



Australian  
Competition &  
Consumer  
Commission

# ACCCOUNT

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

1 July to 30 September 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 September 2010 quarter, the ACCC undertook a range of activities that benefited both businesses and consumers.

In terms of enforcement action, the September 2010 quarter was marked by the conclusion of two major competition focused litigations: *ACCC v Cabcharge Australia Limited* and *ACCC v Baxter Healthcare Pty Ltd & Ors*.

In *ACCC v Cabcharge Australia Limited*, a total of \$15 million in penalties and costs was imposed on Cabcharge Australia in relation to breaches of section 46 of the Trade Practices Act - misuse of market power. The decision reflects the ability of the ACCC to seek significantly higher penalties for breaches of the Trade Practices Act for post 2007 contraventions and serves as a remind to companies in positions of market power to exercise that power legally.

In *ACCC v Baxter Healthcare Pty Ltd & Ors*, a total of \$8.5 million in penalties and costs was imposed on Baxter Healthcare in relation to breaches of the misuse of market power and the exclusive dealing provisions of the Trade Practices Act. The Baxter decision finalised 8 years of litigation – including appeals to the High Court of Australia – and expanded the reach and effectiveness of the Trade Practices Act by narrowing a private firm's ability to rely on derivative crown immunity in commercial dealings.

The ACCC issued for the first time, a Substantiation Notice and a Public Warning Notice under sections 87ZL and section 86DA of the Trade Practices Act respectively.

During the September 2010 quarter, the ACCC in its role of reviewing mergers and acquisitions has pre-assessed 41 matters, reviewed 41 matters – including confidential and public merger reviews. In particular, the ACCC decided:

- not to oppose the acquisition of Swedish Match AB by Scandinavian Tobacco Group A/S subject to a section 87B undertaking offered by the parties
- reject the proposed section 87B undertaking offered by the parties and maintained its opposition to the proposed acquisition of AXA Asia Pacific Holding Ltd by National Australia Bank Ltd (NAB)
- decided not to oppose the proposed acquisition of Rockdale Beef Pty Ltd by Swift Australia Pty Ltd
- decided not to oppose the proposed acquisition of Stella Travel Services Holdings Pty Ltd by Jetset Travelworld Ltd.

In the regulatory area of communications, the ACCC issued a draft report varying the Domestic Transmission Capacity Service, released a draft report and draft indicative prices to apply to fixed line telecommunications services, issued the imputation and

non-price terms and conditions report for the June 2010 quarter and issued six final determinations in arbitrating access disputes. Furthermore, as the result of an action brought by the ACCC, the Federal Court has penalised Telstra \$18.55 million for contravention of the Trade Practices Act and *Telecommunications Act 1997*.

The September 2010 quarter was a busy period for the Australian Energy Regulator. On 19 July 2010 Mr Andrew Reeves was appointed Chair of the AER for three years.

In the quarter, the Australian Competition Tribunal (Tribunal) handed down its decision regarding the merits review of the access arrangement decision made by the AER in respect of ActewAGL Distribution's ACT, Queanbeyan and Palerang gas distribution network. Tribunal reviews were sought of the AER's decision regarding the access arrangement concerning the ActewAGL Distribution and Jemena Gas Networks (NSW); and the AER's distribution determinations regarding the electricity distribution networks owned by Energex, Ergon Energy and ETSA Utilities.

The AER also released its final decision on the application for exclusion from the Victorian service incentives for supply reliability, published a position paper and the draft guideline on the Retail Pricing Information Guidelines, and began publishing a Weekly Gas Market Analysis report covering the wholesale gas market in Victoria and the National Gas Market Bulletin Board.

Also in regulatory matters, the ACCC utilised new enforcement powers under the *Water Act 2007* for the first time and accepted two enforceable undertakings and issued three infringement notices. Additionally, the ACCC objected to Sydney Airport Corporation Limited's proposal to increase its airport service charges to regional air services at Sydney Airport, issued a consultation paper in relation to the proposed access undertaking submitted by the Australian Rail Track Corporation under Part IIIA of the Trade Practices Act, and issued its fifth report assessing cross-subsidy between services provided by Australia Post.

# 1 Enforcement and compliance

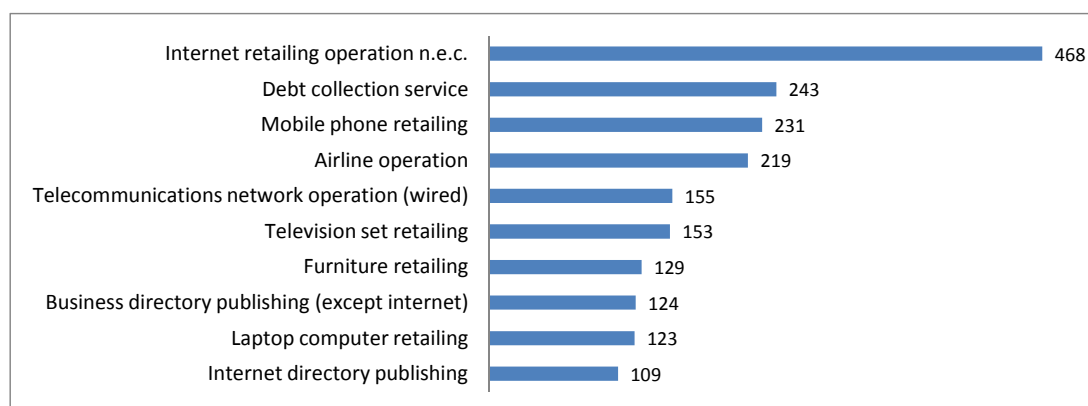
Maintaining and enhancing compliance with the Trade Practices Act is a key objective of the ACCC. This is achieved by promoting competition and informing markets, encouraging fair trading and protecting consumers. The enforcement function of the ACCC, including litigation, is well supported by its liaison,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

## Complaints and inquiries

During the September 2010 quarter the ACCC Infocentre responded to 38 037 complaints and inquiries from businesses and consumers (email: 8593 / telephone: 28 833 / letter correspondence 611). Of these, 27 745 (73 per cent) complaints and inquiries were entered into the ACCC's TRACKIT database by Infocentre staff.<sup>1</sup>

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 placed 582 complaints and inquiries into the 'Under Assessment' category in the ACCC's database for further consideration during the September 2010 quarter.

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



\* Results for the category 'Finance service n.e.c.', which refers primarily to complaints received about advance fee and other financial fraud schemes, are not represented in the above chart. This is the largest category of complaints received with 14 462 contacts in the September 2010 quarter and represents 58% of total contacts for the period.

Of the complaints and inquiries entered into the ACCC's database during the period 87 per cent related to consumer protection matters, which is higher than the 2010 quarterly average of 84 per cent. Competition matters accounted for 2 per cent of contacts, which is lower than the quarterly average figure of 5 per cent reported in 2009.

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<sup>1</sup> The Infocentre often receives contacts that have no relevancy to the operations of the ACCC. These contacts are usually referred to other Government or non-Government agencies and are not recorded in the TRACKIT database.

## 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 thirteen first-instance enforcement litigation proceedings in the Federal Court of Australia during the September 2010 quarter for alleged breaches of the Trade Practices Act.

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#### Auscha Corp and Anor

Commenced 2 July 2010 | NSD814/2010

Proceedings under Part V for alleged false or misleading representations about an 'Enersonic Power Saver' device, including that the device could save domestic consumers up to 24% on their electricity consumption and was "designed and engineered in Australia".

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#### Goody Environment Pty Ltd and Anor

Commenced 2 July 2010 | SAD92/2010

Proceedings under Part V for alleged misleading and deceptive conduct and false representations regarding the biodegradability of 'Goody' brand plastic bags.

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#### IGC Dorel Pty Ltd and Anor

Commenced 22 July 2010 | SAD102/2010

Proceedings under Part IV for alleged resale price maintenance in relation to 'Bertini' brand prams.

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#### Black and White Cabs Pty Ltd

Commenced 6 August 2010 | VID650/2010

Proceedings under Part IV for alleged third line forcing conduct by inserting a clause in a number of operating agreements which required the taxi operators who sub-let a licence through Black and White Cabs to exclusively use the Cabcharge Eftpos System for processing electronic payments.

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#### EDirect Pty Ltd

Commenced 18 August 2010 | NTD28/2010

Proceedings under Parts IV and V for alleged misleading and unconscionable conduct in relation to marketing of telecommunications services.



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**Le Sands Restaurant & Le Sands Cafe Pty Ltd t/as Signature Brasserie**

Commenced 6 September 2010 | NSD1161/2010

Proceedings under Part V for alleged breaches of the component pricing law by failing to include Sunday and public holiday surcharges in their menu prices.

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**Helmos Enterprises (NSW) Pty Ltd t/as Georges Bar and Grill**

Commenced 6 September 2010 | NSD1160/2010

Proceedings under Part V for alleged breaches of the component pricing law by failing to include Sunday and public holiday surcharges in their menu prices.

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**A.I. Constructions (ACT) Pty Ltd t/a Babar Cafe and Bar (Woden)**

Commenced 6 September 2010 | ACD33/2010

Proceedings under Part V for alleged breaches of the component pricing law by failing to include Sunday and public holiday surcharges in their menu prices.

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**Gourmet Goody's Family Restaurant Pty Ltd t/as Steersons Steakhouse**

Commenced 6 September 2010 | NSD1158/2010

Proceedings under Part V for alleged breaches of the component pricing law by failing to include Sunday and public holiday surcharges in their menu prices.

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**Singtel Optus Pty Ltd**

Commenced 6 September 2010 | NSD1157/2010

Proceedings under Part V for alleged misleading or deceptive conduct and false representations in relation to the advertising of certain broadband plans as part of its 'Think Bigger' and 'Supersonic' promotional campaigns.

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**Advanced Allergy Elimination Pty Ltd & Anor**

Commenced 23 September 2010 | VID361/2009

Contempt proceedings for allegedly breaching undertakings provided to the court. The original proceedings were made under Part V in relation to representations that it can test for and accurately identify a substance to which a person is allergic and that it can eliminate and successfully treat a person's allergy.

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**C.I. & Co Pty Ltd ACN 107 302 429 & Ors**

Commenced 23 September 2010 | WAD278/20

Proceedings under Part V for allegedly selling eggs labelled as free range when those eggs were in fact cage or barn laid eggs. It is also alleged that labelled and marketed cartons of eggs prominently featuring the words 'Fresh Range Omega-3' and 'Fresh Eggs with Omega-3' which gives the impression to the public that the eggs in those cartons were free range and/or Omega-3 enriched eggs when the eggs in those cartons were not of that kind.

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**Adepto Publications Pty Ltd**

Commenced 30 September 2010 | NSD1294/2010

Proceedings under Part V for alleged misleading or deceptive conduct, representing that it has sponsorship, affiliation, performance characteristics uses or benefits it does not have, accepting payment for advertising services it did not intend to provide, and asserting a right to payment for unsolicited goods or services when it did not have reasonable cause to believe there was a right to payment.

**Proceedings concluded**

Eight first-instance enforcement litigation proceedings were finalised during the September 2010 quarter.

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**Boost Tel Pty Ltd & Prepaid Services Pty Limited**

Commenced | 24 July 2009 Concluded | 22 July 2010 | WAD125/2009

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

Justice Siopis | Federal Court Perth

Outcome | Declarations, injunctions, corrective notices, costs.

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**PB Supplies Pty Ltd**

Commenced | 24 May 2010 Concluded | 26 July 2010 | NSD399/2010

Proceedings under Part V for alleged misrepresentations, misleading or deceptive conduct and asserting a right to payment in respect of unsolicited goods.

Justice Jago | Federal Court Sydney

Outcome | Declarations, injunctions, an order requiring a letter to all existing customers notifying them of the orders, costs.

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**Panasonic Australia Pty Ltd**

Commenced | 16 March 2010 Concluded | 19 May 2010 | SAD193/2009

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

Justice Mansfield | Federal Court Adelaide

Outcome | Declaration, trade practices compliance program, costs.

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**Baxter Healthcare Pty Ltd**

Commenced | 01 November 2002 Concluded | 26 August 2010 NSD1153/2002

Proceedings under Part IV for alleged misuse of market power and exclusive dealing in relation to the supply of health products to state government purchasing authorities.

Justice Mansfield | Federal Court Sydney

Outcome | Pecuniary penalty (\$4.9m).

Background | 29 August 2007: High Court allowed ACCC appeal on issue of Crown immunity. 14 August 2008: Full Federal Court held Baxter had contravened sections 46 and 47 of the TPA in relation to bundling of medical products.

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**Alvaton Holdings Pty Ltd**

Commenced | 26 March 2010 Concluded | 21 July 2010 | WAD66/2010

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

Justice Gilmour | Federal Court Perth

Outcome | Declarations, injunctions, trade practices compliance program, costs.

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**Jetplace Pty Ltd & Ors**

Commenced | 04 November 2009 Concluded | 21 July 2010 | WAD196/2009

Proceedings under Part V for alleged misleading or deceptive conduct by operators of a dating website in relation to creation of fictional profiles to send messages to users.

Justice Gilmour | Federal Court Perth

Outcome | Declarations, injunctions, compliance programs, corrective notices, and costs.

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**Cabcharge Australia Ltd**

Commenced 24 June 2009 | Concluded | 24 September 2010 VID467/2009

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

Justice Finkelstein | Federal Court Melbourne

Outcome | Declarations, pecuniary penalty (\$14m), trade practices compliance program, costs.

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**Global Green Plan Ltd and others**

Commenced 02 June 2010 | Concluded | 29 September 2010 NSD624/2010

Proceedings under Part V for alleged breach of a section 87B undertaking. The court enforceable undertakings provided to the ACCC related to misleading representations made in purchases of renewable energy and accreditation claims by GreenSwitch.

Justice Bennett | Federal Court Sydney

Outcome | Declarations, costs.

## Section 87B undertakings accepted

The ACCC accepted ten enforcement-related section 87B undertakings during the September 2010 quarter:

**OzTAM Pty Ltd, Seven Network (Operations) Ltd, Nine Network Australia Pty Ltd and Network Ten Pty Ltd** have provided court enforceable undertakings to the ACCC in relation to concerns that the structure and operation of OzTAM has the potential to facilitate:

- OzTAM shareholders engaging in anti-competitive conduct
- OzTAM shareholders entering into anti-competitive agreements and/or
- competitively sensitive information regarding free-to-air (FTA) broadcasting operations of the OzTAM shareholders being shared with competitors.

OzTAM Pty Ltd has undertaken to:

- ensure that certain competitively sensitive information is not shared between OzTAM directors/ shareholders
- procure regular trade practices compliance training of staff and directors with a focus on compliance risks arising from joint ventures.

