereby contributing to an efficient and effective supply chain overall.

In the draft decision, the ACCC provided detailed feedback to ARTC to assist it to revise its arrangements to a form that could be accepted. The ACCC also noted that ARTC and industry have been working in the interim on solutions to some of the outstanding issues, which may assist to address some of the matters raised by the ACCC.

The ACCC is publicly consulting on its draft decision. Submissions were due by 31 March 2010.

## **Airports**

### **Airport monitoring report 2008–09**

On 11 March 2010, the ACCC released its airport monitoring report for the 2008–09 financial year. The ACCC, under a direction from the Australian Government pursuant to Part VIIA of the Trade Practices Act, monitors the prices, costs and profits relating to the supply of aeronautical services and car parking at Adelaide, Brisbane, Melbourne (Tullamarine), Perth and Sydney (Kingsford Smith) airports. The ACCC is also required to monitor the airports' quality of service in relation to the supply of those services.

### **Services to airlines**

Despite the current economic slowdown, around 93.3 million passengers passed through the five major airports in 2008–09—an increase of just over 1 per cent from the previous period. Sydney Airport was the only monitored airport to report an overall decrease in passenger throughput.

Except for Sydney Airport, increased passenger numbers and average prices led to the airports reporting increased revenues and margins from aeronautical services in 2008–09. Despite being the only airport to have a decline in passenger numbers,

Sydney Airport maintained the largest operating margin and had the largest increase in operating margin.

Airlines paid the highest average prices at Sydney Airport. At around \$13.63 per passenger, average prices increased by more than 5 per cent from the previous period. Melbourne Airport had the lowest average charge—\$7.96 per passenger—while, for the second year in a row, Brisbane Airport reported the highest increase—13.6 per cent to \$8.56 per passenger—in 2008–09.

The ever-increasing demand for airport services and the limited availability of suitable alternatives means that the airports have significant market power. Although the extent to which the airports can use their market power varies across the five airports, they have the ability to achieve higher margins by increasing prices or allowing service quality to fall, or both.

As a complement to prices monitoring, the ACCC also uses a range of indicators to determine an overall rating of the airports' quality of service and ranks the airports relative to each other. The indicators include, for example, the availability of check-in counters for airlines to service passengers and surveys of passengers' experiences in passing through security screening points.

It should be noted that the ACCC's measurement of quality of service relates only to those terminals that are owned and run by the airport operators. Some of the airports' domestic terminals, such as the Qantas domestic terminal at Melbourne, Perth and Sydney airports as well as the Qantas and Virgin Blue domestic terminals at Brisbane Airport, are leased and operated by those airlines and are not subject to monitoring.

Brisbane Airport remained the highest ranked airport in 2008–09, followed by Adelaide, Perth and Melbourne airports, while Sydney Airport was ranked last for the fourth consecutive year. The users' overall satisfaction with the airports' quality of service increased slightly in the period, although Brisbane Airport was the only airport to achieve an overall rating of 'good'.

The service that passengers experience at airports is affected by airlines, border agencies and the airports themselves. To better understand the contribution that the airports make, the ACCC surveys airlines on whether they are receiving a level of service that would be reasonably expected.

In their survey responses, airlines have consistently identified Sydney Airport as the least responsive of the airports with respect to service delivery and quality over a sustained period of time. In particular, Sydney Airport's international terminal was rated below satisfactory on average by the airlines. While Sydney Airport has announced proposed improvements to the terminal, there is a question as to whether this should have been carried out earlier. Although the airport reported higher levels of investment (representing 14 per cent of assets) in 2008–09, this was the largest level of investment by the airport since 1999–2000.

In contrast, over the five years covered in the report, Brisbane and Melbourne airports achieved ratings significantly above satisfactory and both airports reported investment of between 14 and 22 per cent of assets in 2007–08 and 2008–09. Airlines' ratings of Adelaide Airport improved with the commencement of operations at the new terminal during 2005–06. Finally, although Perth Airport's service quality results have declined in recent years, these outcomes seem to be relatively short-lived and appear to have been largely driven by unexpected growth in passenger numbers. Indeed, Perth

Airport has undertaken sizeable investment to address the quality of service problems, with the airport reporting investment of 19 per cent of assets in 2008–09.

