



Australian
Competition &
Consumer
Commission

ACCCOUNT

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

1 October to 31 December 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 (ACCC), through securing compliance with the *Trade Practices Act 1974* which is now known as the *Competition and Consumer Act 2010*, enhances the welfare of all Australians by promoting competition, fair trading and protects consumers from unscrupulous business practices.

In meeting these objectives, the ACCC ensures that its processes are efficient, transparent and fair, and that outcomes achieved are communicated to the Australian public. In the December 2010 quarter, the ACCC undertook a range of activities that benefited both businesses and consumers.

In total, the ACCC instituted ten litigation proceedings on enforcement matters during the December 2010 quarter. All of these new proceedings concern fair-trading or consumer protection issues. Seven litigation proceedings were concluded in the December 2010 quarter. This included the successful completion of two competition cases:

- a penalty of \$110 000 and other orders imposed on Black and White Cabs Pty Ltd for third line forcing¹
- penalties, injunctions costs and other orders were imposed on IGC Dorel Pty Ltd and its managing director Robert Berachik for resale price maintenance by not allowing retailers to discount *Bertini* baby prams.

The remaining concluded matters concerned fair trading and consumer protection issues. Three parties were fined for failing to include Sunday and or public holiday surcharges on their menu prices. Two parties were subject to outcomes consisting of declarations, corrective notices, trade practices compliance programs and costs in supplying goods with misleading green claims made by the manufacturer and distributor of plastic shopping bags.

During the December 2010 quarter, the ACCC's liaison and educative activities focused on informing businesses and consumers as well as their advisors about the new elements of the Australian Consumer Law.

During the December 2010 quarter the ACCC preassessed 55 merger proposals and reviewed 45 merger proposals. Major matters the ACCC decided include:

- opposing Metcash Trading Ltd's proposed acquisition of Interfrank Group Holdings Pty Ltd (Franklins) supermarkets
- not opposing Aspen Pharmacare Holdings Ltd's proposed acquisition of Sigma Pharmaceuticals Ltd's pharmaceutical division

¹ Third line forcing is a form of exclusive dealing involving the supply of goods or services on the condition that the purchaser buys goods or services from a particular third party, or a refusal to supply because the purchaser will not agree to that condition

- not opposing the proposed acquisitions of certain electricity privatisation assets of the New South Wales (NSW) Government by AGL Energy Ltd and Origin Energy Limited subject to s.87B undertakings.

In the regulatory area the ACCC continued its work on the National Broadband Network (NBN). A discussion paper was released on the number and location of the initial Points of Interconnect (POI) for the NBN. Advice was also provided to government on this issue in November 2010. With respect to existing communications networks the ACCC issued a position paper announcing its proposed domestic benchmarking approach to transmission pricing on the domestic transmission capacity service (DTCS) and released a methodology for the administration of the Telstra carrier charges and price control arrangements.

On 8 November 2010 the ACCC released the container stevedoring report for 2009–10. The report detailed that demand at Australia's major ports is forecast to almost triple during the next two decades. Further, it noted that if Australia was to meet the predicted boom in trade, competition is needed to encourage stevedores to invest in terminals and make the best use of existing facilities.

On 21 December 2010 the ACCC issued a Position Paper on an access undertaking submitted by the Australian Rail Track Corporation (ARTC), which relates to the provision of access to the Hunter Valley rail network operated by ARTC in New South Wales.

On 15 December 2010 the Australian Energy Regulator (AER) published the State of the Energy Market 2010 report. The report provides an overview of Australia's electricity and natural gas markets over the past 12 to 18 months. The AER also continues its regulatory role in gas network matters, where it is currently considering access arrangements for Queensland and South Australian distribution networks and the Amadeus pipeline. The appeal to the Australian Competition Tribunal by Jemena Gas Networks relating to the access arrangement decision made by the AER in June 2010 is continuing. On 21 December 2010 the AER published its Final Decision on a performance incentive scheme to minimise transmission congestion for ElectraNet. On 22 December 2010 the AER released a discussion paper proposing objectives and priorities for electricity distribution and transmission network service providers performance reporting and released the Victorian Electricity Distribution Businesses Comparative Performance Report 2009.

On 15 December 2010 the ACCC's released its latest petrol monitoring report for 2010. The report highlighted that Australian retail petrol prices closely followed the international benchmark prices of refined petrol. Domestic prices were more stable in 2009-10 compared with earlier years, although the weekly retail price cycles were again evident in the larger cities. Also evident was further evidence of structural changes in the Australian petrol industry, particularly in retail markets where Mobil effectively exited the Australian retail market selling its retail assets to 7-Eleven and On the Run. Sales of ethanol blended petrol increased. The amount of the bowser price for all petrol that motorists paid as profits to the petrol companies accounted for an average of 2.9 cents per litre.

On 23 November 2010 the Parliamentary Secretary to the Treasurer, the Hon David Bradbury MP, and the New Zealand Minister of Commerce, the Hon Simon Power MP, announced cross membership appointments to the ACCC and the New Zealand Commerce Commission (NZCC). ACCC member Dr Jill Walker will join the Commerce Commission as an associate member, and will be particularly involved in issues that

have a trans-Tasman dimension such as merger clearance work involving trans-Tasman market developments. NZCC chair Dr Mark Berry has been appointed as an associate member of the ACCC. Both Dr Walker and Dr Berry have been appointed for three-year terms from 1 December 2010 to 30 November 2013.

On 27 October 2010, Ms Cristina Cifuentes was appointed for five years as a part-time member of the Australian Energy Regulator (AER) and associate commissioner of the ACCC.

1 Enforcement and compliance

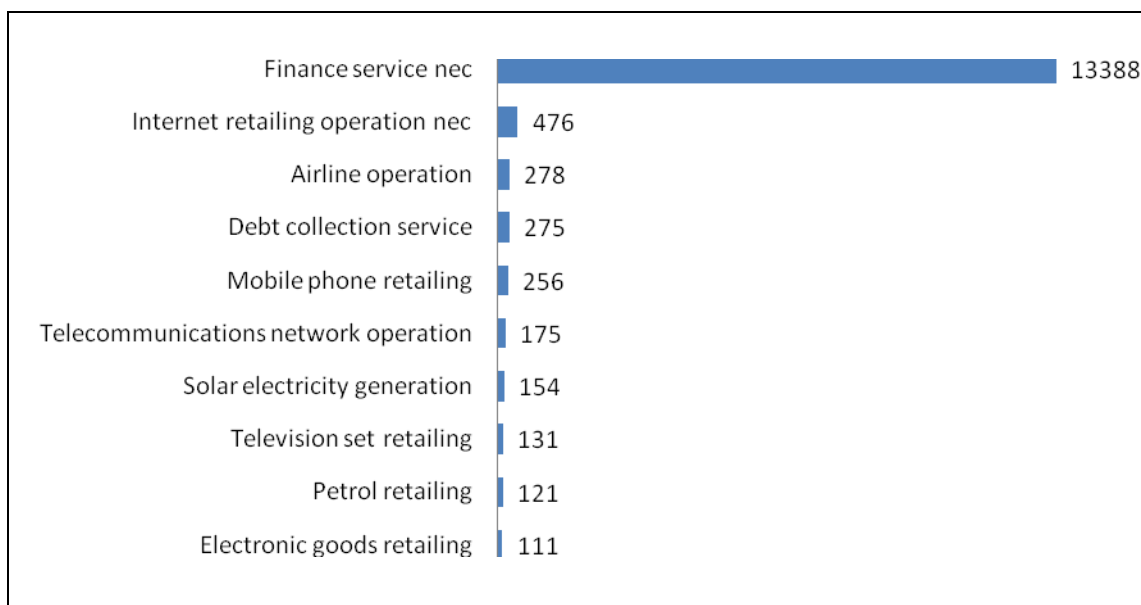
Maintaining and enhancing compliance with the *Trade Practices Act 1974* (TPA), which became the *Competition and Consumer Act 2010* effective 1 January 2011, is a key objective of the ACCC. This is achieved by promoting competition and informing markets, encouraging fair trading and protecting consumers. The enforcement function of the ACCC, including litigation, is well supported by its liaison, analysis, outreach and compliance arms.

Complaints and inquiries

During the December 2010 quarter, the ACCC Infocentre responded to 35 690 complaints and inquiries from businesses and consumers (email: 9 444, telephone: 25 718, letter correspondence: 528). Of these, 27 176 (76 per cent) complaints and inquiries were entered into the ACCC's TRACKIT database by Infocentre staff.²

Major drivers of these contact levels include concerns about scam-based activity, and requests for warranty and refunds advice. The Infocentre placed 424 complaints and inquiries into the 'under assessment' category in the ACCC's database for further consideration during the December 2010 quarter. The results for the category 'Finance service not elsewhere categorised (nec)', refer primarily to complaints received about advance fee and other scam based activity. This category represents 37 per cent of total contacts for the period.

Chart 1.1: The ten industries attracting the most complaints



Of the complaints and inquiries entered into the ACCC's database during the December 2010 quarter, 85 per cent related to consumer protection matters, which is

¹ The Infocentre often receives contacts that have no relevance 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.

higher than the 2010 quarterly average of 84 per cent. Competition matters accounted for 3 per cent of contacts, which is consistent with the quarterly average figure of 3 per cent reported in 2010.

Enforcing the Act 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 ten enforcement litigation proceedings in the Federal Court of Australia during the December 2010 quarter for alleged breaches of the TPA.

Competition

While no competition matters were commenced in this quarter, the ACCC was able to resolve a significant number of matters through court enforceable undertakings. Thirteen court enforceable undertakings were provided to the ACCC in the December quarter in relation to an alleged anti-competitive arrangement between St Vincent's Hospital private anaesthetists, as well as alleged anti-competitive conduct in advertising packaged liquor.

Fair trading and consumer protection

Willesee Healthcare Pty Ltd, Maria Teresa Colosimo, Sophie Lee-Anne Georgonicas, Newlife Publishing And Marketing Pty Ltd, Dzung Kieu Price, Renew You Centre For Wellbeing And Longevity Pty Ltd, Bojan Schiznetz, Theoliza Pty Ltd and Theta Line Pty Ltd

Commenced 8 October 2010 | VID859/2010

Proceedings under Part V for alleged false and misleading representations in relation to diagnosis and treatment of allergies.

Global One Mobile Entertainment Ltd and 6g Pty Ltd

Commenced 20 October 2010 | NSD1388/2010

Proceedings under Part V for alleged misrepresentations in the promotion of mobile premium services.

MSY Technology Pty Ltd, M.S.Y. Technology (NSW) Pty Ltd, MSY Technology (QLD) Pty Ltd, MSY Technology (SA) Pty Ltd and MSY Technology (WA) Pty Ltd

Commenced 28 October 2010 | NSD1472/2010

Proceedings under Part V for alleged false or misleading warranty representations in the sale of computers, computer parts, accessories and other electronic goods.

Yellow Page Marketing BV and Yellow Publishing Ltd

Commenced 4 November 2010 | VID942/2010

Proceedings under Part V for alleged false or misleading and deceptive representations about online directory business services.

Dimmeys Stores Pty Ltd

Commenced 10 November 2010 | VID964/2010

Proceedings under Part V for allegedly supplying children's dressing gowns which did not carry fire hazard information labels as required by the mandatory consumer product safety standard for children's nightwear.

TPG Internet Pty Ltd

Commenced 16 December 2010 | VID1099/2010

Proceedings under Part V for alleged false or misleading representations and failure to state a single price in relation to advertisements of an ADSL2+ broadband plan.

Smash Enterprises Pty Ltd, Spotlight Pty Ltd and Fantastic Furniture Pty Ltd

Commenced 17 December 2010 | VID1102/2010

Proceedings under Part V for allegedly supplying bean bags without the choking hazard warning label as required by the mandatory consumer product safety standard for bean bags. It is also alleged that, by supplying the bean bag covers, Fantastic Furniture breached a court-enforceable undertaking it provided to the ACCC in 2008 and which has effect for three years.