Seven, Nine and Ten have undertaken to:

- procure the necessary amendments to OzTAM governance arrangements to give effect to the undertaking
- procure the appointment to the OzTAM Board of an independent director who will be the chair of the OzTAM Board and have a casting vote in relation to certain matters
- ensure that OzTAM management is authorised to break out and separately report new Digital Channels upon request by any FTA broadcaster without Board or shareholders approval
- ensure that OzTAM management is authorised to certify compliance of OzTAM and OzTAM's rating services company with Technical Specifications without requiring Board or shareholder approval
- take reasonable steps to ensure that certain competitively sensitive information is not shared between OzTAM directors/ shareholders
- procure regular trade practices compliance training of employees appointed to OzTAM roles and nominee directors with a focus on compliance risks arising from joint ventures.

**Resmed Asia Pacific Ltd** has provided court enforceable undertakings to the ACCC in relation to alleged Resale Price Maintenance of products designed to treat and manage sleep disordered breathing conditions. Resmed has undertaken to:

- write to all its Accredited Partners advising them of the ACCC's concerns and informing them they are free to set the minimum price at which they advertise or sell ResMed products
- review and amend its existing trade practices law compliance program.

**ANE Furniture Pty Ltd** has provided court enforceable undertakings to the ACCC in relation to the supply of bunk beds that did not comply with the relevant mandatory standard. ANE admitted that its conduct contravened section 65C of the Act and has provided a court enforceable undertaking to:

- implement a trade practices compliance program, which will include training on the product safety provisions of the Act and mandatory product safety standards covering ANE Furniture's products
- conduct monitoring of ANE Furniture's products covered by a mandatory safety standard to check that they are properly labelled
- conduct monitoring of those products to check variation from their designs and for compliance with the mandatory standards
- report any complaints relating to the current recalls or product safety issues to the ACCC
- will twice annually check their products are subject to mandatory safety standards and report on that to the ACCC
- develop recall procedures to enable them to deal with any future recalls
- complete the current recalls to the satisfaction of the ACCC.

**Ray White (Real Estate) Pty Ltd** has provided court enforceable undertakings to the ACCC in relation to likely breaches of the Franchising Code of Conduct. Ray White (Real Estate) Pty Ltd acknowledged that:

- it was likely to have contravened section 51AD because it did not tell a franchisee why it proposed to end the agreement, nor what was required to remedy any breach
- it did not allow the franchisee a reasonable time to remedy any alleged breach.

Ray White has provided court enforceable undertakings to set up a trade practices law compliance program and for senior staff to undertake practical training focused on requirements under the code.

**State Solar Services Pty Ltd** has provided court enforceable undertakings to the ACCC in relation to alleged misleading conduct and false or misleading representations about electricity savings and sale discounts in advertisements for photovoltaic solar panel systems. State Solar Services has undertaken to:

- publish corrective advertising notices in newspapers, an industry bulletin and on its website and to set up a trade practices law compliance program
- contact its past customers to inform them of the conduct
- advise the ACCC of what steps it takes to resolve any complaints that may arise.

**Queensland Solar Systems Pty Ltd** has provided court enforceable undertakings to the ACCC in relation to alleged misleading conduct and false or misleading representations about electricity savings and sale discounts in advertisements for photovoltaic solar panel systems. Queensland Solar Systems has undertaken to:

- publish corrective advertising notices in newspapers, an industry bulletin and on its website and to set up a trade practices law compliance program
- contact its past customers to inform them of the conduct
- advise the ACCC of what steps it takes to resolve any complaints that may arise.

**Intervest Global Live Pty Ltd** has provided court enforceable undertakings to the ACCC in relation to alleged misleading or deceptive conduct in the advertisement of a horse-betting software called 'Trilogics'. Intervest has undertaken to:

- publish corrective notices on its website and to display the notice in the reception area of its premises
- email a copy of the notice to all potential customers that responded to the advertisements.

**Fitness First Australia Pty Ltd** has provided court enforceable undertakings to the ACCC in relation to alleged failure to state a total single price in advertisements of its 'Gold coin to join' campaign. Fitness First has undertaken to:

- continue its FFit program for teenagers that was due to finish in May 2010 for a period of six months
- publish a corrective notice in its Fitness First magazine and on its website [www.fitnessfirst.com.au](http://www.fitnessfirst.com.au)
- implement a trade practices compliance program.

**LG Electronics Australia Pty Ltd** has provided court enforceable undertakings to the ACCC in relation to alleged misrepresentations of the Comparative Energy Consumption (CEC) of various refrigerator models. LG has undertaken to:

- keep the compensation offers that they are currently offering consumers who purchased the specific models pursuant to the 2007 or 2009 Energy Label registrations open until at least 30 November 2010
- ensure any energy saving feature is disabled during the testing process
- test at least one model from each refrigerator family in accordance with the standard
- test at least one unit from any new refrigerator model family prior to sale in Australia in accordance with the standard
- test at least ten television models each year in accordance with the standard
- test at least one unit from each model family of clothes washers, clothes dryers and dish washers prior to release into the Australian market
- establish and implement an upgraded Trade Practices Compliance Program.

**Big City Promotions** has provided court enforceable undertakings to the ACCC in relation to alleged misleading or deceptive conduct and failure to state a total single price in advertisements of holiday accommodation. Big City Promotions has undertaken to:

- ensure that future advertisements include:
  - a single price payable by consumers, including any fees
  - prominent disclosure of any conditions required to be met by a consumer to qualify for the advertised price
- send a letter to all its customers who purchased holiday accommodation between July 2009 and July 2010 offering a refund of the purchase price paid by its customers who at the time of the purchase were misled by the advertisement as to either the total amount payable for the holiday accommodation or the requirement that they attend a sales presentation
- develop and implement a trade practices compliance program to ensure awareness of its responsibilities and obligations under the TPA.

## 2 Communicating with businesses and consumers

The ACCC continues its strong commitment to liaise with, 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, industry associations and consumer associations in monitoring emerging trade practices issues and educating relevant stakeholders.

During the September 2010 quarter, the ACCC:

- engaged stakeholders in a broad range of forums – 96 meetings with government and industry representatives, small business operators and consumer groups nationally
- participated in over 20 small business and franchising expos and field days
- conducted over 35 presentations on topics including small business and the Trade Practices Act, the Franchising Code of Conduct, cartel conduct, the Australian Consumer Law and advertising practices
- issued three updates to subscribers of the ACCC's Small Business Information Network on issues such as court outcomes and new publications relevant to small business
- held the first meeting with the new membership of the ACCC's Consumer Consultative Committee which took place in September, chaired by the new external chair Chris Connelly
- met with CHOICE, Consumer Action Law Centre, Western Union, Fairfax Media and the Queensland Consumers Association to discuss issues including the new Australian Consumer Law, scams, and telecommunications
- produced a short film clip to introduce consumers to the concept of unit pricing and how they can use it. The film clip has been published on the ACCC's website and on YouTube. DVD copies of the short film clip have been distributed to consumer organisations. The ACCC continue to liaise with the Queensland Consumer Association on unit pricing issues.
- published thirteen radar alerts on SCAMwatch, including warnings for scams targeting veterans and Bigpond customers, and scams involving scratchie cards and pedigree pups
- provided substantive submissions to the Communications Alliance's reviews of the Telecommunications Consumer Protection and Mobile



Premium Service Codes and provided a submission to the Australian Communications and Media Authority's 'Reconnecting the Customer' Public Inquiry.

- the international team was again the international co-ordinator for the global Internet Sweep Day, which is in its 12th year. Under the theme 'The Online Generation' consumer protection agencies from around the world swept for misleading or deceptive conduct targeting young people who are more likely to shop, conduct financial transactions and socialise online than other groups. Staff are assessing the matters identified in the sweep and continue to make contact with foreign enforcement agencies.

## **Trade Practices Act awareness**

The ACCC continues to work with industry associations to address emerging trade practices compliance issues. During this quarter, activities included:

- liaison meetings with major retail groups to encourage compliance with the Trade Practices Act. These meetings discussed trends identified from ACCC contacts and discussions about the new Australian Consumer Law, including consumer guarantees, unit pricing and unfair contract terms.
- the ongoing work of the Australasian Consumer Fraud Taskforce (ACFT), which the ACCC chairs. The ACCC hosted a video conference for ACFT members and participated in the Australian Taxation Office hosted forum on scams education. The ACCC commenced a regular ACFT update to keep members informed of scams related initiatives. The ACCC published thirteen radar alerts on SCAMwatch, including fake grants, telemarketing and end-of-financial-year small business scams.
- releasing a new ACCC publication, *Industry associations and the Trade Practices Act*. This publication is an easy-to-read guide for industry associations and their members. It outlines the obligations of both associations and members, and provides tips on how to avoid breaching the Trade Practices Act. The ACCC is working with various industry associations to ensure that they, and their members, understand their obligations under the Trade Practices Act and the Australian Consumer Law.
- releasing two new videos under the ACCC's *Competing Fairly* title—unconscionable conduct and industry associations and the Trade Practices Act. The *Competing Fairly* chapters are designed to explain key trade practices issues to small business in an informative and interesting manner. These titles are available in hard copy or to view on the ACCC website, along with existing *Competing Fairly* titles—warranties and refunds, advertising and selling, supply issues and collective bargaining.

## **Australian Consumer Law**

### *Agency Guidance*

The ACCC has also worked with the relevant States and Territory consumer protection authorities to ensure a co-ordinated approach to the delivery of Unfair Contract Terms (UCT) training to all ACL regulators.

### *Industry Guidance*

The ACCC has delivered or participated in the following seminars targeting industry stakeholders including businesses, industry associations, legal practitioners, community legal centres and consumer advocates in order to educate and raise awareness of the UCT provisions:

- 20 July - UCT presentation to the Energy and Water Ombudsman of Victoria
- 16 August - Consumer Law Centre seminar in Sydney
- 17 August - Panel presentation to Clayton Utz in Brisbane
- 25 August - UCT seminar to the Motor Trades Association in Adelaide,
- 16 September - Legalwise seminar covering UCT issues
- 22 September - UCT presentation to Grace Ward Lawyers in Brisbane

Upcoming training:

- 16 November – Presentation to the QLD Law Society Business Law Seminar
- 25 October – Presentation to the Redfern Community Legal Centre in Sydney
- 1 December – Legalwise seminar targeting local law firms in Canberra

### *Market Review*

Following the introduction of the UCT provisions from 1 July 2010, the ACCC has commenced sectoral reviews of standard form consumer contracts in the airline, telecommunications and car rental industries. Following each sectoral review, the ACCC will liaise with industries to raise any UCT concerns and to highlight broader consumer issues. This approach will assist in identifying prominent areas of concern to each industry and to encourage improvement in customer service and trade practices compliance.

## **Water Act and rules awareness**

During the September 2010 quarter, the ACCC:

- provided a presentation to the Australian Bankers Association, together with Department of Sustainability, Environment, Water, Population and Communities (DSEWPC), on the Water Market Rules

2009, in particular as they apply to delivery contracts and issues of security

- attended DSEWPC community information sessions in Deniliquin, Forbes and Griffith to inform communities about the Basin Plan and Water for the Future initiatives.

## **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—remained the subject of considerable ACCC educative efforts during the quarter. Activities included:

- updating all franchising publications to incorporate the recent Code amendments
- promotion of the pre-entry education program for prospective franchisees, run by Griffith University, for which there are currently over 700 registrations for this program
- participating in the Melbourne Franchising and Business Opportunities Expo, distributing publications and providing advice to prospective franchisees
- writing numerous articles on franchising in industry magazines
- mailouts to the ACCC's Franchising Code Information Network on a number of franchising-related topics, including the Code amendments, recent ACCC franchising litigation and our published franchising articles
- a mailout to over 1500 franchisors regarding the recent Code amendments with links to our updated franchising publications.

## **Product safety**

The ACCC administers and enforces a range of product safety provisions under the Trade Practices Act that aim to protect consumers from unsafe products. The ACCC has three main product safety functions.

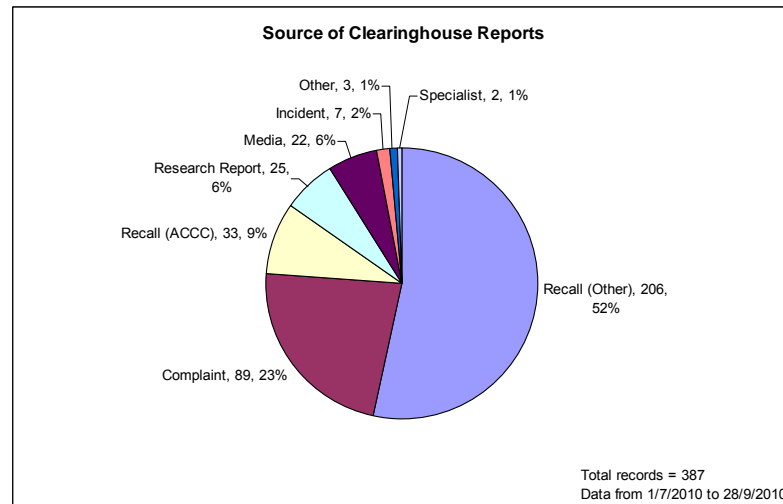
The ACCC receives product recall notifications which are recorded on the Product Recalls Australia website ([www.recalls.gov.au](http://www.recalls.gov.au)), assesses and monitors their effectiveness and advises suppliers on correct recall procedures. It identifies emerging hazards and develops and implements product safety strategies to address them.

The ACCC develops and reviews mandatory safety and information standards and bans. It advises suppliers and consumers about them through a national 'one-stop shop', the Product Safety Australia website ([www.productsafety.gov.au](http://www.productsafety.gov.au)), and develops and delivers compliance strategies through product safety education programs.

The ACCC takes a lead role, working collaboratively with state and territory consumer product safety agencies, to consistently administer enforcement standards and bans to maximise compliance with these regulations.

## Emerging hazards identification

A key component of the ACCC's product safety responsibilities is the early identification of emerging hazards through the clearinghouse system. A wide range of national and international injury and hazard data sources are systematically analysed, enabling a rapid response where a safety issue is identified.



During the quarter, clearinghouse activity resulted in 4 recall notifications: 3 suppliers were made aware of s.65R recall notification obligations and one recall relating to *Step2* children's toys was commenced that would otherwise not have occurred because the US supplier had recalled the products in the US but had not implemented a recall in Australia until contacted by the ACCC.

### Case study: Clearinghouse – Infant Slings

The US Consumer Product Safety Commission (CPSC) issued a warning about the suffocation hazard of infant slings on Friday 12 March 2010, based on three deaths in the US. The Clearinghouse detected the warning and associated media reports on Monday 15 March 2010 as part of its routine data sourcing operations. The risk was assessed as 'high' according to the ACCC nomograph because of the severity of the suffocation hazard and the high availability of these products in Australia. The issue was quickly referred for further action as part of an existing Clearinghouse project related to 'Safe sleeping surfaces for children'.