Although the monitoring results do not provide conclusive evidence, there are initial indications that Sydney Airport has enjoyed persistent increased profits by allowing its quality of service to fall at the expense of airlines and passengers.

### **Airport car parking**

During the 2008–09 financial year, and since 30 June 2009, at least some car parking charges increased at all of the monitored airports.

Combined airport car parking revenue was around \$278 million in 2008–09, accounting for approximately 12 per cent of the airports' total revenue of \$2.3 billion. All of the airports reported higher car parking revenue in the period.

Airport car parking continued to provide the greatest contribution towards total revenue at Melbourne Airport, where it was around 20.5 per cent in 2008–09. By comparison, Sydney Airport reported a revenue share of 7.8 per cent.

Although some airports' expenses for car parking operations increased, all of the monitored airports reported higher operating margins of between \$8.5 million (Adelaide Airport) and \$74.5 million (Melbourne Airport) in 2008–09.

The airports are in a position to set higher car parking prices, which would result in the persistence of higher profits over time, because they are able to influence the costs for alternatives to on-airport car parking (including off-airport car parking, cars, taxis, buses and train services).

In 2008–09 and more recently, the ACCC has observed that some airports have affected the conditions for which alternatives to on-airport parking operate. Although the monitoring results are not definitive, they remain consistent with the ACCC's view that airport car parking charges reflect some element of monopoly rents.

### **Airservices Australia**

#### **ACCC decides on proposed pricing for air traffic control services at Avalon Airport**

The ACCC received a price notification for Avalon Airport relating to terminal navigation services from Airservices Australia on 21 December 2009, pursuant to Part VIIA of the Trade Practices Act. The ACCC has 21 calendar days from receiving a notification to decide whether or not it objects to the proposed price. However, prior to the 21 days expiring, the ACCC granted Airservices Australia an extension to provide affected parties with a sufficient opportunity to comment on Airservices' proposal.

After consulting with stakeholders, the ACCC issued a final decision not to object to a proposed charge by Airservices Australia for a terminal navigation service at Avalon Airport on 28 January 2010. Although there is considerable uncertainty surrounding future demand at Avalon, Airservices Australia agreed to review the price should the activity at the location change dramatically over the next 12 months. The charge will apply for an interim period, pending the ACCC's consideration of Airservices' long-term pricing proposal, expected in 2010–11, which will cover all of its regulated activities including en-route air navigation, terminal navigation and aviation rescue and fire-fighting services.

## Price Monitoring

### Fuel monitoring

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

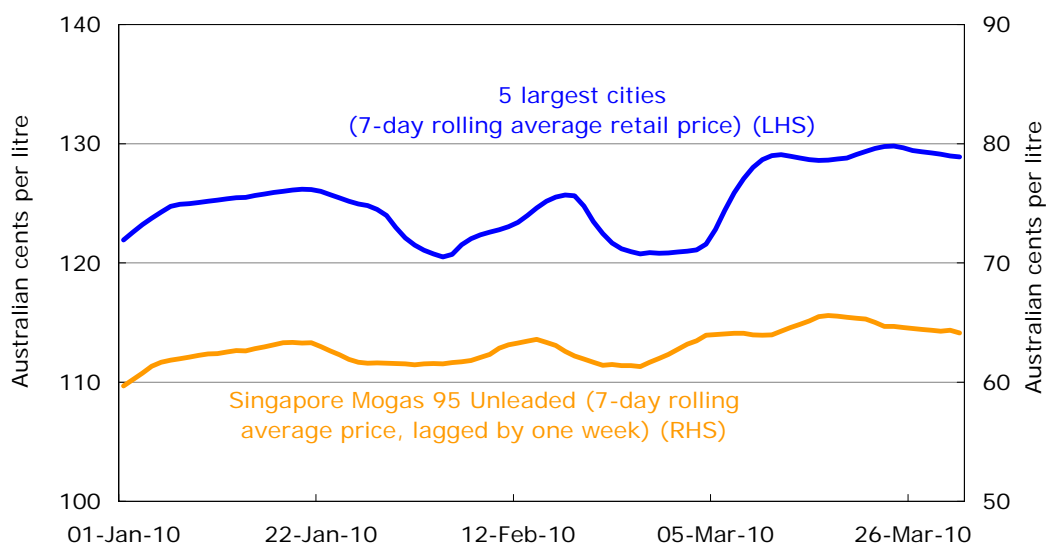
### Price movements in the March 2010 quarter