Advanced Medical Institute Pty Ltd, AMI Australia Holdings Pty Ltd, James Vandeleur, Jacov Vaisman and Brian Lonergan

Commenced 21 December 2010 | VID1113/2010

Proceedings under Part IVA for alleged unconscionable conduct in the promotion and supply of medical services and medications for men suffering from erectile dysfunction.

SMS Global Pty Ltd and Carl Bryan Krumins

Commenced 22 December 2010 | VID1146/2010

Proceedings under Part V for alleged false, misleading or deceptive conduct in relation to representations of purported government endorsement and industry membership and experience.

Marksun Australia Pty Ltd

Commenced 24 December 2010 | WAD418/2010

Proceedings under Part V for alleged false or misleading representations in representing on various websites that its ugg boots were made in Australia when the ugg boots were made in China.

Proceedings concluded

Seven enforcement litigation proceedings were finalised during the December 2010 quarter.

Competition

Black and White Cabs Pty Ltd

Commenced 6 August 2010 | Concluded 14 December 2010 | VID650/2010

Proceedings under Part IV for allegedly engaging in third line forcing conduct in requiring some taxi operators as part of a sub-lease agreement to exclusively use the 'Cabcharge Payment System' when processing electronic payments.

Justice Finkelstein | Federal Court Melbourne

Outcome | Declarations, penalty (\$110, 000), injunction, trade practices compliance program, costs.

IGC Dorel Pty Ltd and Robert Berchik

Commenced 22 July 2010 | Concluded 30 November 2010 | SAD102/2010

Proceedings under Part IV for alleged resale price maintenance in relation to 'Bertini' brand prams, by supplying the prams to retailers on condition that retailers must sell or advertise those prams at prices specified by IGC Dorel.

Justice Lander | Federal Court Adelaide

Outcome | IGC Dorel: declarations, injunctions, send a letter to current retailers of Bertini products to notify them of the outcome of the proceedings and to inform them of the illegality of resale price maintenance, implement a trade practices law compliance and education program, pecuniary penalties (\$80,000) and costs. Mr Berchik: declarations, injunctions, pecuniary penalty (\$20,000).

Auscha Corporation Pty Ltd and Nagarajah Rajkumar

Commenced 02 July 2010 | Concluded 15 October 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".

Justice Nicholas | Federal Court Sydney

Outcome | Injunctions, corrective notices, send a letter to customers affected by the conduct to advise them of the ACCC's action and the outcome and costs.

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

Commenced 6 September 2010 | Concluded 02 November 2010 | NSD1160/2010

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

Justice Jagot | Federal Court Sydney

Outcome | Declarations, penalty (\$13,200) and costs.

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

Commenced 06 September 2010 | Concluded 02 November 2010 | NSD1158/2010

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

Justice Jagot | Federal Court Sydney

Outcome | Declarations, penalty (\$13,200) and costs.

A.I. Constructions (ACT) Pty Ltd (ACN 131 699 262) t/a Babar Cafe and Bar (Woden)

Commenced 06 September 2010 | Concluded 06 December 2010 | ACD33/2010

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

Justice Stone | Federal Court Canberra

Outcome | Declarations, pecuniary penalty (\$20,000), injunction, costs.

Goody Environment Pty Ltd and Nupak Australia Pty Ltd

Commenced 02 July 2010 | Concluded 20 December 2010 | SAD92/2010

Proceedings under Part V for alleged misleading and deceptive conduct and false representations in respect of claims that 'Goody' branded plastic bags were biodegradable and compostable in accordance with the Australian Standard and that they could be legally supplied in South Australia, when this was not the case.

Justice Lander | Federal Court Adelaide

Outcome | Goody Environment: declarations, publish corrective notices, implement trade practices compliance program, costs. Goody undertook to the Court to refrain from making representations that plastic shopping bags promoted by or supplied by Goody, or on behalf of Goody, are biodegradable or compostable in accordance with the Australian Standard unless it has first obtained independent scientific testing of the actual plastic shopping bags which confirms that that bags do, in fact, meet the Australian Standard.

Nupak Australia: declarations, publish corrective notices on the Nupak website and in the Advertiser newspaper; send a letter to each Nupak customer supplied with Goody plastic bags informing them of the orders of the Federal Court and the undertakings given by Nupak; implement a trade practices compliance program; and costs. Nupak undertakes to refrain from making representations that the plastic shopping bags it promotes are biodegradable or compostable in accordance with the Australian Standard unless Nupak has first obtained scientific testing which substantiates such representations.

C.I. & Co Pty Ltd, Antonio Pisano and Anna Angela Pisano

Commenced 23 September 2010 | Concluded | 23 December 2010 | WAD278/2010

Proceedings under Part V for allegedly selling eggs labelled as free range when those eggs were cage or barn laid eggs. It was 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.

Justice Barker | Federal Court Perth

Outcome | Declarations, injunctions and costs. Mr Pisano was also ordered to pay a pecuniary penalty of \$50,000.

Section 87B undertakings accepted

The ACCC accepted nineteen enforcement-related section 87B undertakings during the December 2010 quarter.

Competition

SVPAD Services Ltd and St Vincent's Private Hospital Sydney have provided court enforceable undertakings to the ACCC in relation to an alleged anti-competitive arrangement between St Vincent's private anaesthetists in that, since at least the early 1990s, the members of the department of anaesthetists have adopted and put into effect an arrangement for allocating amongst themselves all permanent anaesthetic work performed at the hospital. The ACCC conducted an investigation into the anaesthetists' conduct and considers that the arrangement was likely to have contravened section 45 of the TPA, which prohibits anti-competitive arrangements containing exclusionary provisions. As part of the undertaking:

- the department of anaesthetists will no longer allocate amongst themselves the permanent anaesthetic work performed at the hospital
- the hospital will be responsible for allocating all permanent anaesthetic work, and will establish procedures under which hospital proceduralists can request the allocation of their preferred anaesthetist to their lists or sessions
- the private anaesthetists will undertake trade practices compliance training.

West Coast Liquor Merchants WA Pty Ltd, Pinard Pty Ltd, Cellsan Pty Ltd, My Liquor Pty Ltd, Catimist Pty Ltd, Kalbarri Holdings Pty Ltd, Raincroft Holdings Pty Ltd, Breakspear Nominees Pty Ltd, Warehouse Liquor WA Pty Ltd and Kelly Bros Investments Pty Ltd have provided court enforceable undertakings to the ACCC in relation to alleged anti-competitive conduct in the advertisement of packaged liquor. The ACCC considered that by entering into an arrangement to jointly advertise packaged liquor at specified prices, the parties entered into an arrangement that contained a cartel provision, in contravention of section 44ZZRJ of the TPA; and the publication of the advertisements gave effect to the cartel provision in contravention of section 44ZZRK of the TPA. These parties have separately undertaken to:

- refrain from entering into a contract, arrangement or understanding with another party or parties regarding the joint advertising of liquor at specified prices
- refrain from publishing joint advertisements advertising liquor at specified prices, unless all of the advertised liquor has been collectively acquired by the parties to the contract, arrangement or understanding within the meaning of the TPA
- establish and implement a trade practices compliance program.

Fair trading and consumer protection

Bronze Swan Pty Ltd has provided court enforceable undertakings to the ACCC in relation to alleged misleading claims about the power-saving ability of the 'Enerasonic Power Saver' device. Bronze Swan has undertaken to:

- not engage in the retail sale, marketing or distribution of the Power Saver

- re-open the Bronze Swan website for a period of 3 months and display the corrective notice
- display the corrective notice for a period of 12 months at each trade or agricultural fair or home show that it attends
- send a copy of the corrective notice to all consumers and agents that purchased the Power Saver
- implement a Trade Practices Compliance Program.

Australian Health & Nutrition Association Ltd t/a Sanitarium has provided court enforceable undertakings to the ACCC in relation to alleged misrepresentations made on the packaging of some cereal products which gave an impression to consumers that the cereals contained a greater quantity of the prominently depicted fruit than was actually the case. Sanitarium has undertaken to:

- not use combinations of colours, words and/or images on the packaging of its cereal products that are likely to mislead consumers
- list the fruit content on the ingredient panels of its cereals so that the percentage attributed to the fruit accurately and clearly reflects the amount of fruit
- change the ingredient panel labelling of its cereals by providing a breakdown of all the ingredients
- implement a product labelling audit of all its food products to ensure its products accurately describe the food contained within
- enhance, maintain and continue to implement its trade practices law compliance program.

M Webster Holdings Pty Ltd t/a David Lawrence, Jigsaw and Marcs has provided court enforceable undertakings to the ACCC in relation to allegedly false or misleading representations by displaying refund policies on receipts and signs which stated the stores would not offer an exchange, refund or credit on sale goods. M Webster has undertaken to:

- refrain from making false or misleading representations regarding the existence, exclusion or effect of any warranty, right or remedy
- ensure that all refund statements made by it and each of its stores complies with the TPA
- display corrective notices on its website for at least 28 days
- send a corrective notice by email to members of each brand's loyalty program
- implement a Trade Practices Compliance Program.

National Foods Ltd has provided court enforceable undertakings to the ACCC in relation to alleged misleading representations made on the packaging of 'Berri Australian Fresh and Daily Juice Company products' National Foods has undertaken to:

- change its Australian Fresh brand to Australian Grown
- cease supplying Berri Australian Fresh and Daily Juice Company products containing the old representations by 14 March 2011

- replace this old stock with new packaging that would not mislead consumers
- publish corrective advertisements in major Sunday newspapers throughout Australia within 14 days to alert Australian consumers to the contents of these juices while the new packaging is prepared.

Power Balance Australia Pty Ltd has provided court enforceable undertakings to the ACCC in relation to alleged misleading or deceptive conduct concerning 'Power Balance' wristbands and pendants. Power Balance claimed that its wristbands and pendants improve balance, strength and flexibility and work positively with the body's natural energy field. It also marketed its products with the slogan "Performance Technology". These claims made by Power Balance were not supported by any credible scientific evidence. Power Balance has undertaken to:

- refrain from making any claims about its products that are not supported by a written report from an independent testing body that meets certain standards
- offer a refund to consumers who feel they have been misled
- publish corrective advertising to prevent consumers from being misled in the future
- amend the Australian website to remove any misleading representations
- remove the words 'performance technology' from the brand itself
- implement a Trade Practices Compliance Program.

Dell Australia Pty Ltd has provided court enforceable undertakings to the ACCC in response to concerns over its warranty and refund policies. From January 2008 to May 2010, Dell provided information to its customers that may have misled those customers about their statutory warranty rights, and responded to customer complaints in a manner not in accordance with consumers' statutory warranty rights. Dell Australia has undertaken to:

- email all customers who purchase products directly from Dell in the next three years, and publish on the Dell website for a period of three years, a notice outlining the warranty rights of consumers
- publish an advertisement in the Weekend Australian newspaper notifying the public of the ACCC's investigation and inviting consumers to contact Dell if they wish to have their claims reassessed
- upgrade its existing Trade Practices Compliance Program.

Hamanth Ravi has provided court enforceable undertakings to the ACCC in relation to alleged supply of chewing tobacco which is a banned good. Mr Ravi has undertaken to:

- refrain from supplying chewing tobacco while there is in place a ban on the supply of such goods
- develop and implement a Trade Practices Compliance Program to ensure awareness of his responsibilities and obligations under the TPA.