ACCC activities were well advanced by 26 March 2010 when the US CPSC initiated a global recall of the infant slings associated with the deaths. Over 8,000 items of the affected Infantino products had been sold in Australia and the supplier, Little Smiles Pty Ltd, advertised a recall that is still being monitored by the Recalls team. Hundreds of slings were removed from the marketplace and are still being returned by consumers.

The ACCC also issued a media release on 26 March 2010 advising parents and caregivers to be cautious when using infant slings and explaining the details of the Australian recall and the results of its investigations in the Australian context.

The ACCC convened a small working group of stakeholders with an interest in child health and safety. The working group made a number of recommendations to improve safety. These included recommending that a mandatory safety standard covering infant slings be considered for development, and the provision of education material on the safe use of slings for parents.

The Clearinghouse team is liaising with the US CPSC on the progress of a voluntary US standard currently under development; this may be suitable for consideration as an Australian

mandatory standard. The ACCC has also progressed the development of education material for parents and will be consulting with the working group to finalise this material over the coming weeks. Safety advice is also available via the Product Safety Australia website.

## Development of mandatory reporting requirements

Draft mandatory reporting guidelines for suppliers were released for consultation in August 2010. The mandatory reporting requirement is the final product safety reform to be developed and implemented to take effect with the introduction of the Australian Consumer Law on 1 January 2011.

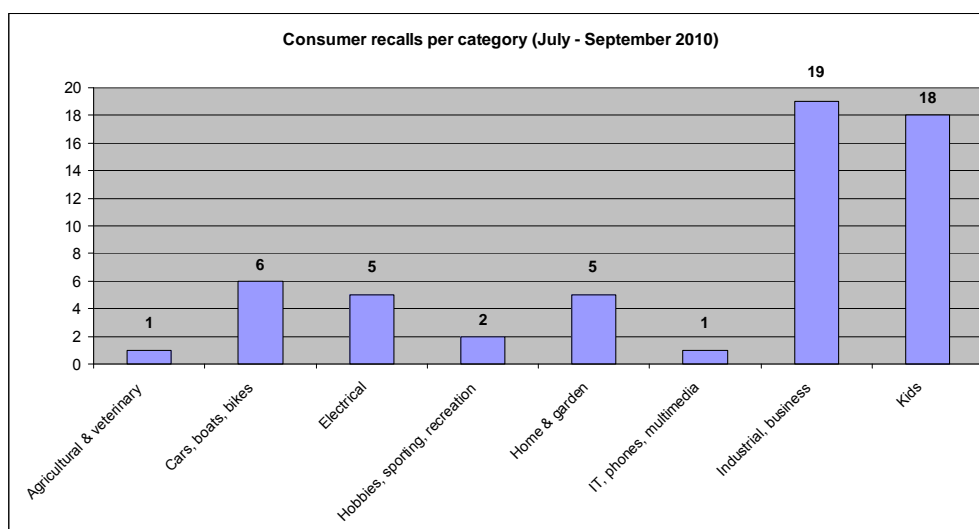
From 1 January 2011 businesses will be required to notify the ACCC when they become aware that a product they have supplied has caused, or may have caused, serious injury, illness or death. The reporting requirement has been introduced to enable potential product safety hazards to be identified more readily, enabling a more rapid and targeted response to emerging safety issues.

Comments on the Mandatory Reporting Guidelines Consultation Draft (available on the Product Safety Australia and Recalls websites) are due by 20 October 2010. Proposals are also in place to include information on the mandatory reporting requirements in supplier education activities surrounding the implementation of the Australian Consumer Law.

## Recalls

Revised recall guidelines have been drafted as a result of the Recalls Review and released on the recalls website for comment. A recall progress reporting e-form for suppliers is being developed and the s.65R recall notification e-form is being improved to enable better tracking of recalls. In addition, considerable work has been done to promote targeted recall communication strategies with suppliers.

A total of 57 consumer product recalls were commenced. This represents an increase of 13, up from 44 during the previous quarter. The majority of recalls this quarter were in the categories of industrial, business, kids and cars, boats and bikes (see graph below). This is consistent with the year-to-date trend.



	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEP
% of consumer recalls submitted by E-form	90%	54%	82%	64%	40%	73%	100%	89%	80%

Major consumer product recalls notified to the ACCC this quarter included:

- Chubb Fire & Security Pty Ltd recalled 38,000 fire extinguishers because of inconsistent filling of the extinguishing powder
- Big W recalled 80,000 'Dymples' Brand Terry Coveralls due to a choking hazard caused by studs falling off
- Garmin Australasia recalled over 21,500 nuvi satellite navigation units due to overheating of the batteries
- International Cleaning Solutions Holding Pty Ltd (Godfreys) recalled nearly 43,000 Turbo Dust Inspectors due to an electrical shock hazard
- Sanbrook Brands Pty Ltd recalled its entire range of natural latex dummies due to teat separation after a public warning notice was issued by the Minister
- Wisdom Brands recalled 16,465 digital pacifier thermometers after the product failed Qld OFT testing against the mandatory standard
- Mattel recalled 60,000 Fisher-Price toys and 26,000 high-chairs because of laceration, choking and other hazards.

### Development of mandatory standards and bans

This quarter, a number of mandatory standards and bans were finalised. The majority of these were regulated under the national harmonisation process.

#### *Mandatory standards*

- projectile toys
- curtain and blind cords
- motor vehicle recovery straps
- care labelling (review of current standard)

#### *Bans*

- no holes tongue studs
- novelty cigarettes
- inflatable toys/novelties
- yo yo water balls
- monkey bikes

- certain toy/novelty knives
- unsafe domestic pool and spa outlets

During the quarter, initial work commenced on Regulation Impact Statements (RIS) for the development of mandatory standards for portable swimming pools, stability of domestic furniture, lead in ceramic dinnerware, trampolines and ceiling insulation. The RIS process was also progressed in relation to reviews of the mandatory standards for disposable cigarette lighters, bunk beds, hot water bottles and baby walkers.

The case study below summarises the harmonisation project and the involvement of all jurisdictions in priority setting and hazard assessment in relation to the implementation of the TPA regulations.

#### **Case study: harmonisation of standards and bans**

For product safety, a key element of the Australian Consumer Law reforms was the project to harmonise the bans and mandatory standards in force around Australia into a single set of nationally applicable regulations. This resulted in a reduction in the number of bans and standards from around 177 to 60, consisting of 20 bans and 37 mandatory safety standards as well as three information standards.

The project was a joint effort between the states and territories and the ACCC. It commenced in 2008 under Victorian leadership (with joint Queensland sponsorship). The project group used a two-stage process to identify which standards and bans should be revoked. This broadly involved:

**Stage 1:** States and Territories agreed to revoke all ban orders that were only made in one or two of the nine jurisdictions, if they were made more than 10 years ago (and had not been reviewed), and where the product subject to the ban order had not been detected in the marketplace for 10 years or more

**Stage 2:** States and Territories conducted risk assessments of the remaining bans and standards, and agreed to revoke any that were not judged to pose a significant risk (children's products) or a high risk (adult products).

At the end of this process, it was agreed that four new mandatory standards and eight bans would be implemented under the TPA. For each of these, the ACCC drafted an instrument that sought to harmonise existing state/territory regulations, and then went through the statutory processes required to implement them. These involved wide consultation, with each mandatory standard being subject to a Regulation Impact Statement (RIS) process, and each ban being consulted on with known industry participants.

#### **Priority setting and hazard assessment for harmonised standards and bans**

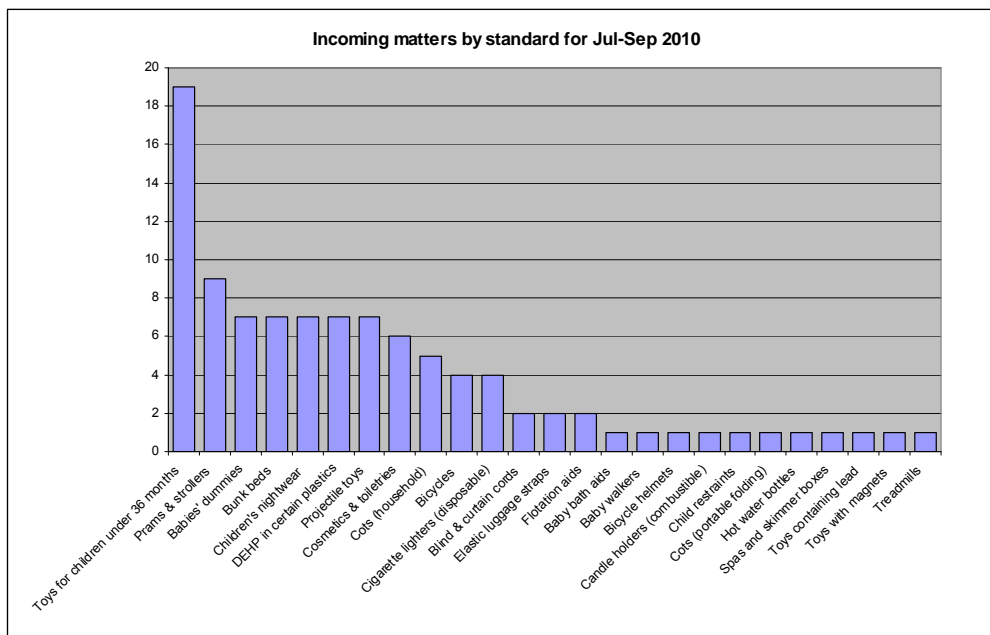
A number of factors were taken into account in the development of the new mandatory standards and bans, including instances of preventable consumer deaths or serious injuries associated with the products

Products subject to the eight new national bans all scored highly on the product risk nomograph and were introduced at the request of, and in a spirit of co-operation with, the states and territories. The majority target hazards that are most likely to injure young children. These include potential disembowelment or drowning (unsafe suction points in spas and pools), choking hazards, potential for severe cuts from undeclared knives in children's stationery sets and falls or collision hazards arising from unsafe mini motor cycles.

## Product safety compliance and enforcement work

During the quarter, the ACCC further developed its strategic approach to product safety compliance. This included the expansion of its product safety knowledge base, more comprehensive prioritisation of product safety matters processed through the clearinghouse, nationally coordinated market surveillance activities, and intelligence-led, targeted compliance activities.

A total of 101 incoming product safety matters were recorded in the matter management system for the quarter. The actual number of incoming matters for the quarter is likely to be higher than this, as the system did not come into effect until late July and therefore July's data is not completely represented.



### *Compliance strategies for mandatory standards and bans*

The focus for this quarter has been on the 18 new or reviewed standards and bans that have been declared during 2010. These newly declared standards and bans have taken priority in terms of supplier awareness and education and staff familiarisation. The ACCC has assisted a number of suppliers by providing guidance to help them comply with these new regulations.

For example as some elements of the new standard for corded internal window coverings (curtain and blinds) are a variation on the existing state and territory regulations, the ACCC has been examining options for industry compliance and guidance whilst maintaining the safety of consumers as the main priority.

### *Significant product safety compliance and enforcement outcomes*

A public warning was issued by the Minister for Competition and Consumer Affairs on *Happy Baby* brand latex dummies following a number of reports of teat separation. This warning led to a voluntary recall by the supplier, and the ACCC continues to investigate the safety of latex dummies.



### *Supplier education and stakeholder partnerships*

A major stakeholder forum was run by the ACCC to capture views on the children's nightwear standard. This standard, which is one of product safety's top priorities, presents a number of compliance challenges, many of which were highlighted in the aftermath of the Woolworths/Vinetex matter of 2009/10 in which the ACCC accepted court enforceable undertakings from the suppliers of children's nightwear products that did not meet the mandatory standard. The forum established a clear process for future ongoing work with Standards Australia to review the Australian Standard.

Questionnaires on technical and compliance issues were sent to suppliers and testers for both the hot water bottle and children's nightwear standards. Responses were comprehensive and provide ACCC staff with very useful information in addressing relevant issues.

### **Education and media**

With the last of the regulations arising from the harmonisation project finalised on 1 July 2010, product safety education for suppliers to help ensure they are ready for any new requirements from 1 January 2011 has been a major focus. This included the development and publication of supplier guides for motor vehicle recovery straps, flotation aids for water familiarisation and swimming tuition, aquatic toys and vehicle jacks. A supplier bulletin on fixed gear bicycles ('fixie' bikes) was also produced and received over 5,000 hits when posted on a bike webforum.

The wide distribution of the 'fixie' bikes bulletin via so called 'new media' channels provides some indication of the possibilities Web 2.0 creates in terms of the extent to which the ACCC is able to reach our target audience with our important product safety messages for both suppliers and consumers.

The product safety twitter account (@ProductSafetyAU) continues to increase in popularity and reach—we now have 411 followers and our safety tweets are regularly re-tweeted to hundreds (and in some cases, thousands) of other twitter users.

### 3 Mergers

In assessing mergers, acquisitions and asset sales under section 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 undertaken in the September 2010 quarter

The ACCC reporting processes 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 (FIRB), as a courtesy because ACCC clearance is not requested. These pre-assessed matters also result from the ACCC's intelligence activities.

In the September 2010 quarter, 41 matters were pre-assessed by the ACCC. Also during that period, the ACCC reviewed a further 41 matters, including confidential and public merger reviews. Of the matters reviewed, 66 per cent of merger proposals were cleared unconditionally by the ACCC.

The ACCC opposed one public merger proposal outright and expressed concerns following one confidential review proposal. Four merger proposals were not opposed subject to s87B undertakings. No decisions were made in eight reviews, either because the proposal was withdrawn or because a view could not be formed on a confidential basis.

**Table 3.1: Matters assessed and reviews undertaken, September quarter 2010**

	Confidential	Public	Total
<b>Pre-assessed 1 April to 30 June 2010</b>	<b>41</b>	<b>0</b>	<b>41</b>
<b>Total reviews undertaken 1 April to 30 June 2010</b>	<b>15</b>	<b>26</b>	<b>41</b>
Total reviews can be broken down into the following categories:			
Not opposed	8	19	27
Finished—no decision (including withdrawn) <sup>2</sup>	6	2	8
Opposed outright	0	1	1
Confidential review—ACCC concerns expressed	1	0	1
Resolved through undertakings <sup>3</sup>	0	4	4
Variation to undertaking accepted	0	0	0
Variation to undertaking rejected	0	0	0
<b>Total matters assessed and reviews undertaken</b>	<b>56</b>	<b>26</b>	<b>82</b>

**Table 3.2: Comparative financial year merger statistics**

Financial Year	2009-10	2010-11
<b>Total matters assessed and reviews undertaken</b>	<b>321</b>	<b>82</b>
<b>MATTERS ASSESSED - NO REVIEW REQUIRED</b>	<b>153</b>	<b>41</b>
<b>REVIEWS UNDERTAKEN</b>	<b>168</b>	<b>41</b>
<i>Total reviews can be broken down into the following categories:</i>		
Not Opposed	131	27
Finished – no decision (incl. withdrawn)	16	8
Publicly Opposed outright	8	1
Confidential review – Opposed or ACCC concerns expressed	6	1
Resolved through undertakings	4	4
Variation to undertaking accepted	2	0
Variation to undertaking rejected	1	0

### Time taken to assess mergers

The following table breaks down the time taken by the ACCC to complete reviews of merger proposals in the September quarter.