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

The chart below shows movements in these prices over the period from 1 January to 31 March 2010. Retail unleaded petrol prices are shown on the left hand side of the chart and Singapore Mogas 95 Unleaded prices are shown on the right hand side. It is important to remember that a comparison of these two prices is indicative rather than an exact science, and that other factors can influence retail petrol prices in the short term. This caveat also applies to comparisons of movements between retail diesel and automotive LPG prices and their respective benchmarks.

**Chart 5.1: Movements in retail unleaded petrol prices and the international benchmark prices: 1 January to 31 March 2010**



As illustrated in the chart, retail petrol prices broadly tracked movements in the benchmark prices in the March 2010 quarter. Over the period from 1 January to 31 March 2010, average retail unleaded petrol prices across the five largest cities (on a seven-day rolling average basis) increased from 121.9 cpl to 128.9 cpl—an increase of 7.0 cpl.

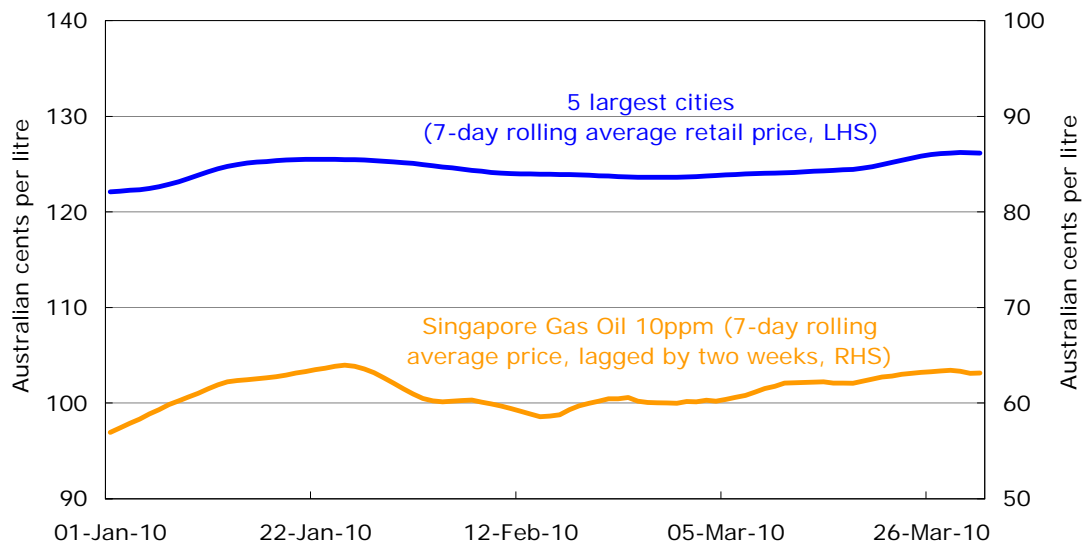


## Diesel

The ACCC monitors the movement of retail diesel prices against the spot price of Singapore Gas Oil with 10 parts per million (ppm) sulphur content. In the chart below, retail diesel prices are shown on the left-hand side of the chart and Singapore Gas Oil prices are shown on the right-hand side. The chart illustrates that retail prices broadly tracked movements in the international benchmark price over the March 2010 quarter.