Fantastic Holdings Ltd and Fantastic Furniture have provided court enforceable undertakings to the ACCC in relation to alleged false, misleading or deceptive conduct by representing that furniture goods referred to in catalogues, television

advertisements and on its website were either wholly or predominantly upholstered in leather when, in fact, they were upholstered in wholly synthetic materials, "bonded leather" (also promoted as "Eurohide" and "Pellissima"), or "combination leather". Fantastic Holdings and Fantastic Furniture have undertaken to:

- refrain from using the terms "leather" or "hide" to describe upholstery that is not wholly leather without clearly disclosing the fact it is not wholly leather
- publish a corrective notice on Fantastic Furniture's website and at the point-of-sale at each Fantastic Furniture store
- implement a Trade Practices Compliance Program.

2 Communicating with businesses and consumers

The ACCC continued its strong commitment to liaise with, consult with, and inform businesses and consumers about their rights and obligations ahead of the second tranche of the ACL effective 1 January 2011.

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 December 2010 quarter, the ACCC met with representatives from Australian Government agencies, including the:

- Department of Health and Ageing in relation to advertising and marketing of alcoholic energy drinks and the labelling of aseptic juice
- Department of Climate Change and Energy Efficiency in relation to a national carbon offset standard and the transition from the greenhouse friendly program; the replacement of the energy efficiency labelling scheme with greenhouse and energy minimum standards (GEMS); and the potential for a memorandum of understanding with the department
- Health Care Complaints Commission on the role and responsibilities of ACCC.

During the quarter ACCC staff met with industry associations, professional associations and consumer associations, including:

- Australian Beverages Council in relation to fresh juice descriptors and the use of aseptic juice, and the review of the fruit juice voluntary code of practice
- Australian Liquor Stores Association in relation to competition and consumer protection issues in the retail liquor industry
- Australian Paper Industry Association in relation to green marketing claims and the paper industry
- Optometrists Association of Australia in relation to competition and consumer protection issues in the optometry market
- Queensland Consumers Association in relation to unit pricing survey and anniversary of unit pricing code enforcement
- The Motor Traders' Association and the Tourism and Transport Forum in relation to the new provisions for unfair contract terms and the hire car industry.

During the quarter the ACCC participated in discussions with an EU trade delegation on WTO geographic indicators and scotch whiskey labelling rules.

Business liaison

During the December 2010 quarter, the ACCC focused on educating businesses and consumers, as well as their advisors, about the new rights and obligations contained in the ACL, which would commence on 1 January 2011. These efforts included:

- engagement with stakeholders in a broad range of forums – more than 50 meetings with government and industry representatives, business operators and consumer groups nationally

- participation in small business and franchising expos and field days, including the National Franchise Convention and the South West Seniors Expo
- conducting more than 35 presentations, primarily focusing on the ACL and specific areas of that law including consumer guarantees, sales practices and the national product safety regime
- providing information sessions on the ACL and small business issues for staff of other agencies and business advisory groups including the Small Business Support Line and Ausindustry Hotline, Office of the Victorian Small Business Commissioner, West Australia's Small Business Development Corporation and the Tasmanian Chamber of Commerce and Industry
- issued four updates to subscribers of the ACCC's Small Business Information Network on issues such as court outcomes and new publications relevant to small business.

As part of its continuing work on the implementation of the unfair contract terms (UCT) provisions introduced on 1 July 2010, the ACCC:

- convened a telecommunications industry forum to discuss the broader issues pertaining to the standard form contracts utilised by the industry
- met with hire car businesses to raise awareness of the new provisions for unfair contract terms.

Trade Practices Act awareness

The ACCC works with other regulators, government departments, businesses, industry associations and consumer associations to monitor emerging trade practices and consumer protection issues and to educate relevant stakeholders as appropriate. To this end, the ACCC meets regularly and as required with key consumer and business groups, as well as with its various consultative committees.

The ACCC continues to work with industry associations to address emerging trade practices compliance issues. During this quarter, there was a focus on raising awareness of the particular changes that the ACL would mean for businesses. ACCC activities included:

- the production of an online education module to explain the Consumer Guarantees regime which replaces the statutory conditions and warranties contained in the TPA. The module can be viewed through the ACCC website (at www.accc.gov.au/consumerguarantees) and on YouTube. It has been designed to provide practical guidance to retail store owners and their staff to ensure they meet their new obligations
- meetings with a number of large retail organisations to outline the key aspects of the ACL and discuss compliance obligations
- releasing a suite of three 'Business snapshot' publications which provide small businesses with an easily understood overview of key aspects of the ACL. These publications are *ACL – what you need to know*, *Consumer guarantees* and *Fair sales practices*.

Small Business Consultative Committee

The ACCC's Small Business Consultative Committee met for the second time in 2010 on 5 November. Issues discussed at the meeting included:

- the ACL
- ACCC enforcement activity affecting small business
- ways the ACCC can work with the sector to provide effective guidance and information materials
- scams targeting small businesses.

Scams

Scams continue to be a topic of interest to the ACCC and the community. The ACCC uses a variety of media platforms and communication opportunities to promote its scams awareness message to the widest possible audience. SCAMwatch is a key resource. Six SCAMwatch radars were issued during the December quarter to alert consumers and businesses to new scams considered to be of significant concern. Several of these radars drew attention to scams related to holidays and travel, with a feature radar issued in December 2010 on the *10 Scams of Christmas*. The ACCC also joined with the Australian Communications and Media Authority (ACMA) to warn consumers of the dangers of telemarketing scams.

In its role as Chair of the Australasian Consumer Fraud Taskforce, the ACCC works closely with government members and private partners to minimise fraudulent conduct. In November 2010, the ACCC hosted a special taskforce forum exploring the role of the private and public sector in disrupting scams. In December, the ACCC presented at a forensic analysts forum hosted by Taskforce partner Telstra.

Australian Consumer Law

The ACCC has worked closely with the Federal Department of the Treasury and with the state and territory consumer protection agencies to maintain a coordinated and cooperative approach to the implementation of the new law and to educate those affected by it.

Notable joint education initiatives to support the ACL progressed at a national level in the December quarter include:

- a seminar (and parallel webinar) on key features of the ACL
- four national ACL guides for business: *Avoiding unfair business practices*; *Sales practices*; *Consumer guarantees*; *Product safety*.

Agency guidance

The ACCC has also worked with the relevant states and territory consumer protection agencies to ensure a co-ordinated approach to the delivery of 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:

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

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:

- ongoing promotion of the pre-entry education program for prospective franchisees, funded by the ACCC and administered by Griffith University. More than 1000 people have registered for this program
- writing numerous articles on franchising in industry magazines
- addressing the National Franchise Convention 2010.

Voluntary codes of conduct

During the quarter, the ACCC also assisted industries, including the Master Builders Association and the Private Health Insurance Intermediaries Association, in improving the effectiveness of their voluntary industry codes.

Product safety

During the December quarter 2010 the ACCC has worked to finalise preparations for the implementation of the product safety provisions of the ACL including the finalisation of the project to harmonise standards and bans nationally.

The ACCC also hosted its first webinar to provide suppliers with an opportunity to hear directly about the new product safety laws.

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.

Highlights from the quarter for the Emerging Hazards Clearinghouse include:

- development of new processes and system enhancements to accommodate mandatory reporting
- consultation with suppliers who produce children's clothing to develop voluntary Australian guidelines (based on existing American and European standards) covering the use of drawstrings in children's clothing. Draft guidelines are currently available via the Product Safety Australia website
- establishment of a working party with external stakeholders to provide advice to the ACCC on the safety of infant slings and sleep positioners

- hosting a forum on mobility scooters bringing together government and state regulators to develop an action plan to reduce injuries.

Clearinghouse assessment activity triggered eight recall notifications. Six of these may not have happened without the initial contact being made to the supplier by the ACCC. During the quarter a total of 637 new records were created in the clearinghouse data base with 498 assessment decisions made. The following products are two examples of matters identified through the clearinghouse system.

Development of mandatory reporting requirements

From 1 January 2011 businesses are 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.

Throughout the December quarter, enhancements in preparation for the implementation of the mandatory reporting requirements were developed, including:

- an on-line form where suppliers can submit mandatory reports directly via the Product Safety Australia website
- enhancements to clearinghouse reporting facilities to accommodate mandatory reporting
- staff training and documentation.

The mandatory reporting guideline for business was finalised at the end of December and is available on the [Product Safety Australia](#) website.

Product safety recalls

The revised recall guidelines have been amended and finalised as a result of feedback from key stakeholders. A recall progress reporting e-form has been trialled and feedback from suppliers has so far been very positive. The e-form is due for release from 1 February 2011. Both these documents will be available from the [Product Safety Recalls Australia](#) website.

During this quarter, a total of 49 consumer product recalls were managed by the ACCC. This represents a slight decrease from 57 in the previous quarter. The majority of consumer product recalls were in the 'kids' category, with 'home and garden' and 'hobbies'. The total number of recalls currently being managed by ACCC is 142.

Recalls overall (including recalls managed by other regulators) were dominated by the 'health & beauty' category, with 'cars, boats and bikes' and 'kids' following closely together. This is consistent with the year-to-date trend.

Almost all consumer recalls were notified by e-form this quarter. This is a result of the work of the recalls team in actively promoting use of the e-form with suppliers and regulators.

Consumer product recalls of note that were managed by the ACCC this quarter included:

- two recalls of children's beverages that had been reported to have caused choking incidents. In the first case, a nine year old boy had presented to a hospital emergency ward with a ball lodged in his throat from the 'roll-on' style

dispenser. The second case involved a two year old girl who was discovered with the flip-top lid from an infant fruit drink bottle in her mouth moments after being given the drink. The container was designed to be given to infants six months and up and had a cap that was poorly attached to the bottle

- three recalls of hair straightening products, and one recall of an eyelash extension glue, which contained unsafe levels of formaldehyde. These recalls received widespread media coverage in national and media
- the longstanding Chief Kitchenware recall (initiated in 2008 by GSM Sales Pty Ltd in regard to a faulty kitchen extractor fan), which is reported to be approaching 100% completion as nearly all of the remedial work has been carried out.

Product safety legal framework

Development of mandatory standards and bans

During the quarter, two recently introduced mandatory standards were amended and came into effect on 31 December 2010:

- a technical problem was corrected in the instrument which introduced a mandatory standard for portable soccer goal posts
- a market problem arose in respect of the new mandatory safety standard for blind and curtain cords.

These two matters completed the project on the national harmonisation of standards and bans, under which seven new bans and four new standards took effect under the TPA.

All 19 existing permanent bans made under the Trade Practices Act were registered as legislative instruments as required by the *Competition and Consumer Act 2010* and continue to be enforceable.

A significant review of the mandatory standard for children's nightwear was initiated, including participation in a stakeholder seminar to identify problem areas within the standard.

Initial research was undertaken in respect of development of a proposed mandatory safety standard for trampolines, while reviews were commenced of existing mandatory standards for household cots, prams and strollers and bunk beds.

The ACCC also participated in the initial stages of an international project to align regulatory and/or non-regulatory approaches to market safety in respect of blind/curtain cords, baby slings and chair-top booster seats for children.

Establishment of the chemicals assessment and information standards section

Due to the increasing number of chemical related emerging consumer product hazards a specialist section (chemical assessment and information standards) was established within the ACCC to deal with these issues that routinely come through the clearinghouse. This increases the ACCC's expertise and capacity to assess and respond appropriately to potential chemical risks. The section will also oversee the development of consumer product information standards.

Update on the harmonisation process for information standards

During the quarter the harmonisation process for information standards was progressed in consultation with the state and territory fair trading agencies. It was agreed that fibre content labelling of clothing and textile products should be developed as a possible mandatory information standard under the *Competition and Consumer Act*. Work has commenced on drafting a stakeholder consultation proposal for the development of this proposed standard.

The existing Commonwealth consumer product information standards for care labelling for clothing and textile products, cosmetic ingredient labelling and tobacco labelling were automatically transitioned to the ACL effective 1 January 2011. Consumer product information standards that existed in states and territories lapse from 1 January 2011 unless specific steps have been taken to preserve them under alternative state and territory legislative arrangements.