Reviews of completed mergers are not included in table 3.3. Completed mergers are not subject to the same time frames as reviews of proposed mergers for several reasons, including that it often takes longer to obtain parties' submissions because time is no longer an imperative. The tables do not include matters assessed as not requiring substantive review, e.g. FIRB notifications. The majority of matters that are pre-assessed as not requiring a review are dealt with in less than two weeks, but are not recorded in these tables because the tables list only the timing relating to substantive merger investigations.

**Table 3.3: Time taken to review merger proposals 1 July 2010 to 30 September 2010<sup>2</sup>**

Time taken to undertake merger reviews (cumulative)	Number of reviews	Percentage of mergers
Two weeks or less	3	9%
Four weeks or less	13	41%
Six weeks or less	20	63%
Eight weeks or less	27	84%
More than eight weeks	5	16%

<sup>2</sup> This does not include 41 pre-assessed matters, 8 matters where no decisions were made as the ACCC could not form a view or the proposal was withdrawn, or 1 review of a completed merger.

## Statement of issues

Two statements of issues were released during the September quarter:

- Jetset Travelworld Limited – proposed acquisition of Stella Travel Services Holdings Pty Ltd – 21 July 2010
- Metcash Trading Limited – proposed acquisition of Interfrank Group Holdings Pty Ltd (Franklins) – 22 September 2010

## Public competition assessments

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

The ACCC issued three public competition assessments during this quarter:

- Novartis AG – proposed acquisition of Alcon Laboratories Inc - 31 August 2010 - Pharmaceuticals - vision care products
- National Australia Bank Ltd and AMP Ltd – proposed acquisitions of AXA Asia Pacific Holdings Ltd - 9 September 2010 - banking
- Jetset Travelworld Limited – proposed acquisition of Stella Travel Services Holdings Pty Ltd – 28 September 2010 – travel products and services

## Section 87B undertakings

Four reviews were completed subject to court enforceable 87B undertakings in the September 2010 quarter:

- Novartis AG proposed acquisition of Alcon Laboratories Inc – 29 July 2010 - Pharmaceuticals - vision care products
- Scandinavian Tobacco Group A/S – proposed acquisition of Swedish Match AB – 29 September 2010 – tobacco products
- Peregrine Corporation proposed acquisition of retail assets of Mobil Oil Australia Pty Ltd Major matters – 1 October 2010 – fuel products
- 7-Eleven Stores Pty Ltd proposed acquisition of retail assets of Mobil Oil Australia Pty Ltd – 1 October 2010 – fuel products

## Major Matters

Major matters decided during the September 2010 quarter included:

- Scandinavian Tobacco Group A/S – proposed acquisition of Swedish Match AB

- Proposed undertakings National Australia Bank Ltd – proposed acquisition of AXA Asia Pacific Holdings Ltd Australian and New Zealand businesses
- Swift Australia Pty Ltd – proposed acquisition of Rockdale Beef Pty Ltd
- Jetset Travelworld Ltd – proposed acquisition of Stella Travel Services Holdings Pty Ltd
- Novartis AG – proposed acquisition of Alcon Laboratories Inc.

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

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**Scandinavian Tobacco Group A/S – proposed acquisition of Swedish Match AB**

Result: On 29 September 2010 the ACCC decided not to oppose the proposed acquisition, subject to a section 87B undertaking offered by the parties.

Summary: On 24 June 2010 the ACCC commenced a public review of the proposed acquisition by Scandinavian Tobacco Group A/S (STG) of Swedish Match AS (SM).

STG is a privately owned Danish company which is involved in the manufacture and wholesale supply of tobacco products. SM is a publicly listed company headquartered in Sweden which is involved in the manufacture, wholesale supply and distribution of tobacco products. In Australia, the merger parties overlap in relation to the wholesale supply of cigars and pipe tobacco.

The ACCC carefully considered the competition effects of the proposed acquisition in two markets: the market for the wholesale supply of cigars in Australia and the market for the wholesale supply of pipe tobacco in Australia.

After an extensive investigation and rigorous consultation with a large number of interested parties including the Australian representatives of tobacco manufacturers, importers/wholesalers, distributors in the tobacco industry and retailers of tobacco products, the ACCC formed the view that the proposed acquisition would be likely to result in a substantial lessening of competition in relation to the market for the wholesale supply of cigars.

The ACCC considered that the proposed acquisition would significantly increase concentration in the market for the wholesale supply of cigars, with only two significant wholesale suppliers of cigars (including the merged firm) remaining post-acquisition. The ACCC also considered that new entrants and imports were unlikely to be an effective competitive constraint on the merged firm due to significant barriers to entry represented by regulatory restrictions on the advertising and display of tobacco products, strong customer brand loyalty and other barriers associated with the manufacture, marketing and supply of cigar products. The ACCC further considered that retail customers were limited in their ability to bypass the merged firm for the wholesale supply of cigars by sponsoring new entry (or expansion by a cigar manufacturer already present in Australia) or by directly importing cigars from an overseas manufacturer – mainly due to the significant barriers to entry and expansion identified by the ACCC, which were likely to limit the extent to which any new or unestablished cigar brand would be able to capture sales volumes in Australia.

In order to address the competition concerns identified by the ACCC in relation to the market for the wholesale supply of cigars in Australia, the merger parties provided an undertaking to divest certain cigar assets, including SM's popular Wee Willem and Willem II cigar brands. The ACCC concluded that the divestiture remedies satisfactorily addressed its competition concerns in the relevant market.

A Public Competition Assessment detailing the basis upon which the ACCC reached its decision will be published on the ACCC's website.

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**Proposed undertakings: National Australia Bank Ltd – proposed acquisition of AXA Asia Pacific Holdings Ltd Australian and New Zealand businesses**

Result: On 9 September 2010 the ACCC decided to reject the proposed section 87B undertakings offered by National Australia Bank Ltd (NAB) and AXA Asia Pacific Holdings Ltd (AXA) (the proposed undertakings) and maintain its opposition to the proposed acquisition of AXA by NAB (the proposed acquisition).

Summary: On 19 April 2010, the ACCC announced its decision to oppose the proposed acquisition of AXA by NAB. The ACCC formed the view that the proposed acquisition would be likely to result in a substantial lessening, prevention or hindrance of competition in the market for the supply of retail investment platforms for investors with complex needs.

The ACCC formed the view that AXA is likely to provide vigorous and effective competition to the existing key players as a result of its implementation and development of a next generation full service wrap platform (the North platform). The ACCC considered that AXA's next generation wrap platform is also likely to be versatile in responding to competing platform developments and will continue to offer strong competition to existing key players and drive competition in innovation by other participants, including NAB.

NAB and AXA offered the proposed undertakings in an attempt to address the ACCC's competition concerns with the proposed acquisition. The proposed undertakings provided for the divestiture of the North platform administration business operated by AXA to the proposed purchaser, IOOF.

The ACCC contacted a range of industry participants in consulting on the proposed undertakings. The majority of these participants raised concerns that the proposed undertakings, including the proposed purchaser would not provide an effective competitive constraint on a merged NAB-AXA or other existing key players.

On 9 September 2010, the ACCC announced its decision to reject the proposed undertakings as they were not sufficient to remedy its competition concerns because the proposed undertakings did not include key assets, including any distribution network, or the North products which provide scale of funds under management. The ACCC found that the omission of these assets would significantly reduce the proposed purchaser's ability to attract sufficient scale on the North platform in a timely manner to ensure the viability of the divestiture business.

The ACCC found that the proposed undertakings involved complex and long term behavioural obligations. The heavy reliance placed upon third parties raised risks and uncertainty as to the effectiveness of the proposed undertakings. The ACCC also considered that the relationship between the proposed purchaser and a merged NAB-AXA created by the proposed undertakings presented a risk that the proposed

purchaser would have diminished incentives to aggressively compete against a merged NAB-AXA.

The ACCC concluded that the proposed undertakings would not remedy the ACCC's competition concerns with the proposed acquisition. Accordingly, the ACCC rejected the proposed undertakings.

A Public Competition Assessment detailing the basis upon which the ACCC reached its decision is published on the ACCC's website.

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**Swift Australia Pty Ltd – proposed acquisition of Rockdale Beef Pty Ltd**

Result: On 9 September 2010 the ACCC decided not to oppose the proposed acquisition.

Summary: On 8 April 2010 the ACCC commenced a public review of Swift Australia Pty Ltd's (Swift's) proposed acquisition of Rockdale Beef Pty Ltd (Rockdale Beef).

Rockdale Beef is a Japanese-owned, vertically integrated abattoir and feedlot business in Australia that operates a single co-located abattoir and feedlot located in Yanco, New South Wales. Swift is a subsidiary of a Brazilian company and is also a vertically integrated operator of beef abattoir and feedlot facilities in Australia. The merger parties overlap in the operation of beef feedlots and abattoirs.

On 24 June 2010, the ACCC released a Statement of Issues outlining its preliminary competition concerns arising from the proposed acquisition. In particular, the ACCC was concerned about a potential reduction in competition in relation to beef processing and the related acquisition of fat cattle, and lot feeding and the related acquisition of feeder cattle.

After an extensive investigation and consultation with a large number of interested parties including cattle producers, feedlot operators, abattoir operators, supermarkets and other suppliers and buyers of meat products, the ACCC formed the view that the proposed acquisition would not result in a substantial lessening of competition in any market.

The ACCC carefully considered the competition effects of the proposed acquisition in a number of markets. In relation to the feedlot side of Rockdale's business, the ACCC examined the market for the acquisition of feeder cattle, while the acquisition of the abattoir side of Rockdale's business was examined in the context of the market for the acquisition of fat cattle, and the supply of processed beef.

The ACCC considered that if the merged entity attempted to depress cattle prices to below competitive levels and/or impose onerous service terms and conditions, existing competitors would be able to attract business and win market share away from the merged entity.

A Public Competition Assessment detailing the basis upon which the ACCC reached its decision will be published on the ACCC's website.

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**Jetset Travelworld Ltd – proposed acquisition of Stella Travel Services Holdings Pty Ltd**

Result: On 1 September 2010 the ACCC decided not to oppose the proposed acquisition.

Summary: On 14 May 2010 the ACCC commenced a public review of Jetset Travelworld's (Jetset's) proposed acquisition of Stella Travel Services Holdings Pty Ltd (Stella).

Jetset and Stella operate two of the largest integrated travel businesses in Australia, each with extensive 'bricks and mortar' retail networks as well as wholesale businesses. The merger parties overlap in the retail supply of leisure and corporate travel products and services and the wholesale supply of travel packages and tours.

On 21 July 2010 the ACCC released a Statement of Issues outlining preliminary competition concerns arising from the proposed acquisition. In particular, the ACCC was concerned about a potential reduction in competition in relation to the retail supply of leisure travel products and the wholesale supply of travel packages and tours, and air ticket consolidation services in Australia.

After an extensive investigation and rigorous consultation with a large number of interested parties including retail travel agents, wholesalers, travel content providers and industry associations, the ACCC formed the view that the proposed acquisition would not result in a substantial lessening of competition in any relevant market.

The ACCC carefully considered the competition effects of the proposed acquisition in a number of markets, including:

- the retail supply of leisure travel products in Australia
- the wholesale supply of travel packages and tours in Australia
- the wholesale supply of air ticket consolidation services in Australia.

With respect to the retail supply of leisure travel products, the ACCC considered that the proposed acquisition was unlikely to result in a significant and sustained increase in the end prices paid by leisure travellers or reduce the range of products and services available to end customers. The ACCC found that other 'bricks and mortar' retailers, online agents, direct distribution and potential entrants were likely to provide an effective competitive constraint on the merged firm. Given the continued competitive pressure at the retail level, the ACCC also considered it unlikely that the proposed acquisition would provide the merged firm with the ability and incentive to substantially foreclose access to retail distribution by its wholesale rivals.

In relation to air ticket consolidation services, the ACCC considered that new entry, retailer bypass and competition from Flight Centre, online agents and direct distribution by air carriers at the retail level would prevent the merged firm from exercising market power.

A Public Competition Assessment detailing the basis upon which the ACCC reached its decision is published on the ACCC's website.

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#### **Novartis AG – proposed acquisition of Alcon Laboratories Inc.**

Result: On 29 July 2010 the ACCC decided not to oppose the proposed acquisition after accepting court enforceable undertakings.

Summary: On 8 April 2010 the ACCC commenced a public review following receipt of a submission from Novartis AG (Novartis) of its proposed acquisition of Alcon Laboratories Inc (Alcon). In Australia, Novartis and Alcon compete in a number of



pharmaceutical product markets relating to eye care, including injectable miotics, preparations for use in contact lenses, artificial tears and ocular lubricants, anti-glaucoma preparations and allergic conjunctivitis treatments.

The ACCC conducted market inquiries with a range of industry participants, including competitors, potential competitors, customers, industry bodies, other regulatory agencies and other interested parties.

The ACCC found that the proposed acquisition would be likely to result in a substantial lessening of competition in the national market for the wholesale supply of injectable miotics. In particular, the ACCC considered that the proposed acquisition would remove the only significant competitor to Novartis in the supply of injectable miotic products in Australia, and therefore lead to there being a single supplier of injectable miotics in Australia.

Novartis offered the ACCC court enforceable undertakings to address these competition concerns. Under the undertakings, Novartis proposed to divest certain assets relating to its injectable miotics business to Bausch & Lomb Inc. The ACCC considered that the undertakings offered by Novartis satisfactorily addressed the competition concerns identified in the market for the wholesale supply of injectable miotics. Accordingly, the ACCC considered that, in light of the undertakings offered by Novartis, a substantial lessening of competition in the national market for the wholesale supply of injectable miotics was unlikely.

A Public Competition Assessment detailing the basis upon which the ACCC reached its decision is published on the ACCC's website.

## 4 Authorisations and notifications

A key objective of the Trade Practices Act is to prevent anti-competitive arrangements or conduct, thereby encouraging competition and efficiency in business, resulting in greater choice for consumers in price, quality and service.