Over the March 2010 quarter, average retail diesel prices for the five largest cities (on a seven-day rolling average basis) increased by 4.1 cpl, from 122.1 cpl to 126.2 cpl.

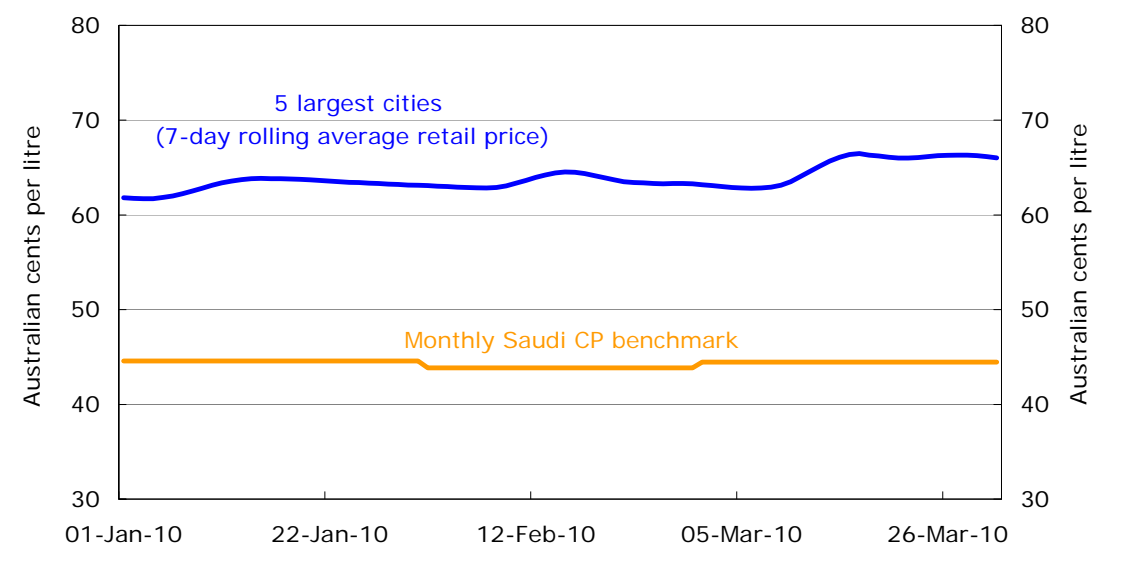
**Chart 5.2: Movements in retail diesel prices and the international benchmark prices: 1 January to 31 March 2010**



## 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 (see chart 5.3).

**Chart 5.3: Movements in retail automotive LPG prices and the international benchmark prices: 1 January to 31 March 2010**



## 6 International activities

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

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

### International forums

The ACCC participates in a variety of international forums throughout the year. It is an active member of the International Competition Network and is represented on its steering committee and a number of key working groups, including some relating to mergers and cartels. The ACCC currently holds the presidency of the International Consumer Protection and Enforcement Network (ICPEN). As a result, the ACCC has been involved in developing ICPEN's future Strategic Plan and hosting their annual conference in Sydney in November 2009. Other forums in which the ACCC participates include the Organisation for Economic Cooperation and Development (OECD) and Asia-Pacific Economic Cooperation (APEC).

Participation in such forums:

- advocates the work of the ACCC
- promotes competition and consumer protection in the region
- assists the ACCC in obtaining global development updates, information and best practice strategies on enforcement activities from counterpart agencies
- assists in building and sustaining strong links with key international officials and organisations.

In particular, during the March 2010 quarter, the ACCC:

- attended the ASEAN Asian Development Bank conference in Manila, the Philippines

- attended the APEC Toy Safety Initiative in Hong Kong, China
- attended and presented at the American Bar Association/International Bar Association International Cartel Workshop, Paris, France
- attended and participated in OECD Competition Committee meetings in Paris, France
- attended and was the keynote speaker for the International Consumer Product Health and Safety Organisation (ICPHSO) annual conference and training symposium in Washington DC, United States
- presented for the OECD–Korea Policy Centre, Competition Program on detecting cartels and making determinations using direct evidence in Indonesia.