Non compliant hazardous products

Mandatory standard for corded internal window coverings

The mandatory standard for corded internal window coverings will take effect from 30 June 2011.

Mandatory standard for bicycle helmets

On 13 December 2010 the Australian bicycle helmet standard (AS/NZS2063) replaced the bicycle helmet regulations. Suppliers are permitted to continue to provide helmets that complied with the previous regulation for a period of 18 months but must include a product warning label with the product that alerts 'children not to play in helmets due to a strangulation risk'. The warning notice has been published in the *Medical Journal of Australia*.

Reduced Fire Risk cigarettes (market surveillance)

Surveys conducted by the ACCC in regional areas NSW, SA, VIC and the Melbourne CBD indicated that major cigarette manufacturers and suppliers are meeting the reduced fire risk cigarette regulations which were introduced in September 2010.

Laboratory controlled testing indicated that 98.5% of cigarettes extinguished before a full burn—well within the mandatory requirement of at least 75% of lighted cigarettes extinguish before a full burn. Suppliers are also meeting the visual requirements of the standard.

Surveillance activities

ACCC national surveillance activity, including the pre-Christmas toy survey, resulted in the recall of four hydraulic trolley jack models effecting over 5000 units, 4565 children's nightwear garments and 26500 non-compliant toys suitable for children under 36 months. The ACCC has commenced litigation against three traders for supply of non-compliant products.

Raising awareness of safety concerns

Supplier guides for *reduced fire risk cigarettes, portable folding cots, treadmills, vehicle jacks and prams and strollers* were updated to be made consistent with the ACL. All

remaining product safety publications will be progressively updated over the first half of 2011.

This quarter also saw the launch of the ACCC's first online product safety education campaign called 'Safe Summer'. Daily tweets have been sent out containing a summer safety tip which is linked to relevant information on the Product Safety Australia website. In December, for example, Twitter followers were directed to website pages containing information on toys (to assist with pre-Christmas purchases) and DIY products. The campaign will run into early 2011, when its success in raising awareness and directing people to the website will be assessed.

International consumer product safety systems

The ACCC continues to work closely with our international counterparts to create a safer marketplace. For example a MOU which highlights opportunities for collaboration with the United States Consumer Product Safety Commission (CPSC) was finalised and is expected to be signed in early 2011.

The ACCC also took up the inaugural Chair of a newly established OECD Product Safety Working Party set up to coordinate ten key product safety projects, including the development of a global recalls database, and an information sharing project.

3 Mergers

In assessing mergers, acquisitions and asset sales under section 50 of the TPA, 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 December 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 by the merger parties because ACCC clearance is not requested or they may result from the ACCC's monitoring activities.

In the December 2010 quarter, 55 matters were pre-assessed by the ACCC and reviews were conducted on 45 matters, including confidential and public merger reviews. Of the matters reviewed, 80 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. Two merger proposals were not opposed subject to s87B undertakings. No decisions were made in five reviews, either because the proposal was withdrawn or because a view could not be formed on a confidential basis.

Table 3.1: Matters assessed and reviews undertaken, December quarter 2010

| | Confidential | Public | Total |
|---|--------------|-----------|------------|
| Pre-assessed 1 October to 31 December 2010 | 55 | 0 | 55 |
| Total reviews undertaken 1 October to 31 December 2010 | 10 | 35 | 45 |
| Total reviews can be broken down into the following categories: | | | |
| Not opposed | 5 | 31 | 36 |
| Finished—no decision (including withdrawn) ² | 4 | 1 | 5 |
| Opposed outright | 0 | 1 | 1 |
| Confidential review—ACCC concerns expressed | 1 | 0 | 1 |
| Resolved through undertakings ³ | 0 | 2 | 2 |
| Variation to undertaking accepted | 0 | 0 | 0 |
| Variation to undertaking rejected | 0 | 0 | 0 |
| Total matters assessed and reviews undertaken | 65 | 35 | 100 |

Table 3.2: Comparative financial year merger statistics (to 31 December 2010)

| Financial Year | 2009-10 | YTD 2010-11 |
|--|------------|-------------|
| Total matters assessed and reviews undertaken | 321 | 182 |
| MATTERS ASSESSED - NO REVIEW REQUIRED | 153 | 96 |
| REVIEWS UNDERTAKEN | 168 | 86 |
| <i>Total reviews can be broken down into the following categories:</i> | | |
| Not Opposed | 131 | 63 |
| Finished – no decision (incl. withdrawn) | 16 | 13 |
| Publicly Opposed outright | 8 | 2 |
| Confidential review – Opposed or ACCC concerns expressed | 6 | 2 |
| Resolved through undertakings | 4 | 6 |
| 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 December 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 the time incentives of parties are altered. The tables do not include matters pre-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 October 2010 to 31 December 2010³

| Time taken to undertake merger reviews (cumulative) | Number of reviews | Percentage of mergers |
|---|-------------------|-----------------------|
| Two weeks or less | 7 | 20% |
| Four weeks or less | 13 | 38% |
| Six weeks or less | 26 | 76% |
| Eight weeks or less | 28 | 82% |
| More than eight weeks | 6 | 18% |

³ This does not include 55 pre-assessed matters, 5 matters where no decisions were made as the ACCC could not form a view or the proposal was withdrawn, or 6 reviews of completed mergers.

Statement of issues

Four statements of issues were released during the December quarter:

- Asahi Holdings (Australia) - proposed acquisition of P&N Beverages Australia - 2 December 2010
- Caltex Australia Petroleum Pty Ltd - proposed acquisition of the Mobil assets at the Caltex-Mobil joint fuel terminal Gladstone - 2 December 2010
- Aspen Pharmacare Holdings Limited - proposed acquisition of Sigma Pharmaceuticals Limited's Pharmaceutical Division - 27 October 2010
- BP Australia Pty Ltd - proposed acquisition of Centrel Pty Ltd - 21 October 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 the December quarter:

- Scandinavian Tobacco Group - proposed acquisition of Swedish Match AB - 25 October 2010
- Swift Australia Pty Ltd - proposed acquisition of Rockdale Beef Pty Ltd - 19 October 2010
- 7-Eleven Stores Pty Ltd - proposed acquisition of retail assets of Mobil Oil Australia Pty Ltd and Peregrine Corporation - proposed acquisition of the South Australian retail assets of Mobil Oil Australia Pty Ltd - 18 October 2010.

Section 87B undertakings

Two reviews were completed subject to court enforceable 87B undertakings in the December 2010 quarter:

- Aspen Pharmacare Holdings Ltd - proposed acquisition of Sigma Pharmaceuticals Ltd's pharmaceutical division
- OneSteel Ltd – proposed acquisition of Moly-Cop Group S.a.r.l.

Major Matters

Major matters decided during the December 2010 quarter included:

- Metcash Trading Ltd – proposed acquisition of Interfrank Group Holdings Pty Ltd (Franklins)
- Aspen Pharmacare Holdings Ltd - proposed acquisition of Sigma Pharmaceuticals Ltd's pharmaceutical division
- BP Australia Pty Ltd – proposed acquisition of Centrel Pty Ltd
- OneSteel Ltd – proposed acquisition of Moly-Cop Group S.a.r.l

- AGL Energy Ltd – proposed acquisition of certain electricity privatisation assets of the NSW Government
- Origin Energy Ltd – proposed acquisition of certain electricity privatisation assets of the NSW Government

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

Metcash Trading Ltd – proposed acquisition of Interfrank Group Holdings Pty Ltd (Franklins)

Result: On 17 November 2010 the ACCC decided to oppose the proposed acquisition.

Summary: On 29 July 2010 the ACCC commenced a review of Metcash Trading Limited's proposed acquisition of Franklins supermarket business. Metcash is Australia's largest wholesaling and distribution company servicing independent grocery retailers throughout Australia, including those under the IGA and Supa IGA banners. Franklins operates 80 corporate owned and 10 franchised Franklins supermarkets in NSW, and is currently owned by Pick n Pay Retailers (Pty) Limited, South Africa's largest retailer.

On 22 September 2010 the ACCC released a Statement of Issues outlining preliminary competition concerns arising from the proposed acquisition. In particular, the ACCC was concerned that the proposed acquisition was likely to result in a substantial lessening of competition through the removal of Metcash's closest and only genuine competitor for the wholesale supply of packaged groceries in NSW.

The ACCC conducted an extensive investigation of the proposed acquisition, considering information from a wide range of sources including supermarket retailers, suppliers, industry groups, consumers and other market participants. In addition, the ACCC conducted meetings and interviews and scrutinised a substantial number of internal company documents of the merger parties.

The ACCC formed the view that the proposed acquisition was likely to result in a substantial lessening of competition, concluding that Franklins' ability to offer a full range of services means Metcash faces competition in wholesaling services, terms, rebates and prices, to the advantage of independent retailers.

Following the ACCC's decision to oppose the proposed acquisition, Metcash advised the ACCC that it intended to complete the proposed acquisition in not less than five business days. On 26 November 2010, Metcash and Pick n Pay agreed not to complete the proposed acquisition provided that the ACCC file an Originating Application and Statement of Claim in the Federal Court of Australia by 8 December 2010 and that all parties take all reasonable steps for securing an urgent final hearing on an expedited basis.

On 8 December 2010 the ACCC filed an application for injunctions and other orders under s80 of the Trade Practices Act 1974 and Statement of Claim. The ACCC has been ordered to file and serve lay evidence on which it will rely by 31 January 2011 with a directions hearing to be held on 2 February 2011. The matter has been provisionally listed for hearing on 14 March 2011.

Aspen Pharmacare Holdings Ltd - proposed acquisition of Sigma Pharmaceuticals Ltd's pharmaceutical division

Result: On 16 December 2010 the ACCC decided not to oppose the proposed acquisition after accepting court enforceable undertakings.

Summary: On 6 September 2010 the ACCC commenced a review of Aspen Pharmacare Holdings Ltd's (Aspen's) proposed acquisition of Sigma Pharmaceuticals Ltd's (Sigma's) Pharmaceutical Division.

Aspen and Sigma supply generic prescription drugs and private label over-the-counter pharmaceutical products in Australia. The merger parties overlap in the supply of a number of pharmaceutical products in Australia.

On 27 October 2010 the ACCC released a Statement of Issues outlining preliminary competition concerns arising from the proposed acquisition. In particular, the ACCC was concerned that the proposed acquisition would remove the only competitor to Aspen in a number of relevant markets.

After an extensive investigation and rigorous consultation with a large number of interested parties including generic pharmaceutical companies, wholesalers and regulatory bodies, the ACCC formed the view that the proposed acquisition would result in a substantial lessening of competition in the following national markets:

- the supply of iron polymaltose
- the supply of prednisone and prednisolone
- the supply of phenoxymethylpenicillin (penicillin V).

In each of these markets, the number of suppliers would be reduced from two to one as a result of the proposed acquisition. The ACCC formed the view that the merged firm would have the ability and incentive to increase the effective prices at which pharmacists and public hospitals acquire these drugs. The ACCC also found that the government would be adversely impacted in terms of inflated subsidies paid for these drugs. The removal or reduction in discounts by the merged firm may have an impact on prospective reductions in the PBS list price that would have otherwise been captured under the government's mandatory price disclosure regime.

In response to the ACCC's preliminary concerns as outlined in the Statement of Issues, Aspen and Sigma agreed that Sigma's iron polymaltose product would no longer be included in the proposed transaction.

To address the remaining concerns in the markets for prednisone/prednisolone and penicillin V, the ACCC accepted a court enforceable undertaking from Aspen that requires Aspen to divest the Sigma prednisone and prednisolone brands and the Aspen penicillin V brand.

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

BP Australia Pty Ltd - proposed acquisition of Centrel Pty Ltd

Result: On 17 November 2010 the ACCC decided not to oppose the proposed acquisition of BP Australia Pty Ltd and Centrel Pty Ltd.