Some anti-competitive arrangements can, however, be allowed under the Act if the parties can demonstrate that the arrangements are in the public interest. Businesses may obtain immunity by applying for an authorisation or submitting notifications of exclusive dealing and collective bargaining to the ACCC.

### Authorisations

During the September quarter 2010, the ACCC received 9 new authorisation applications, covering 6 projects.

At 30 September 2010, a total of 23 authorisation applications, covering 13 projects, were being considered by the ACCC.

### Matters finalised

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#### North West Shelf Project—A91220-A91223

Summary: On 31 March 2010 the North West Shelf Project (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 contract 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 and
- 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.

On 8 September 2010 the ACCC issued a final determination granting conditional authorisation until 31 December 2015.

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**Recruitment and Consulting Services Association Limited—A91226**

Summary: On 4 May 2010 the Recruitment & Consulting Services Association Limited (RCSA) applied to make a minor variation to authorisation A91102, which allows RCSA to make arrangements giving effect to exclusionary provisions in its Code for Professional Conduct, its Constitution and its Disciplinary & Dispute Resolution Procedures (DDRP) until February 2014.

RCSA proposes to vary the DDRP to:

- clarify the chronology of the complaints process
- allow for matters to be resolved between the complainant and RCSA member within 30 days
- allow the RCSA to delay its intervention in a complaints process
- provide that members may give an undertaking to the RCSA Board in satisfaction or partial satisfaction of a disciplinary complaint made against that member.

On 2 July 2010 the ACCC issued a determination granting the minor variation.

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**Suncorp Metway Limited & Bendigo & Adelaide Bank Limited—A91232-A91233**

Summary: On 31 May 2010 Suncorp-Metway Ltd and Bendigo and Adelaide Bank Ltd applied for authorisation to agree not to 'direct charge' each other's cardholders for Automatic Teller Machine transactions at their ATMs.

On 13 September 2010 the ACCC issued a final determination granting authorisation for five years.

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**Vision Group Holdings Limited—A91217**

Summary: On 29 March 2010 Vision Group Holdings Limited (Vision Group), 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.

On 8 September 2010 the ACCC issued a final determination granting authorisation until 30 September 2015.

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**Premium Milk Ltd—A91236**

Summary: On 22 June 2010 Premium Milk Ltd (Premium) applied for re-authorisation to collectively negotiate farm-gate prices and milk standards on behalf of its members (milk producers located in south-east Queensland) with Parmalat Australia Ltd.

Premium proposes to amend its Constitution so as to expressly allow it to represent milk producers operating in northern New South Wales as well as Queensland.

On 22 September 2010 the ACCC issued a final determination granting authorisation until 14 October 2020.

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

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### **Generic Medicines Industry Association Pty Ltd—A91218 and 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. On 31 May 2010 the GMiA provided an amended version of the Code.

On 3 August 2010 the ACCC issued a draft determination proposing to grant authorisation, subject to conditions, for a period of three years.

On 3 August 2010 the ACCC also granted interim authorisation.

Following the applicant's request for an extension, the ACCC extended the period for consideration of the applications until 11 November 2010.

The ACCC has sought further submissions from interested parties and the matter is under consideration. The ACCC anticipates releasing a final determination responding to the GMiA's application in October/November 2010.

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### **Virgin Blue Airlines Pty Ltd & Ors—A91227 and A91228**

Summary: On 6 May 2010 Virgin Blue and Air New Zealand applied for authorisation to make, and give effect to, the Australasian Airline Alliance Agreement, an associated Code Share Agreement and proposed related agreements which are contemplated by the Alliance Agreement (together the Alliance). The Alliance provides for coordination and agreement between Virgin Blue and Air New Zealand in respect of trans-Tasman passenger services.

On 10 September 2010 the ACCC issued a draft determination proposing to deny authorisation.

Following the applicants' request for an extension, the ACCC extended the period for consideration of the applications until 20 December 2010.

The ACCC is currently seeking submissions in response to the draft determination and expects to issue a final decision in November/December 2010.

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### **South Australian Oyster Growers Association Inc (SAOGA)—A91229 and A91230**

Summary: On 17 May 2010 the South Australian Oyster Growers Association Inc applied for reauthorisation of an agreement between it and five named oyster hatcheries (which grow juvenile oysters or 'spat'). Under authorisations first granted in 1999, the parties have agreed that the hatcheries shall charge oyster growers (which rear spat to marketable size) in South Australia a levy on spat. The money is used by an association-owned company, the South Australian Oyster Research Council Pty Ltd, for oyster-industry research and development.

The hatcheries now charge \$1 per 1000 spat and seek authorisation to index the levy to inflation annually.

On 20 August the ACCC issued a draft determination proposing to grant authorisation to the oyster spat levy arrangements for 10 years.

On 20 August the ACCC also granted interim authorisation to these arrangements.

The ACCC has sought submissions from interested parties and the matter is under consideration. The ACCC anticipates releasing a final determination responding to SAOGA's application in October 2010.

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**Agsafe Limited—A91234 and A91242-A91244**

Summary: On 28 May 2010 Agsafe Limited applied for re-authorisation of the Agsafe Code of Conduct (the Code).

The Code requires persons and premises involved in the storage, handling, transport and distribution of agricultural and veterinary chemicals to be accredited through the Agsafe Accreditation and Training Program. The Code also provides for the imposition of trading sanctions on persons and premises that are not accredited, and manufacturers and retailers that continue to trade with those who are sanctioned. Agsafe seeks authorisation for three years to allow it to transition the industry to a new incentive based accreditation and training program.

On 20 August 2010 the ACCC issued a draft determination proposing to grant authorisation in respect of the proposed arrangements for three years.

The ACCC has sought submissions from interested parties and the matter is under consideration. The ACCC anticipates releasing a final determination responding to Agsafe's application in October 2010.

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**State of Queensland Acting through the Office of Liquor and Gaming Regulation—A91224 and A91225**

Summary: On 15 April 2010 the Office of Liquor and Gaming Regulation (OLGR) applied for authorisation of a pro-forma liquor accord agreement. Liquor accord agreements are signed by licensed premises and others in a particular area and contain strategies to reduce the abuse and misuse of alcohol. The OLGR's pro-forma liquor accord agreement:

- is voluntary to sign and is non-binding upon its signatories
- requires signatories to ban practices and promotions that may encourage rapid or excessive consumption of liquor, for example:
  - drink cards that provide multiple free drinks
  - extreme discounts or discounts of limited duration
  - any other promotions or gimmicks that encourage rapid intoxication
- requires signatories to ensure smaller serves of drinks (e.g. half nips) are available at differential (lower) prices
- requires signatories to offer and promote low alcohol beer at differential (lower) prices compared to full strength
- requires signatories not to advertise or allow promotions of very high alcohol substances such as overproof rum and high alcohol carbonated drinks

- requires signatories to avoid offering drinks that, by their method of consumption, encourage irresponsible drinking habits and are likely to result in rapid intoxication.

On 12 August 2010 the ACCC issued a draft determination proposing to grant conditional authorisation in respect of these arrangements for three years.

The ACCC has sought submissions from interested parties and the matter is under consideration. The ACCC anticipates releasing a final determination responding to the OLGR's application in October 2010.

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**Liquor Stax Australia Pty Ltd—A91237**

Summary: On 30 June 2010 Liquor Stax applied for authorisation for a group of around 200 small businesses operating liquor merchants and hotels to bargain collectively with 60 suppliers of inputs such as alcohol, cigarettes, poker machines and confectionery as well as services such as advertising, insurance and communications.

On 8 September 2010 the ACCC issued a draft determination proposing to grant authorisation to the arrangements for five years.

The ACCC has sought submissions from interested parties and the matter is under consideration. The ACCC anticipates releasing a final determination responding to Liquor Stax's application in October 2010.

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**DP World Australia Limited & Patrick Stevedores Operations Pty Limited—A91238-A91240**

Summary: On 2 July 2010 DP World Australia Limited (DP World Australia) and Patrick Stevedores Operations Pty Ltd (Patrick) applied for authorisation to agree to make available preferential treatment to truck carriers engaged in 'dual runs' (i.e. where a truck both delivers a container and collects a container during the same run) at their container terminals at the Port of Fremantle and to agree some of the terms on which such preferential treatment would occur.

On 28 July 2010 the ACCC granted interim authorisation to the proposed arrangement.

On 30 September 2010 the ACCC issued a draft determination proposing to grant authorisation in respect of these arrangements for five years.

The ACCC is currently seeking submissions in response to the draft determination and expects to issue a final decision in December 2010.

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

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**Various Queensland Coal Producers using Wiggins Island Coal Terminal—A91241**

Summary: On 7 July 2010 various coal producers applied for authorisation to collectively negotiate terms and conditions of access to below-rail infrastructure associated with the Wiggins Island Coal Export Terminal (Terminal) in the Port of Gladstone, Queensland.

In particular, the applicants seek authorisation to engage in collective bargaining with QR Network Ltd (or any other QR Group entity or any entity that may acquire the relevant rail assets following the privatisation of QR Network) for the purpose of negotiating terms and conditions, including price, for access to the below rail infrastructure comprising the Blackwater and Moura rail systems including:

- all expansions to these systems
- access to any other rail infrastructure necessary to support the Terminal
- below rail infrastructure to support the relocation of capacity from Barney Point to the Terminal and RG Tanna Coal Terminal and
- all services relating to access for the purpose of transporting coal to the Terminal (the 'Identified Rail Infrastructure and Services').

On 4 August 2010 the ACCC granted conditional interim authorisation to the applicants' arrangements.

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

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**Pozzolanic Enterprises Pty Ltd—A91245**

Summary: On 28 July 2010 Pozzolanic applied for authorisation to make and give effect to the proposed Fly Ash Supply Agreement between itself, Tarong Energy Corporation Limited (TEC) and Tarong North Pty Ltd. Clause 4.1 of the Agreement allows Pozzolanic to purchase any and all fly ash obtained from the Ash Transfer Points and removed from the Tarong or Tarong North Power Station sites in Queensland. The Agreement would run for approximately three years, expiring on 1 March 2014.

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

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**Central Queensland Local Government Association & Ors—A91246**

Summary: On 10 August 2010 the Central Queensland Local Government Association and others (the Applicants) applied for authorisation to collectively tender for the provision of green waste mulching services in their respective council areas. Successful tenderers will be required to enter into separate contracts with each council.

The Applicants have sought a term of authorisation of up to five years. This term comprises a three year duration of the initial contract with a potential extension of the contract for a period of two years.

On 2 September 2010 the ACCC granted interim authorisation to the Applicants' proposed arrangements. Interim authorisation does not extend to the Councils entering into contracts with the successful tenderer(s).

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

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**Virgin Blue Airlines Pty Ltd & Ors—A91247 and A91248**

Summary: On 27 August 2010 Virgin Blue and Etihad applied for authorisation of a proposed alliance, which will include:

- a commercial cooperation agreement
- associated code share agreements
- a frequent flyer agreement
- a reciprocal lounge agreement.

Under the alliance, Virgin Blue and Etihad have agreed to cooperate on joint pricing and scheduling of services between Australia and Abu Dhabi.

On 23 September 2010 the ACCC granted interim authorisation to the proposed alliance.

The ACCC is currently seeking submissions from interested parties regarding the applications for authorisation and anticipates releasing a draft determination in November 2010.

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**Brisbane Marine Pilots Pty Ltd—A91235**

Summary: On 10 June 2010 Brisbane Marine Pilots Pty Ltd (BMP) applied for authorisation of a pilotage services agreement entered into with the State of Queensland (represented by the Department of Transport trading as Maritime Safety Queensland) under which MSQ must acquire all pilotage services at the Port of Brisbane exclusively from BMP.

The ACCC has sought submissions from interested parties and the matter is under consideration. The ACCC anticipates releasing a draft determination responding to BMP's application in October 2010.

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**TLS Association Pty Ltd—A91250**

Summary: On 27 September 2010 the TLS Association Pty Ltd (TLSA) applied for authorisation to negotiate discounts and rebates with companies that supply products and services to Telstra Licensed Shops (TLS), with those discounts and rebates available to licensees who are members of the TLSA.

The ACCC is currently seeking submissions from interested parties and the matter is under consideration. The ACCC anticipates releasing a draft determination responding to the TLSA's application in January/February 2011.

## **Collective bargaining notifications**

The ACCC considered 2 collective bargaining notifications during the September quarter 2010.

Summaries of these notifications are provided below.



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**Nelson Enterprises Pty Ltd—CB00148**

Summary: On 27 July 2010 the Queensland citrus growers known as Abbotsleigh, Dermark and Bayntun notified a proposal to collectively negotiate the price and volume of their supply of citrus fruit (lemons and mandarins) to Woolworths Limited (Woolworths). The proposed collective bargaining arrangement was previously notified to the ACCC in 2007 (CB00001). That notification expired on 31 July 2010.

The ACCC sought submissions from the target prior to allowing the notification to stand on 11 August 2010.

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**Hertz Australia Pty Limited—CB00143**

Summary: On 3 May 2010 Hertz Australia Pty Limited, on behalf of a group of rental car companies, notified a proposal to collectively negotiate with Perth Airport in relation to the terms and conditions (including price) at which the rental car companies will acquire airport facility services (car parks and counter space).

On 16 July 2010, the ACCC issued a notice objecting to the notification, preventing immunity commencing.

## **Exclusive dealing notifications**

During the September quarter 2010, the ACCC received 144 new exclusive dealing notifications across 70 matters.

Notifications of interest considered during the quarter include:

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**Review of Co-operative Bulk Handling Limited—N93439**

Summary: On 11 June 2008 CBH lodged a notification to offer to supply storage and handling services on the condition that Growers or Marketers acquire:

- supply chain coordination services from CBH; and
- to the extent that grain remains in CBH's custody, that they only acquire transport services from CBH (through its nominated carrier).

On 8 September 2008 the ACCC decided not to take any further action at that time.

On 18 June 2010 the ACCC commenced a review of the notification.

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

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**FOXTEL Management Pty Limited—N94674**

Summary: On 4 May 2010 FOXTEL Management Pty Ltd lodged a notification proposing to only supply customers with the ability to purchase and download videos and all associated services delivered via the internet to their iQ set top boxes on condition that the customer uses a Telstra BigPond broadband connection for the carriage of those services.

The ACCC invited submissions from interested parties in relation to the notified arrangements.

On 9 July 2010 FOXTEL withdrew the notification.

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**Perth Motorplex and Avalon International Raceway—N93304 and N93305**

Summary: On 12 February 2008 Placide Pty Ltd as trustee for the Metro Speedway Trust t/a Speedway Perth Motorplex and Corio Park Pty Ltd t/a Avalon International Raceway lodged notifications proposing to supply race services, 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.