## **Free trade agreements**

The ACCC continues to actively participate in the free trade agreement negotiation rounds contributing to work on competition and consumer protection issues. The ACCC's participation in these negotiations reflects its goals of promoting competition in the region and ensuring that the FTAs are:

- compatible with Australia's competition regulations
- practical in implementation
- contain mechanisms to build cooperative arrangements between the relevant enforcement authorities.

## **Information requests**

The ACCC continues to actively share information with its international counterparts. During the March 2010 quarter, the ACCC received and sought information from counterpart agencies in Canada, Chile, China, Japan, Mexico, the Netherlands, New Zealand, Norway, Pakistan, Singapore, South Korea, Thailand, the United Kingdom, the United States 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 cartel investigations, scam activity and technical assistance, and general inquiries to assist enforcement investigations.

## **Information exchange meetings and study visits**

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

During the March 2010 quarter, the ACCC met with representatives of the following agencies:

- Competition Authority, Ireland
- Competition Authority, Pakistan
- Competition Bureau, Canada
- Customs, Hong Kong
- Energy and Water Utilities Regulatory Authority, Tanzania
- Fair Trade Commission, Japan (commissioned professor from Okayama University)
- Health Canada
- Ministry of Domestic Trade, Malaysia
- Office of Fair Trading, United Kingdom
- Competition Authority, Tanzania.

### **Capacity-building activities**

ACCC involvement in technical assistance programs provides staff with valuable experience delivering training. The ACCC's capacity-building activities mainly focus on best practice processes in infrastructure regulation, competition and consumer protection. One specific activity during this quarter was providing presentations to delegates of the Australia-China Legal Professional Development Program.

### **Staff exchange**

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

In the March 2010 quarter, the ACCC hosted an official from the Independent Consumer and Competition Commission of Papua New Guinea for a one-month secondment.

## 7 Reviews and inquiries

### Legislative matters

The following legislation came before the Australian Parliament during the March 2010 quarter.

#### **Trade Practices Amendment (Australian Consumer Law) Bill (No. 1) 2010**

The Bill, previously known as the Trade Practices Amendment (Australian Consumer Law) Bill 2009, seeks to amend the Trade Practices Act by incorporating new enforcement powers and an unfair contract terms provision covering standard form consumer contracts. The new enforcement powers include:

- civil pecuniary penalties
- disqualification orders
- infringement notices
- substantiation notices
- public warning notices
- non-party consumer redress.

Parliament passed an amended version of the Bill on 17 March 2010.

#### **Trade Practices Amendment (Australian Consumer Law) Bill (No. 2) 2010**

On 17 March 2010, the Australian Government introduced the Trade Practices Amendment (Australian Consumer Law) Bill (No. 2) 2010 into the House of Representatives. The Bill has been referred to the Senate Economics Legislation Committee for inquiry and report by 21 May 2010.

If passed, the Bill will implement the remainder of reforms to the Trade Practices Act as part of the Australian Consumer Law process. In particular, the Bill will implement three key sets of reforms:

- agreed best practice reforms based on existing provisions of the Fair Trading Acts of the states and territories
- a new national product safety regulatory and enforcement framework
- a new regime of statutory consumer guarantees and remedies to replace existing consumer conditions and warranties.

The Bill will also change the name of the Trade Practices Act to the Competition and Consumer Act.

## **Telecommunications Legislation Amendment (Fibre Deployment) Bill 2010**

The Bill seeks to amend the *Telecommunications Act 1997* to help implement the Australian Government's policy that fibre-to-the-premises infrastructure should be installed in new developments that receive planning approval from 1 July 2010.

Among other amendments, the Bill provides for the establishment in later regulations of an access regime that would require third party access to those facilities to be given. This is to ensure that carriers are able to gain access to the fibre-ready facilities installed in accordance with the fibre-ready infrastructure requirement. These regulations may confer functions or powers to the ACCC.