Summary: On 25 August 2010 the ACCC commenced a review of BP Australia Pty Ltd's proposed acquisition of Centrel Pty Ltd. BP Australia Pty Ltd (BP) proposed to acquire all of the shares in its branded distributor Centrel Pty Ltd (Reliance). The ACCC considered the proposed acquisition in the context of:

1. state-based markets for the wholesale supply and distribution of:
 - i. petrol, diesel and automotive LPG
2. local markets for the retail supply of:
 - i. petrol, diesel and automotive LPG
3. state-based markets for the supply of commercial bulk fuels
4. state-based markets for the supply of wholesale lubricants
5. national market for the supply of fuel cards.

The ACCC concluded that the likely counterfactual to the proposed acquisition was Reliance continuing to operate as per the status quo. The ACCC did not consider it was likely that Reliance would be acquired by a party other than BP in the absence of the proposed acquisition. For this reason, the ACCC concluded that the proposed acquisition would be unlikely to lead to a substantial lessening of competition in the markets for the wholesale supply of fuel.

The ACCC concluded that the proposed acquisition would not be likely to lead to a substantial lessening of competition in any local retail markets due to the minimal overlap between the retail networks of BP and Reliance and the presence of sufficient local competitors in those areas where overlap did exist.

The ACCC concluded that BP and Reliance were not close competitors in the markets for the supply of commercial bulk fuels, wholesale lubricants and fuel card services. Accordingly, the ACCC considered it unlikely that the proposed acquisition would lead to a substantial lessening of competition in these markets.

OneSteel Ltd – proposed acquisition of Moly-Cop Group S.a.r.l

Result: On 17 December 2010 the ACCC decided not to oppose the proposed acquisition after accepting court enforceable undertakings.

Summary: On 15 November 2010 the ACCC commenced a review of OneSteel Ltd's proposed acquisition of Moly-Cop and AltaSteel businesses from Anglo American plc.

The relevant interest to be acquired in Australia was a 40% interest in Donhad Pty Ltd, a manufacturer and supplier of grinding media to the mining industry. Absent the s87B undertaking accepted by the ACCC, the proposed acquisition would make OneSteel a 40% owner of its main competitor for the supply of grinding media in Australia, Donhad. The ACCC was concerned that this would lessen the incentive for competition between OneSteel and Donhad in the supply of grinding media.

The ACCC concluded that the vast majority of competition in Australia for the sale of grinding media occurs between OneSteel and Donhad, and imports of grinding media could not be relied upon to competitively constrain OneSteel if the proposed acquisition proceeded.

In order to address these competition concerns, OneSteel provided an undertaking to divest the 40% interest in Donhad that it would acquire as part of the proposed

acquisition. The ACCC concluded that the divestiture remedy satisfactorily addressed its competition concerns. Public Competition Assessment detailing the basis upon which the ACCC reached its decision will be published on the ACCC's website.

AGL Energy Ltd – proposed acquisition of certain electricity privatisation assets of the NSW Government

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

Summary: On 1 September 2010 the ACCC commenced a review of AGL Energy Ltd's (AGL) proposed acquisition of certain electricity privatisation assets of the New South Wales (NSW) Government.

The NSW Government proposed to privatise its electricity generation and retail assets, including generation development sites. AGL was a bidder in this process. The ACCC decided not to oppose the proposed acquisition by AGL of certain privatisation assets, namely:

- Country Energy or Integral Energy, together with
- Eraring or Delta Coastal or Delta Western gentrader bundles, together with
- one or more development sites.

In reaching its view, the ACCC had regard to the following markets and factors.

The ACCC considered the relevant markets for analysing the proposed acquisitions by AGL were:

- separate markets for the retail supply of gas and the retail supply of electricity in New South Wales and Queensland
- the market for the wholesale supply of electricity in New South Wales.

The ACCC concluded that the proposed acquisitions would not be likely to substantially lessen competition. The likely counterfactual to the proposed acquisition of either Country Energy or Integral Energy by AGL would be that these businesses would be acquired by other retailers that were already active in New South Wales.

The ACCC considered that the proposed acquisition of one retail business by AGL would not be likely to substantially lessen competition in any of the relevant retail markets. The ACCC considered that AGL would be likely to be competitively constrained by new entrants and existing competitors in New South Wales, including the acquirers of the other retail businesses.

AGL proposed to acquire either of the Eraring, Delta Coastal or Delta Western gentrader bundles, together with one or more generation development sites. The ACCC considered the proposed acquisition in the context of the market for the wholesale supply of electricity in New South Wales. The ACCC considered that none of the proposed acquisitions would be likely to increase market concentration as AGL did not operate any electricity generation assets in New South Wales.

AGL already had development sites for two significant generators in New South Wales. However, the ACCC considered that the aggregation of these with one or

more of the development sites and one of the gentrader bundles would not be likely to substantially lessen competition. The ACCC considered it was likely that AGL would be competitively constrained by existing competitors and other proposed generation projects in the New South Wales wholesale electricity market.

As noted above, AGL proposed to aggregate its existing electricity retail business with either Integral Energy or Country Energy. AGL also proposed to acquire a gentrader bundle and one or more generation development sites.

The ACCC concluded that the vertical integration of AGL's retail businesses and a gentrader bundle would not be likely to change incentives for generator bidding or retailer conduct in the wholesale and retail markets in New South Wales, nor raise barriers to entry in these markets. The ACCC considered there was a significant amount of generation capacity that would be available to supply electricity hedge contracts to retailers. This would provide incentives for AGL to bid the gentrader bundle into the wholesale market at competitive levels. Accordingly, the ACCC concluded that the vertical integration of these assets would not result in a substantial lessening of competition in either the wholesale or retail markets in New South Wales.

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

Origin Energy Limited - proposed acquisition of electricity privatisation assets of the New South Wales Government

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

Summary: On 3 September 2010 the ACCC commenced a review of Origin Energy Ltd's (Origin) proposed acquisition of certain electricity privatisation assets of the New South Wales (NSW) Government.

The New South Wales Government proposed to privatise its electricity generation and retail assets, including generation development sites. Origin was a bidder in this process. The ACCC decided not to oppose the proposed acquisition by Origin of certain privatisation assets, namely:

- EnergyAustralia, or
- Country Energy, or
- Integral Energy, or
- Country Energy and Integral Energy

together with one of the Eraring, Delta Coastal or Delta Western gentrader bundles and one of the generator development sites.

In reaching its view, the ACCC had regard to the following markets and factors. The ACCC considered the relevant markets for analysing the proposed acquisitions by Origin were:

- separate markets for the retail supply of gas and the retail supply of electricity in New South Wales and Queensland; and
- the market for the wholesale supply of electricity in New South Wales.

The ACCC concluded that the proposed acquisitions would not be likely to substantially lessen competition. The likely counterfactual to the proposed acquisition of either Energy Australia, Country Energy or Integral Energy by Origin would be that each of these businesses would be acquired by other retailers that were already active in New South Wales and Queensland. In terms of Origin's proposal to acquire both Country Energy and Integral Energy, the likely counterfactual was that these retailers would be sold to separate acquirers who were already active in New South Wales and Queensland.

The ACCC considered that the proposed acquisition of one retail business by Origin would not be likely to substantially lessen competition in any of the relevant retail markets. The ACCC considered that Origin would be likely to be competitively constrained by new entrants and existing competitors in New South Wales, including the acquirers of the other retail businesses.

The ACCC noted there would be significant market concentration post-acquisition in the market for the retail supply of electricity in Queensland where Integral Energy has approximately 10 per cent market share and Origin Energy approximately 54 per cent. However, the ACCC considered that the proposed acquisition of Integral Energy would not be likely to substantially lessen competition in the market for the retail supply of electricity in Queensland. In forming this conclusion, the ACCC considered that it was likely that other competitors or new entrants would be able to replicate the competition that Integral had provided since its entry into the Queensland market and therefore that the future state of competition would not be substantially lessened compared to the counterfactual where another retailer acquired Integral.

The ACCC also noted that Origin's proposal to acquire both Integral Energy and Country Energy would result in very significant market concentration. However, a key consideration was the level of competitive tension that would be likely to occur in the future with these acquisitions compared to the level of competition in the counterfactual where the three retailers were sold to separate acquirers.

The ACCC took into account the fact that EnergyAustralia would be acquired by a third party not including AGL. The ACCC therefore concluded that Origin would face competition in electricity retailing from the separate acquirer of Energy Australia, smaller retailers, as well as AGL, which has a large gas customer base and expanding electricity customer base.

The ACCC concluded that new entry, together with continued vigorous competition from existing players, would be likely to preserve competitive tension in the retail markets.

Origin proposed to acquire either of the Eraring, Delta Coastal or Delta Western gentrader bundles, together with a generation development site. Origin already owned the 640 MW Uranquinty gas fired generator.

The ACCC considered the proposed acquisitions in the context of the market for the wholesale supply of electricity in New South Wales. The ACCC considered that none of the proposed acquisitions would be likely to substantially lessen competition in this market. The ACCC found that the aggregation of Origin's Uranquinty generator with one of the gentrader bundles would not be likely to provide it with the ability to exercise market power in the market due to the presence of several competing generators in the market.

Origin proposed to aggregate its existing electricity retail business with either or both Integral Energy and Country Energy, or with Energy Australia. As noted above, it also proposed to acquire a gentrader bundle and a development site.

The ACCC concluded that the vertical integration of Origin's retail businesses, its Uranquinty generator and a gentrader bundle, would not be likely to change incentives for generator bidding or retailer conduct in the wholesale and retail markets in New South Wales, nor raise barriers to entry in these markets. The ACCC considered there was a significant amount of generation capacity that would be available to supply electricity hedge contracts to retailers. This would provide incentives for Origin to bid its generating capacity into the wholesale market at competitive levels. Accordingly, the ACCC concluded that the vertical integration of these assets would not result in a substantial lessening of competition in either the wholesale or retail markets in New South Wales.

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

4. Adjudication

Authorisations

During the December quarter 2010, the ACCC received 15 new authorisation applications, covering nine projects.

At 31 December 2010, a total of 19 authorisation applications, covering 12 projects, were being considered by the ACCC.

Matters finalised

Generic Medicines Industry Association Pty Ltd – A91218 & A91219

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

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

On 3 November 2010 the ACCC issued a determination granting conditional authorisation until 25 November 2013.

The State of Queensland Acting through the Office of Liquor and Gaming Regulation – A91224 & A91225

Summary | On 15 April 2010 the Office of Liquor and Gaming Regulation 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.

On 7 October 2010 the ACCC issued a determination granting conditional authorisation until 7 October 2013.

Virgin Blue Airlines Pty Ltd & Ors – A91227 & 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.

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

On 16 December 2010 the ACCC issued a determination granting conditional authorisation until 31 December 2013.

The South Australian Oyster Growers Association Inc – A91229 & 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 agreed that the hatcheries could 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.

On 1 October 2010 the ACCC issued a determination granting authorisation until 23 October 2020.

Agsafe Limited – A91234, A91242 - A91244

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

On 27 October 2010 the ACCC issued a determination granting conditional authorisation until 27 October 2013.

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.

On 3 December 2010 the ACCC issued a determination denying authorisation.

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 6 October 2010 the ACCC issued a determination granting authorisation until 6 October 2015.

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 10 November 2010 the ACCC issued a determination granting authorisation until 2 December 2015.

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 sought 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
- all services relating to access for the purpose of transporting coal to the Terminal (the 'Identified Rail Infrastructure and Services').

On 2 December 2010 the ACCC issued a determination granting authorisation until 31 December 2025.

Draft determinations issued (not otherwise appearing above)

Central Queensland Local Government Association & Ors – A91246

Summary | On 10 August 2010 Central Queensland Local Government Association & Ors 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.