In June 2008 the ACCC decided not to take any further action with respect to these notifications. Following similar notifications being lodged by Brisbane International Speedway and others, the ACCC decided to review the immunity provided by the Perth Motorplex and Avalon Raceway notifications. On 13 May 2010 the ACCC issued draft notices proposing to revoke these notifications.

On 17 June 2010 a pre-decision conference was held with respect to this matter. On 19 August 2010 the ACCC issued notices revoking the notifications. The immunity provided by the notifications ceased to be in force on 19 September 2010.

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**FOXTEL Management Pty Limited—N94744**

Summary: On 25 June 2010 FOXTEL lodged notifications to supply video content delivered to a customer's Xbox 360 games console via the internet (the FOXTEL by Xbox LIVE Service) on the condition that the customer has purchased an Xbox 360 games console and subscribes to the Xbox LIVE Gold service, or the Xbox LIVE Silver service in the case of transactional video on demand content.

On 6 August 2010 the ACCC decided to take no further action at that time.

## 5. Regulatory affairs

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

### Communications

In the September 2010 quarter, the ACCC:

- issued a draft report about varying the Domestic Transmission Capacity Service (DTCS) declaration to clarify the interface protocols covered by the declaration
- released a draft report and draft indicative prices to apply to the regulated fixed line telecommunications services
- issued the imputation and non-price terms and conditions report for the June 2010 quarter
- issued six final determinations in arbitrating access disputes.

### 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.

#### Draft report on varying the DTCS declaration

In the September quarter, the ACCC issued its draft and final reports in relation to varying the Domestic Transmission Capacity Service (DTCS) declaration to clarify the interface protocols covered by the declaration. The DTCS provides connectivity between fixed and wireless access networks and upstream services such as internet connectivity and interconnection with other services.

The DTCS declaration is intended to be technologically neutral and the ACCC's view is that varying the service description clarifies that Ethernet Interface Protocols, which are widely used in the Australian telecommunications network, are covered by the declaration.

The release of the final report follows the ACCC's public consultation which began in November 2009.

## **Access pricing**

### **ACCC proposes new simpler approach for wholesale fixed line telecommunications services pricing**

On 17 September 2010 the ACCC released a draft report and draft indicative prices to apply to the regulated fixed line telecommunications services which are currently used by telecommunications companies to provide voice, facsimile and broadband products to consumers and businesses over Telstra's copper network.

In developing the draft indicative prices, the ACCC used a building block pricing model (also known as a regulated asset base, or 'RAB' model), which calculates prices based on the assets and costs associated with providing the regulated services. This is consistent with its approach for other regulated industries.

The release of the draft report and draft prices results from a period of industry consultation that commenced on 3 December 2009. The proposed prices are intended to apply from 1 January 2011 to 31 December 2014 to provide a period of price certainty and stability in the industry.

Submissions on the draft report and draft indicative prices are due by 22 October 2010. The ACCC will release a final report before 1 January 2011.

### **Access disputes**

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

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

In the September 2010 quarter, no new access disputes were notified to the ACCC. One access dispute was withdrawn concerning the wholesale line rental (WLR) service.

The ACCC issued six final determinations in finalising two unconditioned local loop service (ULLS), two local carriage service (LCS) and two WLR access disputes between Telstra and various access seekers.

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

	<b>Total</b>
Active disputes at 1 July 2010	13
Decisions subject to appeal to the Federal Court	0
New arbitrations commenced	0
Final determinations issued	6
Disputes withdrawn	1

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

### **Other developments**

#### **\$18 million penalty imposed on Telstra**

On 28 July 2010 the Federal Court penalised Telstra \$18.55 million for denying competitors access to telecommunications exchange buildings in contravention of its carrier licence. The Court found that Telstra had contravened its standard access obligations in the Trade Practices Act and had breached the facilities access regime in the *Telecommunications Act 1997* which requires Telstra to provide access to its facilities.

The ACCC had initiated proceedings in March 2009.

### **Reports**

On 29 September 2010 the ACCC published the 'Imputation and Non-price Terms and Conditions Report' for the June 2010 quarter.

## **Australian Energy Regulator**

The AER recognises the importance of being open and transparent. Accordingly, all papers and submissions relating to the AER are freely accessible by the public on the AER's website at [www.aer.gov.au](http://www.aer.gov.au).

### **AER chair arrangements**

On 19 July 2010 Mr Andrew Reeves was appointed Chair of the Australian Energy Regulator for three years.

Mr Reeves has been the part-time state/territory member of the AER since 17 July 2008, and has been the acting Chairman since 20 May 2010, succeeding the inaugural chair Mr Steve Edwell.

Prior to his AER appointment, Mr Reeves was Commissioner of the Tasmanian Government Prices Oversight Commission and Regulator of the Tasmanian electricity supply industry, responsible for technical and economic regulation of the sector, including performance standards and prices for distribution services and retail tariffs. He is also the Commissioner of the Utilities Commission of the Northern Territory.

### **Gas network regulation matters**

#### **Merits review of gas access arrangement decision by the Australian Competition Tribunal—ACT, Queanbeyan and Palerang gas distribution network**

The access arrangement decision made by the AER in April 2010 in respect of ActewAGL Distribution's (ActewAGL) ACT, Queanbeyan and Palerang gas distribution network was the subject of an application for review in the Australian Competition Tribunal (Tribunal). ActewAGL sought review of the decision made by the AER in relation to the debt risk premium.

On 17 September 2010 the Tribunal handed down its decision and established a ground for review of the AER's approach in estimating the debt risk premium, when determining the cost of capital. The cost of capital is a major determinant of network tariffs. The Tribunal's decision increases the allowed total revenue of ActewAGL by around \$5 million to \$283.5 million. This additional revenue will be recovered from network users in future years through higher network tariffs. Network tariffs for the average residential customer will increase in July 2011 by 12 per cent (from 9 per cent), plus CPI following this decision.

The Tribunal's decision increases ActewAGL's debt risk premium to 3.89 per cent from 3.35 per cent, resulting in the allowed cost of capital increasing to 10.04 per cent from 9.72 per cent.

### **Decisions—proposed 2010–11 tariff variations for distribution and transmission pipelines**

On 22 June 2010 the AER made decisions to allow the proposed annual tariff variations for 2010–11 for the APT Allgas network, the Envestra (QLD) gas network and the Envestra (SA) gas network.

The tariff increases allowed for by the AER are based on the tariff variation methods as set out in the approved access arrangements. These methods use a CPI less an approved X factor adjustment. These tariffs also include approved cost pass throughs for full retail contestability charge for the APT Allgas and the Envestra (QLD) gas networks; and an approved licence fee pass through for the Envestra (SA) gas network.

### **Appeals—ActewAGL Distribution and Jemena Gas Networks (NSW)**

On 20 July 2010 Jemena Gas Networks (NSW) Limited (JGN) sought review by the Australian Competition Tribunal (Tribunal) of the access arrangement decision made by the AER in June 2010. JGN has sought review on the AER's decision in respect of:

- the methodology and the estimation of the debt risk premium
- the estimate of the value of the gamma (assumed utilisation of imputation credits)
- the AER's approach to mine subsidence capital expenditure
- the reduction of the opening capital base to remove the effect of the weighted average cost of capital on the difference between actual and forecast net capital expenditure, and
- the liability and indemnity clauses in the approved reference services agreement.

The hearing will be held in Melbourne on 6, 7, 8, and 10 December 2010. Details of the matters under appeal are available on the AER's website at [www.aer.gov.au](http://www.aer.gov.au).

## **Electricity network regulation matters**

### **Proposed amendments to the transmission roll forward model and post-tax model**

On 17 August 2010 the AER published proposed amendments to the roll forward model (RFM) and post-tax revenue model (PTRM) that will apply to future electricity transmission determinations.

Transmission network service provider revenue determinations have transitioned to recognising capital expenditure (capex) on a partially as-incurred approach, where the return on capital is calculated based on as-incurred capex and the return of capital (depreciation) is calculated based on as-commissioned capex. In order to continue with recognising capex under the partially as-incurred approach the AER amended the transmission RFM and PTRM under the requirements of the National Electricity Rules (NER). The AER also included a function in the RFM to calculate closing average remaining asset lives based on a weighted average methodology.

Interested parties were invited to make written submissions on the proposed amendments. One submission from Grid Australia was received. The AER expects to make its final decision on the proposed amendments to the models in December 2010.

### **EnergyAustralia pass through application - Solar Bonus Scheme**

On 2 September 2010 the AER received an application from EnergyAustralia to pass through the implementation and administration costs associated with the introduction of the NSW Solar Bonus (feed-in-tariff) Scheme. EnergyAustralia has proposed a pass through amount of \$75.9 million for the 2009-14 regulatory control period. Based on this amount, EnergyAustralia requests that additional revenues of \$47.1 million be passed through to distribution network customers during the 2009-14 regulatory control period.

The AER must assess EnergyAustralia's application under clause 6.6.1 of the transitional chapter 6 rules. The application has been published on the AER's website. Interested parties have been invited to make submissions on EnergyAustralia's application by 30 September 2010. The AER expects to make its determination on EnergyAustralia's application in November 2010.

### **Merits review of Qld and SA electricity distribution determinations by Australian Competition Tribunal**

The distribution determinations made by the AER in May 2010 regarding the respective electricity distribution networks owned by Energex, Ergon Energy and ETSA Utilities are the subject of an application for review in the Australian Competition Tribunal.

Energex, Ergon Energy and ETSA Utilities have sought review of the AER's decision regarding the value of imputation credits (gamma). Ergon Energy has also sought review of aspects of its capital expenditure allowance, forecast customer service costs, demand forecasts, alternative control services (quoted services), the classification of street lighting services, the service target performance incentive scheme, and labour cost escalators. ETSA Utilities has also sought review of the value of its opening regulatory asset base.

### **Victorian Advanced Metering Infrastructure excluded services charges**

The AER has received proposals from the Victorian DNSPs regarding charges and terms and conditions for the provision of Advanced Metering Infrastructure (AMI) remote services. SP AusNet did not submit a proposal due to delays in the roll out of AMI infrastructure. CitiPower, Powercor, Jemena and United Energy have all provided proposals. The AER is expected to release its final decision in December 2010.

### **Final decision – Victorian distribution determination**

The AER is preparing to release its final decisions and distribution determinations for CitiPower, Powercor, SP AusNet Jemena Electricity Networks, and United Energy Distribution on 29 October 2010. The decisions and determinations cover regulatory control period 1 January 2011 to 31 December 2015 and set the revenue that the distributors are able to recover for the provision of electricity distribution services.

The final decisions, distribution determinations and reports prepared by the AER's consultants will be available on the AER's website at [www.aer.gov.au](http://www.aer.gov.au).

### **Network Service Provider Exemptions**

Under the National Electricity Rules the AER can exempt a party from the requirement to register an electrical network with the electricity market operator. In preparation for privatisation Queensland Rail sought to vary its existing exemption covering its electrical traction network to permit other parties to also access the network. The AER granted the variation on 20 August 2010.

### **Tasmanian electricity distribution framework and approach**

The AER is responsible for making a distribution determination for the regulatory period covering 2012-13 to 2016-17 in 2012 for Tasmania's electricity distribution business, Aurora Energy. In preparation for this determination, the AER released a preliminary positions paper on the framework and approach to apply to this determination on 25 June 2010. Submissions on this paper were due on 9 August 2010, and the AER will be releasing its final framework and approach paper by 30 November 2010.

### **Victorian advanced metering infrastructure 2011 charges revision applications**

The Victorian distribution network service providers were required to provide their charges revision applications, covering the period 2010 and 2011, to the AER by 31 August 2010. The charges revision applications provide for DNSPs to revise meter service charges to account for differences between the expenditure previously approved by the AER and actual expenditure. The AER is required to make a determination on these charges revision applications by 31 October 2010.

### **Final decision - applications for exclusion from the Victorian service incentives for supply reliability (supply interruption events March - December 2009)**

On 15 September 2010, the AER released the final decision on applications for exclusion from the Victorian service incentives for supply reliability regarding supply interruption events during March-December 2009 period.



## **Energy markets**

### **Retail pricing information guidelines - Position paper and draft guideline**

On 17 September 2010 the AER published a position paper (including a draft Guideline) on the Retail Pricing Information Guidelines. The position paper sets out the AER's preliminary preferred position on a range of issues.

Under the proposed National Energy Retail Law, the AER will be required to develop a guideline that specifies the manner and form in which details of standing offer prices and market offer prices are to be presented by retailers. This will ultimately assist small customers in comparing standing offer prices and market offer prices offered by retailers.

The position paper and draft Guideline formed part of the second round of preliminary consultation in relation to the Retail Pricing Information Guidelines. This draft Guideline will be the subject of formal consultation once the Retail Law has passed.

The AER will be hosting a stakeholder forum in early October 2010 to discuss the position paper and development of the Guideline.

### **Gas Weekly Report with new STTM section**

In July 2009, the AER began publishing a Weekly Gas Market Analysis report covering the wholesale gas market in Victoria and the National Gas Market Bulletin Board. On 1 September 2010 the Short Term Trading Market (STTM) for gas began operation. The STTM is a market for the trading of natural gas at the wholesale level at defined hubs between pipelines and distribution systems. Currently the STTM has two hubs: Sydney and Adelaide.

In line with its responsibility for monitoring and enforcing compliance in the STTM, the AER has expanded its Weekly Gas Market Analysis report to include a new section on the STTM. The first expanded weekly gas report was published on 15 September 2010.

### **Final investigation report - TransGrid compliance with Electricity Rules**

On 10 September the AER published its investigation report into the compliance of TransGrid with clause 5.6.6 of the Electricity Rules in regard to a proposed 330 kV transmission line from Dumaresq to Lismore.

The Electricity Rules require an applicant who proposes to establish a new transmission asset to comply with various planning and consultation procedures, including the conduct of the Regulatory Test. These processes aim to ensure that planning for new investment is transparent and that consultation to elicit alternative proposals is effective. Further, they are designed to ensure that non-network alternatives (such as generation and demand management) are considered equally with network options.

The AER found shortcomings in the process conducted by TransGrid in reaching its decision to build the line.

The investigation report notes that TransGrid has now undertaken further consultation through the issue of a Request for Proposals in May 2010 that sought non-network

alternatives in the far north coast region. TransGrid has provided the AER with a series of commitments to improve future processes.

### **AER Stakeholder Forum – Hardship Program Indicators**

On 8 September 2010 the AER held a second stakeholder forum (following one held in May) to discuss the development of Hardship Program Indicators.

Under the proposed Retail Law, the AER will be required to monitor and report on energy retailers' performance in relation to their customer hardship policies. As part of this, the AER will be required to determine a set of Hardship Program Indicators.