## **Other developments**

### **Franchising Code of Conduct and Unconscionable Conduct**

In November 2009, the Minister for Competition Policy and Consumer Affairs announced the appointment of an expert panel to consider issues arising out of the Australian Government's response to the Senate inquiry into unconscionable conduct, as well as the issues raised during the joint parliamentary inquiry into the Franchising Code of Conduct.

On 3 March 2010, the Minister announced that the Australian Government would accept the recommendations of the expert panel. In particular, the Australian Government would seek the support of the franchising community in voluntarily producing a short simple 'plain English' document to be provided to prospective franchisees. The Australian Government may mandate a document if necessary.

Franchisors will also have to make it clear to prospective franchisees that there may be unilateral contract variations, unforeseen capital expenditure, requirements to meet legal costs and confidentiality restrictions. The franchisors will also be required to clearly spell out the process for the sale of the business at the time of entering the contract.

On unconscionable conduct, the Minister announced that the Australian Government will make the law more effective by making the types of conduct it covers much clearer. This will include the addition of a list of interpretive principles into the Trade Practices Act to assist the courts in interpreting the unconscionable conduct provisions and for parties to better understand them.

### **Reports**

During the March 2010 quarter, the ACCC presented to the Minister for Competition Policy and Consumer Affairs its annual airport performance report: *Airport monitoring report 2008–09: price, financial performance and quality of service monitoring*.

### **Parliamentary inquiries**

During the March 2010 quarter, the ACCC appeared before a Senate Estimates hearing and one other parliamentary inquiry:

- Senate Economics References Committee, 18 January 2010, inquiry into competition and pricing in the Australian dairy industry

- Senate Economics Legislation Committee, 10 February 2010, Additional Estimates 2009-10.



# Appendix

## Speeches

During the March 2010 quarter, the ACCC delivered a number of speeches, including:

*Australia's competition law in practice*

Mr Ed Willett, Commissioner

Stocktaking recent competition policy developments in South-East Asia Public Law Conference, Manila, The Philippines, 11 January 2010

*How competition law supports transport and logistics solutions*

Mr Graeme Samuel, Chairman

Australian Logistics Council Forum 2010, Sydney, 3 March 2010

*Fair call: the ACCC's report card for the telecommunications sector*

Mr Graeme Samuel, Chairman

2010 ATUG Annual Conference, Sydney, 12 March 2010

*Competition issues and the use of utility infrastructure*

Mr Ed Willett, Commissioner

NBN infrastructure: opportunity or threat, Sydney, 24 March 2010

## News releases

During the March 2010 quarter, the ACCC issued 69 news releases and the AER issued one news release.

## Publications

The following publications were released during the March 2010 quarter.

### Corporate

*New unfair contract terms law: draft guidance for consultation, 26 March to 12 April*

*ACCCCount: a report of the Australian Competition and Consumer Commission's activities, 1 October to 31 December 2009*

*ACCC Update, issue 28*

### For consumers

*Product safety bulletin: household cots with wooden drop sides*

*Product safety bulletin March 2010: DEHP in children's plastic products*

*Children's plastic products with more than 1 per cent diethylhexyl phthalate (DEHP): a guide to the interim ban*

*Reduced fire risk cigarettes: supplier guide*

*Targeting scams: report of the ACCC on scam activity 2009*

**For business**

*Warranty and refund signs (News for business)*

*Competing fairly forum: scams, frauds and your business*

*Small business and the Trade Practices Act*

*Treadmills: supplier guide*

*Biodegradable, degradable and recyclable claims on plastic bags (News for business)*

*Small business scams*

**ACCC reports**

*Airport monitoring report 2008–09: price, financial performance and quality of service monitoring*

*Monitoring of the Australian petroleum industry: summary 2009*

*Report to the Australian Senate on anti-competitive and other practices by health funds and providers in relation to private health insurance, 1 July 2008 to 30 June 2009*

*Targeting scams: report of the ACCC on scam activity 2009*

*Telstra's compliance with the price control arrangements, 1 July to 30 June 2009*

**For regulated industries**

*Network, issue 35*