On 22 November 2010 the ACCC issued a draft determination proposing to grant authorisation to the proposed arrangements for five years. On 2 September 2010 the ACCC also granted interim authorisation (although interim authorisation does not extend to the councils entering into contracts with the successful tenderer/s).

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 application in January/February 2011.

Virgin Blue Airlines Pty Ltd & Ors - Authorisation - A91247 & A91248

Summary | On 27 August 2010 Virgin Blue and Etihad applied for authorisation for an alliance, in relation to air passenger services.

On 16 December 2010 the ACCC issued a draft determination proposing to grant authorisation for the proposed alliance for five years. On 23 September 2010 the ACCC also granted interim authorisation.

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 application in February 2011.

Homeworker Code Committee Incorporated – A91252 - A91255

Summary | On 14 October 2010, the Homeworker Code Committee applied for re-authorisation of the Homeworker Code of Practice. The Code is a voluntary mechanism for retailers, manufacturers and fashion houses to ensure compliance, across their supply chains, with minimum award and legislative conditions.

On 15 December 2010 the ACCC issued a draft determination proposing to grant authorisation to the code for two years. On 15 December 2010 the ACCC also granted interim authorisation.

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 application in February/March 2011.

Applications lodged (not otherwise appearing above)

Transport Workers Union – A91249

Summary | On 5 October 2010 the Transport Workers Union applied for authorisation to collectively bargain, on behalf of currently seven concrete cartage owner drivers in Queensland, with Allen's Asphalt Pty Ltd (trading as Q-crete Premix) for the purpose of establishing new contractual arrangements for the cartage of concrete.

On 28 October 2010 the ACCC granted interim authorisation to the Transport Workers Union to commence collective negotiations with Q-crete.

The ACCC has sought submissions from interested parties and the matter is under consideration. The ACCC anticipates issuing a draft determination responding to the application in January 2011.

Australian Paint Manufacturers' Federation Inc. – A91251

Summary | On 12 October 2010 the Australian Paint Manufacturers' Federation (APMF) applied for authorisation to introduce a five cent per litre levy on the wholesale sale of paint in Victoria. The levy will be used to fund a 12 month pilot waste paint collection scheme.

On 17 December 2010 the APMF amended its application for authorisation to propose that a national levy of 2 cents per litre be imposed instead of the Victorian levy. The national levy will still be used to fund the 12 month waste paint collection scheme trial in Victoria.

The ACCC anticipates issuing a draft determination responding to the application in February 2011.

Refrigerant Reclaim Australia Limited – A91256

Summary | On 20 October 2010 Refrigerant Reclaim Australia Limited applied for authorisation to allow it to continue to apply an industry agreed levy for the reclamation of ozone depleting and synthetic greenhouse gas refrigerants imported in bulk or contained in equipment sold in Australia.

Refrigerant Reclaim Australia Limited also seeks to extend the scope of its current authorisation (A91079) to cover the setting of rebates paid to contractors and wholesalers for the return of recovered refrigerant, and the processes and disposal practices which may be applied to recovered refrigerant.

On 1 December 2010 the ACCC granted interim authorisation from the period its current authorisation expires (1 January 2011) until the outcome of this application is determined

The ACCC has sought submissions from interested parties and the matter is under consideration. The ACCC anticipates issuing a draft determination responding to the application in January 2011.

Australian Hotels Association – A91257

Summary | On 25 October 2010 the Australian Hotels Association applied for authorisation to continue to collectively bargain with various wagering, gambling and racing broadcast services and to commence collectively bargaining with various other goods and service providers (including beer, wine, soft drink, energy, advertising, cigarettes, insurance, confectionary, catering, communication, superannuation, banking, music, accommodation, employment providers, training, accounting, auditing, IT services and security) in all states and territories.

The ACCC has sought submissions from interested parties and the matter is under consideration. The ACCC anticipates issuing a draft determination responding to the application in February 2011.

Energy Assured Limited – A91258 & A91259

Summary | On 29 October 2010 Energy Assured Limited applied for authorisation for its Code of Practice and Complaints Process. The Code is designed to regulate door-to-door energy sales that are undertaken on behalf of electricity and gas retailers.

The ACCC has sought submissions from interested parties and the matter is under consideration. The ACCC anticipates issuing a draft determination responding to the application in February 2011.

Australian Swimmers' Association Incorporated – A91260

Summary | On 5 November 2010 The Australian Swimmers' Association applied for authorisation to collectively bargain on behalf of its members with Swimming Australia Limited.

The ACCC has sought submissions from interested parties and the matter is under consideration. The ACCC anticipates issuing a draft determination responding to the application in February 2011.

Rio Tinto Aluminium Limited & Ors – A91205 – A91207

Summary | On 17 November 2010 Rio Tinto Aluminium Limited and the participants of the Gladstone Power Station Joint Venture applied for a minor variation to authorisations A91205-A91207, granted by the ACCC on 2 June 2010. The applicants wish to amend schedule 6 of the Restated Operation and Maintenance Agreement, which sets out the fee to be paid by the Joint Venture to the operator for the provision of services for the Gladstone Power Station.

The ACCC has sought submissions from interested parties and the matter is under consideration. The ACCC anticipates issuing a determination responding to the application in early January 2011.

Pozzolanic Enterprises Pty Ltd – A91261

Summary | On 7 December 2010 Pozzolanic applied for authorisation to enter into a Fly Ash Supply Agreement with Tarong Energy Corporation Limited and Tarong North Pty Ltd granting Pozzolanic the right to purchase any and all fly ash from specified transfer points at the Tarong and Tarong North coal fired power stations in Queensland.

The ACCC has sought submissions from interested parties and the matter is under consideration. The ACCC anticipates issuing a draft determination responding to the application in March 2011.

Exclusive dealing notifications

During the December quarter 2010, the ACCC received 309 new notifications across 82 matters.

Notifications of interest considered during the quarter include:

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 to take no further action at that time. On 18 June 2010 the ACCC commenced a review of the notification. On 6 December the ACCC issued a draft notice to revoke the notification. A pre-decision conference to discuss the draft notice is scheduled for 20 January 2011.

Collective bargaining notifications

The ACCC did not receive any collective bargaining notifications during the December quarter 2010.

5 Regulatory affairs

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

Communications

In the December 2010 quarter, the ACCC:

- released a discussion paper on the number and location of the initial Points of Interconnect (POI) for the National Broadband Network (NBN), and provided advice to government on this issue in November 2010
- issued a position paper announcing its proposed domestic benchmarking approach to transmission pricing on the domestic transmission capacity service (DTCS)
- released a methodology for the administration of the Telstra carrier charges and price control arrangements.

Key legislative developments

In November 2010 Parliament passed the *Telecommunications Legislative Amendment (Competition and Consumer Safeguards) Act 2010* (CACS Act) to streamline access arrangements and to address industry structure issues.

The CACS Act amends competition and access regimes of Parts XIB and XIC in the *Trade Practices Act 1974*. The new amendments allow the ACCC to set prices for declared services up-front, and streamline the process for the ACCC issuing competition notices. In addition, while ordinary access undertakings are not available under the new access regime, special access undertakings will continue to be available for services that have not been declared.

It also amends the *Telecommunications Act 1997* to provide for the ACCC to assess a structural separation undertaking and migration plan if submitted by Telstra, or an undertaking in relation to its HFC network or subscription television licence.

Declarations

Part XIC of the *Competition and Consumer Act 2010* (CCA) enables the ACCC to declare telecommunications services. Once declared, the access provider is obliged to supply the services to an access seeker upon request.

Inquiry into the declaration of wholesale ADSL services

On 20 October 2010 the ACCC wrote to interested parties requesting comment on the need to commence an inquiry into declaration of the wholesale ADSL service. The ACCC received responses from seventeen interested parties; fourteen considered an inquiry into possible declaration of the wholesale ADSL service desirable and three did not. This matter is still under ACCC consideration.

Access pricing

Fixed-line services access pricing

On 21 December 2010 the ACCC suspended the review of the 1997 access pricing principles. Following the legislative changes to the telecommunications access regime under Part XIC of the CCA, the ACCC now has the power to set up-front price (including a method of ascertaining price) and non-price terms and conditions of access in interim and final access determinations.

The ACCC no longer has the power to make pricing principles. However, the ACCC continues to analyse submissions and information received as part of the review to calculate prices for Interim Access Determinations which will be finalised in early 2011.

Position Paper on the DTCS Pricing Review

On 23 November 2010 the ACCC issued a Position Paper announcing its proposed domestic benchmarking approach to transmission pricing. The proposed approach is based on the domestic benchmarking of prices on competitive transmission routes and supplemented by information from service providers and other sources.

The ACCC will consult with transmission providers on the pricing information required by the ACCC. These consultations will take place on a bilateral basis in the coming months. This information will be used to calculate prices for Interim Access Determinations for DTCS services.

Access disputes

Following the amendments to Part XIC of the CCA, the transitional provisions provide that access disputes may be notified and continue to be arbitrated by the ACCC until a Final Access Determination (FAD) in respect of a declared service is made. Once an FAD is made, access disputes can no longer be notified to the ACCC in relation to that service. The ACCC has not yet made any FADs.

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

In the December 2010 quarter, seven new access disputes were notified to the ACCC and five access disputes were withdrawn. Four of the withdrawn disputes concerned the Mobile Terminating Access Service the fifth withdrawn dispute concerned access to ducts by an access-seeker.

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

| | Total |
|--|--------------|
| Active disputes at 1 October 2010 | 6 |
| Decisions subject to appeal to the Federal Court | 0 |
| New arbitrations commenced | 7 |
| Final determinations issued | 0 |

| | |
|--------------------------|---|
| Disputes withdrawn | 5 |
| Published determinations | 0 |

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

Other developments

Points of Interconnect

On 21 October 2010 the ACCC released a discussion paper on the number and location of the initial Points of Interconnect (POI) for the National Broadband Network (NBN). Following public consultation, the ACCC developed an approach to help identify the number and location of initial POIs which would best meet the long-term interests of end-users.

The ACCC provided the government with its advice on POIs in November 2010. The ACCC recommended a semi-distributed approach to the initial location of POIs. The government endorsed the ACCC's advice and in December 2010, NBN Co identified 120 POIs that meet the criteria set out in the ACCC's advice.

Telstra's Price Control Arrangements

In October 2010, the ACCC released a methodology for administration of the Telstra carrier charges price control arrangements. The carrier charges subject to these price control arrangements are connections, line rentals, local calls, trunk calls and international calls. This methodology applies to the operation of Telstra's price control arrangements until 30 June 2012.

The methodology follows from the ACCC's inquiry earlier in 2010 into Telstra's price control arrangements, made at the request of the Minister for Broadband Communications and the Digital Economy. The ACCC initially reported to the Minister in March 2010.

Department of Broadband, Communications and the Digital Economy review of Universal Service Policy

The Department is consulting with stakeholders regarding the implementation of an institutional, regulatory and funding framework for the delivery of the Universal Service Obligation (USO) and other public interest services in an NBN environment. In October 2010, a discussion paper was released asking for feedback and in November 2010, the ACCC provided a public submission to the Department in response to this discussion paper.

Exchange Service Areas – Exemption from Standard Access Obligations

On 22 December 2010 the ACCC announced that from 30 June 2011, an additional 52 exchange service areas (ESA) will be exempt from standard access obligations for the provision of the declared wholesale line rental, local carriage service and public switched telephone network originating access. Once the exemptions take effect, access seekers cannot rely on regulated access to the services in these ESA's and must make a commercial agreement with Telstra regarding the terms and conditions of access. This takes the total to 181 ESAs in which the exemptions operate.

Reports

On 15 November 2010 the Minister for BCDE tabled in Parliament the ACCC's report *Telecommunications competitive safeguards for 2008-2009; Changes in the prices paid for telecommunications services in Australia 2008-2009*.

In November 2010, the ACCC also published the 'Current cost accounting report relating to the accounting separation of Telstra for second half and full year 2009-10'.