In April 2010, the AER released an Issues Paper outlining a set of possible indicators. This September forum discussed the advantages and disadvantages of the indicators proposed. It also considered a number of amendments to improve the indicators as well as alternative indicators put forward in submissions. Consultation on the development of the indicators is ongoing.

### **Breakfast seminar - Overview of the AER's new Retail Roles**

On 9 September 2010 the AER held a breakfast seminar in relation to its expected new retail functions under the National Energy Customer Framework (NECF). The seminar provided a high-level overview of the AER's new roles and the AER's guideline consultation process.

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

From July to September 2010 the AER released two 'prices above \$5000/MWh' reports. The reports related to events in Tasmania and New South Wales.

The electricity spot price in Tasmania reached \$5720/MWh and \$12 400/MWh on 7 August 2010. On 8 August 2010 the spot price reached \$8300/MWh and twice reached \$12 400/MWh. The reasons for the high spot prices related to behaviour by Hydro Tasmania.

On 10 August 2010 the electricity spot price in New South Wales reached \$6267/MWh and \$5739/MWh. The reasons for the high spot prices related to rebidding and network congestion.

## **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 *Trades Practices Act*.

## **Enforcement and monitoring activities under the Water Rules**

### **Enforcement**

The ACCC is responsible for enforcing compliance with rules made under the *Water Act 2007* (Water Act) including the Water Charge (Termination) Fee Rules 2009 (WCTFR), which took full effect from 1 September 2009.

During the September 2010 quarter, the ACCC utilised new enforcement powers under the Water Act for the first time by accepting two enforceable undertakings and issuing three infringement notices.

On 27 July 2010 the ACCC accepted an enforceable undertaking under section 163 of the Water Act from Murray Irrigation Limited (MIL). MIL admitted it contravened rule 5 of the WCTFR by over charging irrigators for termination fees and undertook to put procedures in place to avoid future contraventions. MIL also provided refunds in excess of \$140,000 to affected irrigators

On 6 September 2010 the ACCC issued three infringement notices totalling \$66,000 to Murrumbidgee Irrigation Limited (MI)<sup>3</sup>. The infringement notices, which have been paid by MI, related to alleged contraventions of rule 5 of the WCTFR. On 13 September 2010 the ACCC also accepted an enforceable undertaking from MI under section 163 of the Water Act. MI admitted it had contravened rule 5 of the WCTFR and undertook to put procedures in place to avoid future contraventions. MI also provided refunds in excess of \$640,000 (including interest) to affected irrigators.

The details of the undertakings are discussed below.

### **Monitoring**

The ACCC is required under the Water Act to monitor and report on:

- regulated water charges
- transformation arrangements
- compliance with the water market and water charge rules.

The ACCC will provide its first monitoring report to the Minister for Sustainability, Environment, Water, Population and Communities, the Hon. Tony Burke MP for public release in March 2011.

As part of preparing this report, the ACCC has sought information from a variety of reporting entities through the issuing of water monitoring information requests. These information requests were issued on 1 and 2 July 2010 and consisted of two parts:

- part 1 – sought information on irrigation infrastructure operator (IIO) charges, transformation and rule compliance
- part 2 – sought information on infrastructure operator charges, bulk water charges and water planning and management charges.

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<sup>3</sup> The infringement notices were given in accordance with section 156 of the Water Act

Reporting entities were asked to respond by 30 September 2010.

On 30 September 2010 the ACCC publicly released a shorter monitoring update report. The update provides an early view of the effects of recent water reform and the ACCC's role in advising on and facilitating compliance with the water market and water charge rules.

### **Section 163 Water Act undertakings accepted**

The ACCC accepted two enforcement-related section 163 undertakings during the September 2010 quarter:

**Murray Irrigation Ltd (MIL)** provided a court enforceable undertaking to the ACCC in relation to alleged imposition of termination fees in excess of those allowed for by the WCTFR. MIL has undertaken to:

- refrain from imposing demanding or receiving termination fees, for a period of three years, unless the fees are authorised by part 3 of the WCTFR
- implement and maintain, for a period of three years, a mechanism to ensure that termination fees are calculated appropriately having regard to the terminating customers' circumstances
- take steps to inform its customers and certain stakeholders about the undertaking
- provide future information to the ACCC in relation to its compliance with rule 5 of the WCTFR.

**Murrumbidgee Irrigation (MI)** provided a court enforceable undertaking to the ACCC in relation to alleged imposition of termination fees in excess of those allowed for by the WCTFR rules. MI has undertaken to:

- refrain from imposing demanding or receiving termination fees, for a period of three years, unless the fees are authorised by part 3 of the WCTFR and MI is able to verify to the ACCC that the termination fees are so authorised
- implement and maintain for three years a WCTFR specific compliance program to minimise the risk of future contraventions and ensure MI is aware of its responsibilities and obligations
- ensure all termination fees imposed, demanded and/or received by MI are approved by a member of MI's Executive team
- provide future information to the ACCC in relation to its compliance with rule 5 of the WCTFR
- take steps to inform its customers and stakeholders about the undertaking

- ensure, for a period of three years, invoices imposing or demanding termination fees advise terminating irrigators of the maximum termination fees allowable under the WCTFR.

## **Policy development**

### **Water Charge (Planning and Management Information) Rules**

On 24 July 2010 the Minister for Climate Change, Energy Efficiency and Water made the Water Charge (Planning and Management Information) Rules. These rules are based on advice provided by the ACCC in July 2009.

The rules aim to improve the transparency of water planning and management charges and require government agencies to consistently publish detailed information on water planning and management charges.

The ACCC will be responsible for enforcing compliance and monitoring of these rules.

Coinciding with the making of these rules, the ACCC released a guideline providing details of the rules and how stakeholders can publish information on water planning and management charges that complies with the rules.

## **Transport and General Prices Oversight**

### **Transport Monitoring and Analysis**

#### **Sydney Airport price notification for regional air services**

On 17 September 2010 the ACCC announced its decision to object to Sydney Airport Corporation Limited's (SACL's) proposal to increase in charges for the provision of terminal, check-in, passenger security and bag screening, runways and apron parking services to 'regional air services' at Sydney Airport. Regional air services are defined as regular public transport air services operating wholly within the State of New South Wales.

This decision responded to a price notification provided by SACL to the ACCC on 24 June 2010 under Part VIIA of the Trade Practices Act. In its price notification, SACL stated that it proposed to increase charges for the provision of services by 2.9 per cent from no earlier than 23 October 2010.

The ACCC considered that the proposed increases were not inconsistent with the Ministerial Direction to the ACCC that increases should not exceed the rate of increase in the Consumer Price Index over the relevant period (being 2.9 per cent over the twelve months to March 2010).

However, the ACCC was not satisfied that SACL had sufficiently demonstrated that a price increase was required to recover costs, particularly given that there had been strong growth in demand and associated revenues. Also, the ACCC considered that SACL had not supported its claims that the price increases were required to signal more efficient use of claimed scarce airport assets.

A separate matter that arose during the ACCC's consultation process involved concerns that SACL was proposing much larger increases to regional air services and that these other increases should also be notified to the ACCC. The concerns related

to charges for aircraft parking for regional air services that were in addition to the 2.9 per cent increases that had been notified.

After the ACCC raised the matter with SACL, the airport confirmed that it will not increase charges for aircraft parking for regional air services unless the charges are first notified to the ACCC. The ACCC published a media release on this matter on 26 August 2010.

### **Hunter Valley access undertaking application**

On 7 September 2010 the Australian Rail Track Corporation (ARTC) submitted a proposed access undertaking to the ACCC for assessment under Part IIIA of the *Trade Practices Act 1974*. The proposed undertaking relates to the provision of access to the Hunter Valley rail network operated by ARTC in New South Wales.

ARTC previously submitted to the ACCC a proposed access undertaking in relation to the Hunter Valley rail network on 22 April 2009. On 5 March 2010 the ACCC issued a Draft Decision in which it outlined its preliminary view that it would reject that proposed undertaking as being unlikely to be appropriate under Part IIIA. ARTC withdrew that undertaking from consideration on 19 April 2010.

The ACCC issued a Consultation Paper in relation to the proposed 2010 undertaking on 16 September 2010, and sought submissions from interested parties by 11 October 2010. The ACCC continues its assessment of the proposed 2010 undertaking.

### **GrainCorp's Proposed Undertaking**

On 22 September 2010 GrainCorp Operations Limited submitted a proposed undertaking to the ACCC for assessment under Part IIIA of the Trade Practices Act. GrainCorp's proposed undertaking relates to the provision of access to services for the export of bulk wheat at seven grain terminals operated by GrainCorp in Queensland, New South Wales and Victoria. These terminals are:

- Queensland: Fisherman Islands, Gladstone and Mackay
- New South Wales: Carrington and Port Kembla
- Victoria: Geelong and Portland.

The ACCC will shortly release an issues paper for consultation.

## **Postal Services**

### **Monitoring for cross subsidy**

On 23 July 2010 the ACCC issued its fifth report assessing cross-subsidy between the services provided by Australia Post. The report analyses Australia Post's 2008-09 regulatory accounts to establish whether its competitive services were being cross-subsidised with revenue from its monopoly services.

The ACCC found that the regulatory accounts did not provide evidence that Australia Post is cross-subsidising its competitive services with revenue from its monopoly services. The four previous cross subsidy reports also found that there was no

evidence that Australia Post was cross-subsidising its competitive services with revenue from its monopoly services.

## Price Monitoring

### Fuel monitoring

The ACCC closely follows developments in the petroleum industry and monitors retail prices of petrol, diesel and automotive liquefied petroleum gas (LPG) in all capital cities and around 150 regional centres and country towns.

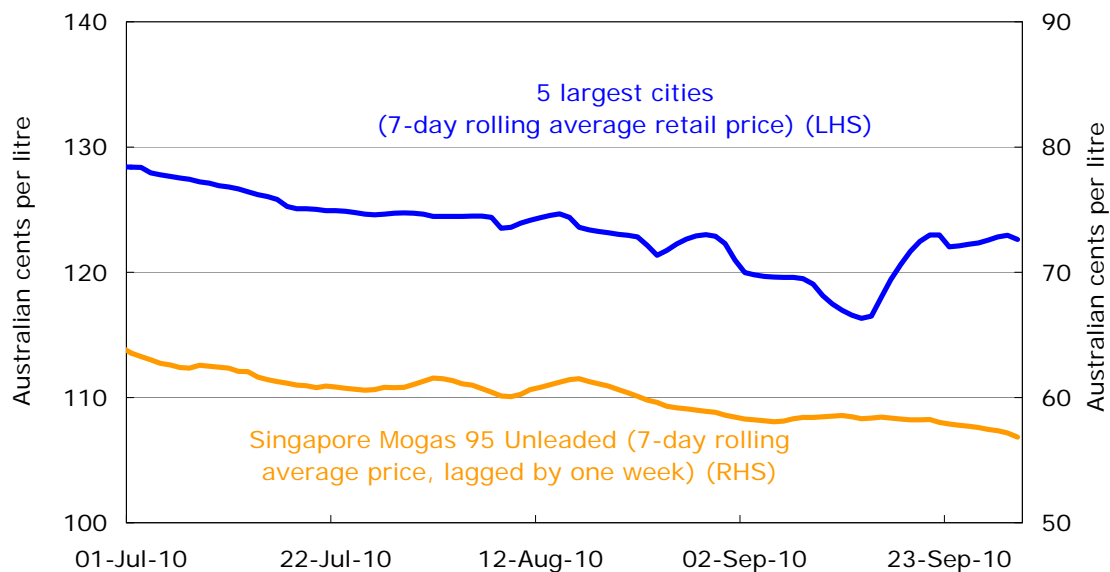
#### Price movements in the September 2010 quarter

##### *Petrol*

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

The chart below shows movements in these prices over the period 1 July to 30 September 2010. Retail regular 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 movements in these two prices is indicative rather than an exact science, and factors other than international benchmark prices can influence retail petrol prices in the short run. This caveat also applies to comparisons of movements between retail diesel and automotive LPG prices and their respective international benchmarks.

**Chart: Movements in retail regular unleaded petrol prices and international benchmark prices — 1 July to 30 September 2010**



As illustrated in the chart, retail regular unleaded petrol prices broadly tracked movements in the international benchmark price in the September 2010 quarter.

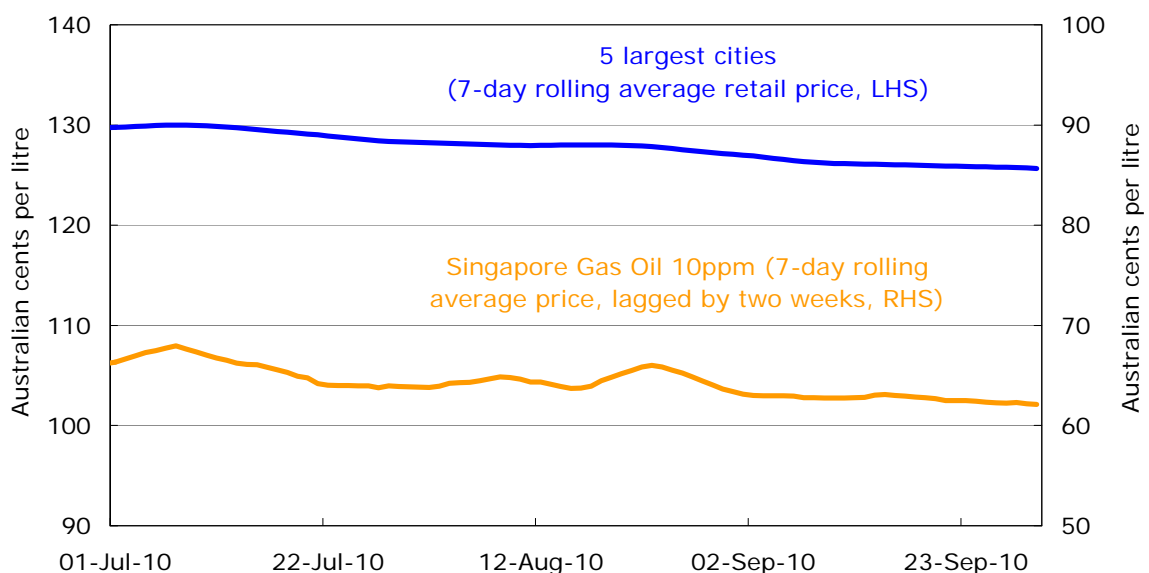
However, the influence of a period of significant discounting at the retail level is evident in September 2010. Average retail regular unleaded petrol prices across the five largest cities (on a seven-day rolling average basis) decreased from 128.4 cpl at the beginning of July to 122.6 cpl at the end of September - a decrease of 5.8 cpl.