Australian Energy Regulator

All papers and submissions relating to the AER are freely accessible by the public on the AER's website at www.aer.gov.au.

Acting part-time member of the AER arrangements

On 27 October 2010 Ms Cristina Cifuentes was appointed as part-time member of the Australian Energy Regulator and associate commissioner of the Australian Competition and Consumer Commission for a period of five years.

Ms Cifuentes succeeded Mr Andrew Reeves in this position who was appointed Chairman of the AER in July 2010. Ms Cifuentes has formal qualifications in law and economics and holds a number of directorships and executive roles, including as director of the NSW Treasury Corporation and First State Super Trustee Corporation. She has a breadth of experience in energy networks in market regulation, and was a member of the NSW Independent Pricing and Regulatory Tribunal between 1997 and 2006.

Gas network regulation matters

Reference Tariffs and Ancillary Reference Tariffs

On 22 November 2010 the AER approved Reference Tariffs and Ancillary Reference Tariffs submitted by the Victorian gas distribution networks Multinet, SP AusNet, Envestra Victoria and Envestra Albury.

Proposed revisions to access arrangements for Queensland and South Australian gas distribution networks

On 30 September and 1 October 2010 the AER received an access arrangement proposal for the South Australian gas distribution network from Envestra Ltd. Proposals were also received from APT Allgas Energy Pty Ltd and Envestra for the Queensland gas networks.

The access arrangement proposals outline the proposed terms and conditions of access for the distribution network for the period 1 July 2011 to 30 June 2016. The AER convened stakeholder forums in Adelaide and Brisbane in October 2010 and submissions on the proposals were received in November. The AER is now examining the compliance of the access arrangement proposals with the *National Gas Law* and the *National Gas Rules*. A Draft Decision is expected to be released in February 2011.

Proposed revisions to the access arrangement for the Amadeus Gas Pipeline

On 23 December 2010 NT Gas submitted an access arrangement to the AER for the Amadeus Gas Pipeline (AGP). This pipeline transports gas from the Amadeus basin near Alice Springs to Darwin in the Northern Territory. Subject to approval, the proposed access arrangement would apply from 1 July 2011. The AER is seeking

submissions from interested parties and anticipates releasing a Draft Decision in March 2011.

ActewAGL electricity distribution review

On 24 September 2010 ActewAGL has sought judicial review of the AER's 2009 distribution determination, specifically the AER's decision regarding the risk free rate averaging period. ActewAGL claims that the rejection of its proposed averaging period and the use of another averaging period has had a material adverse impact upon it and bases its application for review on a number of grounds. The Federal Court has listed this matter for hearing in March 2011.

Appeals—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.

On 18 October 2010 the Tribunal granted leave to AGL Energy Limited, AGL Retail Energy Limited, AGL Energy Sales and Marketing Limited and TRUenergy Pty Limited to intervene in the review in relation to the following issues in respect of the approved reference services agreement:

- the liability and indemnity ground for review raised by JGN
- the minimum billing period intervals in clause 22.1,
- the security for payment in clause 30 and the definition of 'Security'.

A hearing was held in Melbourne on 6 and 7 December 2010 on some of the issues. A hearing will be held in Melbourne on 28 February 2011 on the debt risk premium issue. A date has not yet been set for the hearing on the gamma issue. Details of the issues under appeal are available on the AER's website at www.aer.gov.au.

Electricity network regulation matters

Discussion paper - objectives and priorities of electricity network service provider performance reports

On 22 December 2010 the AER released a discussion paper proposing objectives and priorities for electricity distribution and transmission network service providers' performance reporting.

Annual performance reports are an important element of the regulatory framework. Performance reporting enables stakeholders to assess compliance with regulatory

determinations and compare the performance of network service providers. Annual performance reporting will enhance the operation of the National Electricity Market by encouraging active and informed stakeholder participation in regulatory processes.

In accordance with clause 8.7.4 of the *National Electricity Rules* (NER), prior to preparing network service provider performance reports the AER must consult about appropriate objectives and priorities for the performance reports. The AER is seeking comment on the proposed performance report objectives and priorities by 28 January 2011.

Performance reports of Victorian electricity distribution businesses in 2009

On 21 December 2010 the AER released the *Victorian Electricity Distribution Businesses Comparative Performance Report 2009*.

The report presents the 2009 financial and service quality performance of Victoria's five electricity Distribution Network Service Providers: CitiPower, Jemena Electricity Networks, Powercor, SP AusNet and United Energy. The report also provides details of the businesses' performance trends since 1999.

Information paper: Statement by Victorian electricity distribution businesses on their preparation for meeting the 2010-11 summer peak demand

On 21 December 2010 the AER released the statement by Victorian electricity distribution businesses on their preparation for meeting the 2010-11 summer peak demand.

The statement summarises information provided to the AER in November 2010, by each of the Victoria's distribution network service providers (DNSPs), on the preparations they have undertaken for managing the 2010-11 summer peak demand period.

Draft Decision: Interest rate for security fees under Guideline 14 for CitiPower and Powercor

On 21 December 2010 the AER released a draft decision paper on CitiPower's and Powercor's proposed security fee schemes. The draft decision paper follows a consultation paper released in June 2010 seeking stakeholders' comments on the proposed schemes.

Under *Electricity Industry Guideline No. 14 - Provision of Services by Electricity Distributors*, a DNSP may require a security deposit (security fee) when connecting high risk customers to insure against potential asset stranding, which will then be eventually funded by all other customers of the DNSP. The paper presents the AER's draft decision to approve CitiPower's and Powercor's proposed interest rate (to be paid by the DNSP to certain customers who are required to pay a security fee) and administration charge. In addition, the draft decision paper seeks stakeholders' comments and outlines the AER's indicative views on the fairness and reasonableness of the security fee scheme, which will inform the AER should a dispute be submitted to AER.

AMI Bring Forward service fee – proposal by CitiPower and Powercor

On 21 December 2010 the AER published its final decision for CitiPower's and Powercor's fees to be levied on customers who request the installation of Advanced Metering Infrastructure (AMI) ahead of the State Government imposed pre-determined rollout schedule. Clause 9 of the revised AMI Order, published 25 November 2008, permits the Victorian distribution network service providers (DNSPs) to propose customer requested service fees to deliver unique services to individual customers stemming from the AMI rollout.

CitiPower's and Powercor's fees approved by the AER will sunset on 31 December 2013, the date by which all Victorian residential and small business customers consuming less than 160MWh of electricity per annum will receive an AMI meter.

Final decision - ElectraNet's market impact parameter

On 21 December 2010 the AER published its Final Decision on a performance incentive scheme for ElectraNet.

The aim of the scheme is to minimise transmission congestion. Transmission congestion occurs when the electricity flowing through transmission equipment (the large wires that transport electricity from electricity generators) reaches its maximum capability. Transmission congestion can be a problem where low cost generators are unable to send their electricity to where it is required, which can mean that higher cost generators are required to supply the electricity demanded causing inefficiencies.

To try to address the problem, the AER developed a parameter which sits in the existing service target performance incentive scheme. The scheme provides a financial reward to a transmission business for annual improvements against a benchmark set by the AER. The intention of the scheme is to encourage transmission businesses to make operational decisions so that there is as little disruption to the market through transmission outages as possible.

After reviewing ElectraNet's application, the AER set a benchmark slightly lower than that proposed by ElectraNet, meaning that it will need to strive harder to make annual improvements. The scheme applies to ElectraNet from 1 January 2011.

Two other transmission businesses (TransGrid and Powerlink) are already subject to the scheme and will have their 2010 performances evaluated early in 2011.

SP AusNet distribution cost allocation method

On 17 December 2010 the AER approved the cost allocation method proposed by SP AusNet. The AER is required to assess Cost Allocation Methods (CAMs) proposed by Distribution Network Service Providers in accordance with the National Electricity Rule requirements.

Approval of Victorian electricity distribution tariffs 2011

On 13 December 2010 the AER determined that the Victorian distribution businesses' pricing proposals comply with Part I of chapter 6 of the NER and the AER's 2011-15 distribution determination, and that all forecasts associated with the proposals are reasonable.

In accordance with clause 6.18.9 of the NER, the Victorian DNSPs must publish and maintain information relating to approved prices, including a statement of expected price trends, on their respective websites.

2009-09 Transmission Network Service Providers performance report

On 10 December 2010 the AER released its *2008-09 TNSP Electricity Performance Report*.

The report relates to the performance of Electricity TNSP's in 2008-09. TNSPs covered in this report were Directlink, ElectraNet, EnergyAustralia, Murraylink, Powerlink, SP AusNet, Transend, TransGrid and AEMO. The report provides revenue, profit, expenditure and service standards information on each TNSP for the 2008/09 financial year. In publishing the report, the AER took into account confidentiality considerations and comments from the transmission networks.

Amendments to the transmission roll forward model and post-tax model

On 6 December 2010 the AER published its amended roll forward model (RFM) and post-tax revenue model (PTRM) final decision 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.

Following the draft decision the AER made some further amendments to the model including incorporating the equity raising costs worksheet to calculate a benchmark amount and expanding the number of asset classes from 20 to 30. In addition, the AER has engaged an independent auditor to review the PTRM and RFM excel models to ensure they are accurate and contain no material errors. The AER will publish the audited PTRM and RFM on its website.

Proposed amendments to transmission service target performance incentive scheme

On 3 December 2010 the AER released a proposed amended service target performance incentive scheme (STPIS) for electricity transmission network service providers (TNSP), following receipt of a proposal by Powerlink to amend certain aspects of the STPIS as they apply to Powerlink.

The proposed amendments to the STPIS therefore generally relate to parameters and definitions specific to Powerlink, however some minor amendments are also proposed to the text in Appendix B of the STPIS, which applies to all TNSPs. The AER intends to undertake a more extensive review of the STPIS, including its effectiveness, in 2011. The AER will engage with stakeholders as part of that review.

Advanced Metering Infrastructure remote service charges

On 24 November 2010 the AER released its Draft Decision regarding AMI remote service charges for Victorian distribution businesses. The draft decision relates to the charges proposed by CitiPower, Powercor, United Energy and Jemena Electricity Networks (JEN) for the provision of AMI remote services, including re-energisation (connection), de-energisation (disconnection), special meter reads and meter reconfiguration. The businesses will be ready to provide these services in 2011 to customers who have remotely read advanced interval meters (smart meters).

Final decision and distribution determinations for Victorian distribution businesses

On 29 October 2010 the AER released its Final Decision and distribution determinations for the Victorian electricity distributors—CitiPower, Powercor, United Energy, Jemena Electricity Networks and SP AusNet. The decision and determinations cover the regulatory control period 1 December 2011 to 31 December 2015 and set the revenue that the Victorian distributors are able to recover in their distribution charges for the provision of electricity distribution services. Applications for review of the determinations sought by the distribution businesses were submitted to the Tribunal in December 2010, with the AER providing notice to interested stakeholders about the applications for review.

Final decision - AMI charges applications

On 29 October 2010 the AER released the Victorian distribution network services providers' (CitiPower, Powercor, Jemena Electricity Networks, SP AusNet and United Energy) revised Advanced Metering Infrastructure charges. These will apply for the period 1 January 2011 to 31 December 2011.

Framework approach paper for Aurora Energy

On 29 November 2010 AER published the framework and approach paper for its 2012-17 distribution determination for Aurora Energy. The framework and approach paper states the form of control that will apply to Aurora Energy's distribution services in the forthcoming regulatory control period, and sets out the likely approach to the classification of services and application of a service target performance incentive scheme, efficiency benefits sharing scheme and demand management incentive scheme.

Demand Management Incentive Scheme for Aurora Energy

On 8 October 2010 the AER made a Final Decision on the demand management incentive scheme (DMIS) to apply to Aurora Energy.