### ***Diesel***

The ACCC monitors the movement of retail diesel prices against the spot price of Singapore Gasoil 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 Gasoil prices are shown on the right hand side. The chart illustrates that retail diesel prices broadly tracked movements in the international benchmark price over the September 2010 quarter.

Average retail diesel prices across the five largest cities (on a seven-day rolling average basis) decreased by 4.1 cpl over the September 2010 quarter - from 129.8 cpl to 125.7 cpl.

**Chart: Movements in retail diesel prices and international benchmark prices — 1 July to 30 September 2010**



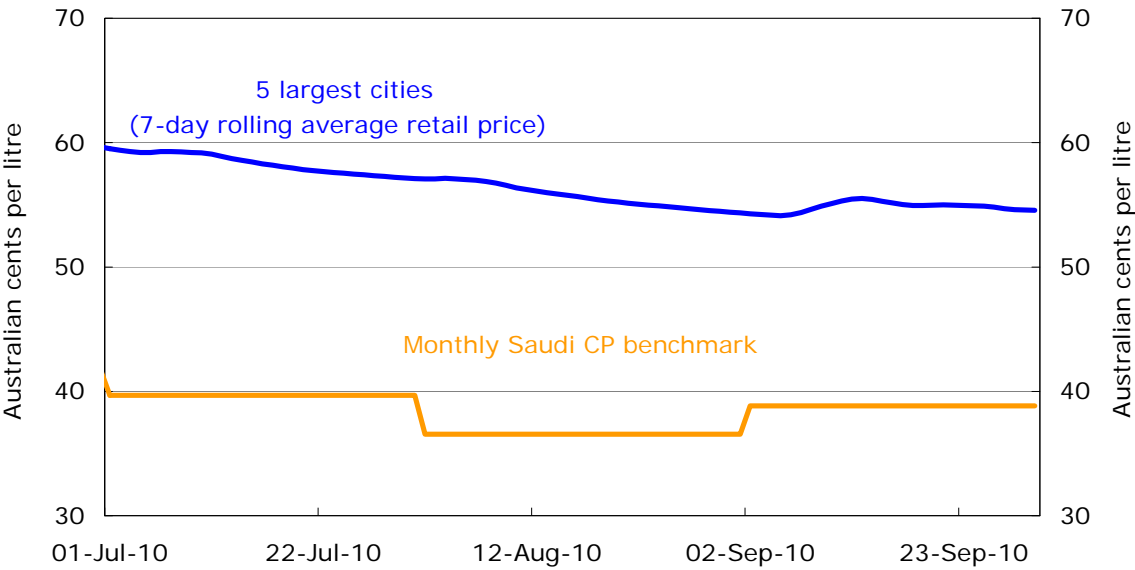
### ***Automotive LPG***

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 below).

Average retail automotive LPG prices across the five largest cities (on a seven-day rolling average basis) decreased by 4.9 cpl over the September 2010 quarter - from 59.5 cpl to 54.6 cpl.



**Chart: Movements in retail automotive LPG prices and international benchmark prices — 1 July to 30 September 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 fora, 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 ACCC staff about global developments through research, analysis and reporting
- building and sustaining strong links with key international officials and organisations.

### International fora

The ACCC participates in a variety of international fora throughout the year. The ACCC is an active member of the International Competition Network and is represented on its steering committee and a number of key working groups, including those relating to mergers and cartels. The ACCC continues to participate in the International Consumer Protection and Enforcement Network (ICPEN). Other fora in which the ACCC participates include the Organisation for Economic Cooperation and Development (OECD) and Asia-Pacific Economic Cooperation (APEC).

Participating in such fora delivers a number of benefits to the ACCC, including:

- advocating the work of the ACCC internationally
- promoting competition and consumer protection in the region
- assisting the ACCC to obtain global development updates, as well as information and best practice strategies on enforcement activities from counterpart agencies
- assisting in building and sustaining strong links with key international officials and organisations.

In particular, during the September 2010 quarter the ACCC:

- attended and participated in the ICN Agency Effectiveness Workshop in London, England
- attended and presented at the Global Developments in Competition Policy seminar in London, England

- attended and participated in the APEC Competition and Policy Law Group Training Course on Advocacy in Competition Law and Policy in Nha Trang, Vietnam
- attended the Energy Intermarket Surveillance Group Meeting in Cebu, the Philippines
- attended and participated in the Rencontres de St Gall 2010 Conference in St Gallen, Switzerland, and
- attended and participated in the East Asia and Pacific Infrastructure Regulatory Forum 2010.

## Free trade agreements

The ACCC continues to actively participate in free trade agreement (FTA) negotiation rounds, contributing in particular 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 law and regulations
- are practical in implementation
- contain mechanisms to build cooperative arrangements between the relevant enforcement authorities.

This quarter the ACCC participated in negotiations, or assisted in the preparation of material for negotiations, in relation to the following FTAs:

- Australia–Japan
- Australia–Korea
- Australia–Malaysia
- Trans-Pacific Partnership Agreement.

## Information requests

The ACCC continues to actively share information regularly with its international counterparts. During the September 2010 quarter, the ACCC received and/or sought information from counterpart agencies in Brazil, Brunei, Canada, Chile, Cyprus, the European Commission, Fiji, Germany, Hong Kong, Indonesia, Ireland, Japan, Malta, New Zealand, the Philippines, Pakistan, Papua New Guinea, Peru, Singapore, Switzerland, South Africa, Chinese Taipei, the United Kingdom, the United States and Vietnam.

Information shared between the ACCC and its counterpart agencies relates to a range of the ACCC's activities, including market inquiries, best practice processes for investigations, product safety standards, outreach methodology, cross-border cartels, mergers and marketing fraud, and general information about the ACCC's role and functions and Australia's competition, regulatory and consumer protection laws and

policies. The ACCC has also exchanged information to assist with enforcement investigations and measures against scam activity, and provided technical assistance.

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

The ACCC hosts visits by counterpart agencies, which provides an opportunity to share experiences and expertise. In addition to hosting meetings in Australia, the ACCC conducts meetings with counterpart agencies at international events such as OECD meetings.

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

- Competition Bureau, Canada
- Commerce Commission, New Zealand
- Ministry of Economic Development, New Zealand
- Competition Commission, Singapore
- Office of Fair Trading, United Kingdom
- Ofcom, United Kingdom
- Ofgem, United Kingdom
- Competition Commission, United Kingdom
- Department of Justice, United States
- Federal Trade Commission, United States
- Competition Authority, Vietnam
- Indonesia's National Consumer Protection Agency, the BKPN
- Said Business School, Oxford University
- Delegates from the Iraqi Trade Program

## **Capacity-building activities**

The ACCC's capacity-building activities mainly focus on best practice processes in competition, infrastructure regulation and consumer protection. ACCC involvement in technical assistance programs provides valuable learning opportunities for developing agencies and experience for ACCC staff in delivering training.

This quarter the ACCC facilitated the attendance of two staff from the Hong Kong Customs agency to attend the ACCC Basic Investigations Course. The ACCC also participated in the APEC CPLG Training Course.

## **Staff exchange**

The ACCC and its counterpart agencies participate in staff exchanges and secondments to assist in developing an increased understanding of each other's activities, laws and policies, and to facilitate cooperation between agencies.

In the September 2010 quarter, staff exchanges commenced in relation to an ACCC/ Chinese Taipei exchange. A four month staff secondment to the Office of Fair Trading in the United Kingdom came to an end. A six month staff secondment to Ofgem, the electricity and gas regulator in the United Kingdom, commenced in July.

## 7 Reviews and inquiries

### Legislative matters

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

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

On 13 July 2010 the second tranche of the Commonwealth legislation introducing the Australian Consumer Law, the Trade Practices Amendment (Australian Consumer Law) Bill (No. 2) 2010, received the Royal Assent. This legislation introduces the remaining reforms to the Trade Practices Act as part of the Australian Consumer Law process. In particular, the legislation implements three key sets of reforms:

- agreed best practice reforms based on existing provisions in the fair trading acts of the states and territories – such as door-to-door and lay-by sales
- 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.

These provisions will commence on 1 January 2011. From this date the short title of the Trade Practices Act will change to the *Competition and Consumer Act 2010*.

In addition, on 1 July 2010 the provisions related to unfair contract terms contained in the first tranche of the Australian Consumer Law—the *Trade Practices Amendment (Australian Consumer Law) Act (No. 1) 2010*—came into effect.

#### **Trade Practices Amendment (Infrastructure Access) Bill 2010**

On 29 October 2009 the Government introduced the Trade Practices Amendment (Infrastructure Access) Bill 2009 into the House of Representatives. Parliament passed an amended version of the bill on 24 June 2010. The bill received the Royal Assent on 13 July 2010.

Among other changes, the legislation amended the Trade Practices Act in relation to:

- binding time limits and limited merits review
- applications by certain persons that a certain service is ineligible to be a declared service
- enabling the ACCC to accept access undertakings with fixed principles that will apply to subsequent undertakings
- enabling the ACCC to issue an amendment notice proposing amendments to a proposed access undertaking submitted by a service provider.

## **Other developments**

### **Ministerial arrangements**

After the August 2010 election, the Hon David Bradbury MP was appointed as Parliamentary Secretary to the Treasurer. Mr Bradbury is responsible for administering the majority of the Trade Practices Act, including the administration of the ACCC, and for the implementation and administration of competition and consumer policy.

The following provisions of the Trade Practices Act are not the responsibility of the Parliamentary Secretary to the Treasurer:

- Parts XIB and XIC (which relate to the telecommunications industry) are the responsibility of the Minister for Broadband, Communications and the Digital Economy, Senator the Hon Stephen Conroy.
- Part X (international liner cargo shipping), is the responsibility of the Minister for Infrastructure and Transport, the Hon Anthony Albanese MP
- Division 1AA of Part V (country of origin representations) is the responsibility of the Minister for Innovation, Industry, Science and Research, Senator the Hon Kim Carr.

### **Water Charge (Planning and Management Information) Rules 2010**

The Water Charge (Planning and Management Information) Rules 2010 (the Rules) came into effect on 24 July 2010. The Rules were based on advice provided by the ACCC to the Minister for Climate Change, Energy Efficiency and Water in July 2009. The ACCC is the sole enforcement agency for contraventions of the Rules.

Water planning and water management activities are in broad terms those activities that are undertaken by or on behalf of governments to ensure the long-term sustainability of water resources and to plan for and manage the current and future use of those resources.

The Rules advance the Murray Darling Basin water charging objective of achieving pricing transparency, by requiring persons determining charges for water planning and water management activities to publish information about these charges

The publication of this information will make information on water planning and management charges more widely and consistently available across Murray Darling Basin states. It will also result in greater, more direct disclosure of both the costs of water planning and water management activities for which charges are levied, and the link between those costs and the charges imposed on water access entitlement holders and other water users.

### **Franchising Code of Conduct amendments**

Following the 2008 inquiry into the Franchising Code of Conduct by the Parliamentary Joint Committee on Corporations and Financial Services and recent advice from an expert panel, the Australian Government made a number of amendments to the Franchising Code of Conduct. These amendments came into effect on 1 July 2010

and apply to franchise agreements entered into on or after 1 July 2010. This also includes franchise agreements transferred, renewed or extended on or after 1 July 2010.

Among other amendments, the changes include a requirement for franchisors to disclose more information to franchisees on issues such as unilateral contract variations, future capital expenditure and confidentiality obligations. Franchisors are also required to give six months notice if they are not going to renew a franchise agreement.

## **Reports**

During the September 2010 quarter the 2009–10 annual report of the ACCC incorporating the AER was provided to the Minister for Competition Policy and Consumer Affairs.

## **Parliamentary inquiries**

On 2 September 2010 the AER provided a briefing to the Western Australian Legislative Assembly's Economics and Industry Committee, to assist its inquiry into domestic gas prices.

## **Consultative committees**

**Health Sector Consultative Committee (HSCC)** | met 24 August 2010 | issues discussed included:

- recent health-related ACCC complaints, enquiries and enforcement outcomes
- product safety clearing house and mandatory reporting requirements
- unfair contract terms and the Australian Consumer Law more broadly.

**Consumer Consultative Committee (CCC)** | met 7 September 2010 | issues discussed included:

- sales practices
- door-to-door selling
- telecommunications.



# Appendix

## Speeches

During the September 2010 quarter the ACCC delivered 49 speeches, including:

### Regulatory Update

Mr Michael Cosgrave, Group General Manager of Communications Group, 2010 Australian Telecommunications Users Group Regional Conference, 14 July 2010

### The ACCC's role in mergers and acquisitions – a mythbuster!

Mr Graeme Samuel, Chairman, Mergermarket conference, 30 September 2010

### Trade Practices Committee Workshop Opening Remarks

Mr Graeme Samuel, Chairman, Law council of Australia, Trade Practices Committee Workshop, 21 August 2010

### Changes under the ACL

Mr Peter Kell, Deputy Chair, Society of Consumer Affairs Professionals, 26 August 2010

### Professionals and the Trade Practices Act

Dr Michael Schaper, Deputy Chair, Professionals Australia Sydney, 23 July 2010

### Agreements, Communication and Facilitating Practices: where is the harm?

Dr Jill Walker, Commissioner, Law Council of Australia, Trade Practices Committee Workshop, 21 August 2010

## News releases

During the September 2010 quarter the ACCC issued 77 news releases and the AER issued two news releases.

## Publications

The following publications were released during the September 2010 quarter.

### Corporate

*ACCCCount: A report of the Australian Competition and Consumer Commission's activities, 1 April to 30 June 2010*

*Corporate Plan 2010, 23 July 2010*

### For consumers

*Consumers and unfair contract terms – DL Brochure, 1 July 2010*

*Product safety bulletin—Fixed-gear pedal bicycles, 12 July 2010*

*Unit Pricing DVD – 13 August 2010*

*Little black book of scams – 5, 2 September 2010*

### **For business**

*Franchising Code amendments, 1 July 2010*

*Competing Fairly DVD, 21 July 2010*

*Being smart about your new franchise - check list before signing a lease agreement, 4 August 2010*

*The Franchisee manual, 5 August 2010*

*Disclosure under the Franchising Code of Conduct, 10 August 2010*

*Franchisee start-up checklist, 10 August 2010*

*Immunity policy for cartel conduct, 23 August 2010*

*Motor vehicle recovery straps – supplier guide, 23 August 2010*

*Small business and the Trade Practices Act, 9 September 2010*

*Franchising Code of Conduct compliance manual CD, 7 October 2010*

### **ACCC reports**

*ACCC water monitoring update 2009-10, 5 October 2010*

### **For regulated industries**

*11<sup>th</sup> ACCC Regulatory Conference, 20 July 2010*