The DMIS consists of a demand management innovation allowance (DMIA), which is provided to Aurora Energy on an annual basis throughout the regulatory period. The AER will consider the application of the DMIA in the upcoming regulatory control period, including the amount of the DMIA, of the AER's final framework and approach paper, was published on 29 November 2010.

Responsibility for the economic regulation of Aurora will transfer to the AER on or before the commencement of the forthcoming regulatory control period, starting 1 July 2012. The AER will undertake the next determination of Aurora's maximum revenue allowance for this regulatory control period.

The AER commenced the first stage of the process of making a distribution determination in Tasmania in June 2010, with the joint release of its preliminary position papers on the framework and approach for Aurora Energy and the draft DMIS.

Energy Australia's revised cost pass through application – NSW Solar Bonus Scheme

On 2 September 2010 the AER received a cost pass through application from EnergyAustralia relating to the implementation and administration of the NSW Solar

Bonus Scheme. As the NSW Energy Minister was reviewing the scheme at the time of EnergyAustralia's application, the AER decided on 8 October 2010 to extend the time for EnergyAustralia to submit its application until 45 business days after the Minister's review of the scheme was published.

On 24 December 2010 the AER received a revised application from EnergyAustralia to pass through to its network customers the costs that have been incurred and are likely to be incurred as a result of the introduction of the NSW Solar Bonus Scheme during the 2009-14 regulatory control period. EnergyAustralia has proposed a pass through amount of \$35.2 million for this period. Based on this amount, EnergyAustralia seeks additional revenues of \$26.2 million to be recovered from its distribution network customers during the 2009-14 regulatory control period.

EnergyAustralia's cost pass through application is required to be assessed under clause 6.6.1 of the transitional chapter 6 rules. The revised application has been published on the AER's website. Interested parties have been invited to make submissions on EnergyAustralia's revised application by 28 January 2011. The AER expects to make its determination on EnergyAustralia's application in March 2011.

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

The Australian Competition Tribunal has mostly completed the applications for review filed by Energex, Ergon Energy and ETSA Utilities in May 2010.

As per the Tribunal orders, the parties are currently undertaking further work in relation to Gamma (value of tax imputation credits) which was appealed by all three DNSPs. This includes reports on components used in calculating Gamma such as dividend drop off and tax statistic studies. The AER also prepared and filed a report relating to the alternative control services control mechanism matter appealed by Ergon Energy.

The Tribunal decided that the AER erred in not revaluing ETSA Utilities' easements. Further, it also decided the AER erred in some aspects of the labour escalation rates and non system capex allowance provided for Ergon Energy. The Tribunal agreed with the AER in relation to the service standards target and customer services opex allowance set out in the final decision. The Tribunal also agreed with the AER's classification of street lighting services as regulated services.

Energy markets

On 15 December 2010 the AER published the *State of the energy market 2010* report. The report provides an overview of Australia's electricity and natural gas markets over the past 12 to 18 months. It supplements the AER's extensive technical and compliance reporting on the energy sector and is intended to meet the needs of a wide audience, including government, industry and the broader community.

The 2010 edition consists of a market overview, supported by four chapters on the electricity and natural gas sectors. It is more concise than previous editions, and focuses on activity in those jurisdictions and areas in which the AER has regulatory responsibilities. The report is available electronically on the AER website, with hard copies available for purchase.

Enforcement policy: non-compliant bid and rebid information

On 7 December 2010 the AER published Compliance Bulletin No 3 *Monitoring and enforcing compliance of electricity offer, bid and rebid information in the National Electricity Market* (the compliance bulletin).

As a result of ongoing issues with the quality of offer, bid and rebid information submitted by participants, the AER has adopted a three stage process for enforcing compliance with the relevant provisions of the NER. Relevant participants that submit offer, bid and/or rebid information that does not appear to meet the requirements of the NER will receive two warnings. If it happens again on a third occasion within a defined period, the AER will consider issuing an infringement notice.

The three stage process will take effect on 1 March 2011. The AER encourages relevant participants to review their offer, bid and rebid procedures to ensure that they meet the requirements of the NER.

AER future retail functions

The AER continued to develop and consult on the various guidelines and position papers in anticipation of the National Energy Customer Framework. The proposed new Law and NER being implemented as part of the National Energy Customer Framework will transfer non-price distribution and retail regulatory functions from state and territory jurisdictions to the AER (except in Western Australia and the Northern Territory). Effective transfer of these functions is likely to occur during 2011/12. The AER's consultation in readiness for these new functions during the last quarter of 2010 included the following:

- *Draft Retail Authorisation guideline*: released 10 November 2010 with consultation paper
- *Retail Market Performance Reporting position paper, including updated proposals on Hardship Program Indicators*: released 11 November 2010. Stakeholder forum held on 26 November 2010.
- *Retailer of Last Resort (RoLR) scheme and cost recovery scheme issues papers*: released 19 and 22 November 2010. Stakeholder forum hosted 1 December 2010.
- *Draft decision on proposed approach to compliance and enforcement under the National Energy Customer Framework*: released 2 December 2010 with Draft Statement of Approach and Draft Compliance Procedures and Guidelines.
- *Retail Exemptions Consultation Paper, draft Exempt Selling Guidelines and draft determination of class exemptions*: released 3 December 2010. Stakeholder forum hosted 15 December 2010.
- *Approach to Approval of Hardship Policies*: draft guidance paper published on 6 December 2010.

Electricity spot prices above \$5000/MWh

On 19 November 2010 the electricity spot price exceeding \$5000/MWh in Tasmania. The AER published a report exploring the reasons for the high spot price.

Quarterly Compliance Report for July – September 2010

On 27 October 2010 the AER published its latest energy quarterly compliance report. The report summarises the results of the AER's compliance monitoring and enforcement activities in both the electricity and gas industries during the period July–September 2010. It provides an overview of the results of investigations (including special reports into significant market or power system events), compliance audits, targeted compliance reviews as well as electricity derogations and rebidding enquiries during the quarter.

Water

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

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

Enforcement and monitoring activities under the Water Rules

The ACCC is responsible for enforcing compliance with rules made under the *Water Act 2007* (Water Act) including the Water Market Rules 2009 (WMR) and the Water Charge (Termination) Fee Rules 2009 (WCTFR – collectively the Rules), which took full effect from 1 January 2010 and 1 September 2009 respectively.

Recent amendments to the NSW *Water Management Act 2000* mean that there are no longer impediments to private water trusts and private irrigation districts in NSW complying with the Rules. These amendments were made following concerns raised by a number of NSW private water trusts and private irrigation districts about their ability to give effect to their obligations under the Rules.

During the December quarter Murray Irrigation Limited and Murrumbidgee Irrigation Limited fulfilled certain obligations in accordance with the undertakings they each gave to the ACCC in July 2010 and September 2010 respectively in relation to contraventions of the WCTFRs.

The ACCC continued to investigate a number of inquiries and possible breaches of the Rules during the December quarter. One of these investigations involved a breach of the WCTFR by an irrigation infrastructure operator (IIO). The ACCC and the IIO reached administrative resolution of the matter that included the giving of refunds by the IIO to affected customers.

Transport and General Prices Oversight

Ports

Monitoring of container stevedoring

The ACCC monitors prices, costs and profits of container stevedoring terminal operator companies at the ports of Adelaide, Brisbane, Burnie, Fremantle, Melbourne and Sydney under a direction from the Treasurer. On 8 November 2010 the ACCC released the *container stevedoring monitoring report no. 12* for 2009–10.

Industry performance in 2009–10 was largely affected by increased demand for stevedoring services associated with improved economic conditions following the

impact of the global financial crisis during 2008–09. The following summarises the monitoring results for 2009–10:

- some measures of productivity increased while others decreased. Improvements in crane intensity rates during 2008–09 appear to have been temporary at some container ports, mostly Sydney
- container throughput increased by 4.9 per cent, largely as a result of a recovery in general economic conditions
- unit total revenues (which are indicative of average prices) were largely unchanged
- unit total costs were slightly lower than 2008–09 levels. Higher labour, equipment and property costs were offset by growing volumes
- industry profitability (measured by a rate of return on tangible assets) increased as a result of higher industry earnings and a relatively smaller expansion in the industry's asset base.⁴ Operating profits continue to be high when measured against benchmark indicators.

The monitoring results remain consistent with an industry in which competition is constrained.

Demand for stevedoring services is forecast to grow strongly over the next decade and beyond. During 2009–10 signs emerged, however, of quay-side congestion at larger container ports (mostly Sydney). Australia will require the most efficient use of its existing stevedoring capacity as well as efficient investment in new capacity to meet the challenges of future growth. Investment in port infrastructure and further improvements in stevedoring productivity will be required to carry out this task.

Australia's trade performance depends upon efficient container ports. The productivity of, and continued investment in, container stevedoring terminals is important for Australia's economic performance. Competition on the docks is the most effective means of driving productivity in the operation of existing capacity, and the most effective way of driving efficient investment in new capacity. The need for greater competition in Australian stevedoring has been recognised for several years.

Decisions taken by state governments about the timing and level of investment in ports are necessarily complex and involve a range of considerations. Opportunities for capacity expansion at ports are rare, which makes them all the more important when they do arise. The Victorian Government is currently deciding how Australia's largest container port will cater for future increases in demand.

GrainCorp's proposed ports access undertaking

On 7 October 2010 the ACCC released an issues paper on the proposed undertaking received from GrainCorp on 22 September 2010 and sought submissions by 4 November 2010. This commenced consultation in relation to the ACCC's

⁴ Tangible assets refer to the physical infrastructure (e.g. cranes, straddles etc) used by the stevedores to provide container stevedoring services. The value of tangible assets does not represent the total value of the assets employed in the business. The ACCC excludes the value of intangible assets (i.e. goodwill) and revaluations from the industry's asset base when assessing operating performance. The resulting measure should therefore not be interpreted as a return on the funds invested by shareholders in the respective stevedoring business.

assessment of the proposed undertaking under Part IIIA of the Trade Practices Act (the Competition and Consumer Act from 1 January 2011). Three interested parties made submissions to the issues paper.

The proposed undertaking is intended to take effect at the expiry of the current undertaking accepted by the ACCC in September 2009 and relates to port terminal services for the export of bulk wheat from GrainCorp's seven terminals in Queensland, New South Wales and Victoria.

The ACCC expects to release a draft decision for consultation in the first quarter of 2011.

Australian Bulk Alliance's (ABA) proposed ports access undertaking

On 23 December 2010 ABA submitted a proposed undertaking to the ACCC for assessment under Part IIIA of the TPA (the Competition and Consumer Act from 1 January 2011). ABA is an Australian subsidiary of the Japanese listed Sumitomo Corporation and the undertaking relates to the provision of access to services for the export of bulk wheat at the grain terminal operated by ABA at the Port of Melbourne.

The ACCC has released an issues paper for consultation.

Viterra's proposed ports access undertaking

On 23 December 2010 Viterra submitted a proposed undertaking to the ACCC for assessment under Part IIIA of the TPA (the Competition and Consumer Act from 1 January 2011).

The proposed undertaking is intended to take effect at the expiry of the current undertaking accepted by the ACCC in September 2009 and relates to port terminal services for the export of bulk wheat from Viterra's six port terminals in South Australia. The ACCC has released an issues paper for consultation.

Rail

Hunter Valley rail access undertaking

On 21 December 2010 the ACCC issued a Position Paper setting out its views on an access undertaking submitted by the Australian Rail Track Corporation (ARTC).

ARTC submitted the undertaking to the ACCC for assessment under Part IIIA of the TPA on 7 September 2010. The proposed undertaking relates to the provision of access to the Hunter Valley rail network operated by ARTC in New South Wales.

While the ACCC is not seeking formal submissions on the Position Paper, it will meet with any interested parties to discuss the matters raised if desired. The ACCC continues its assessment of the proposed undertaking.

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.

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.

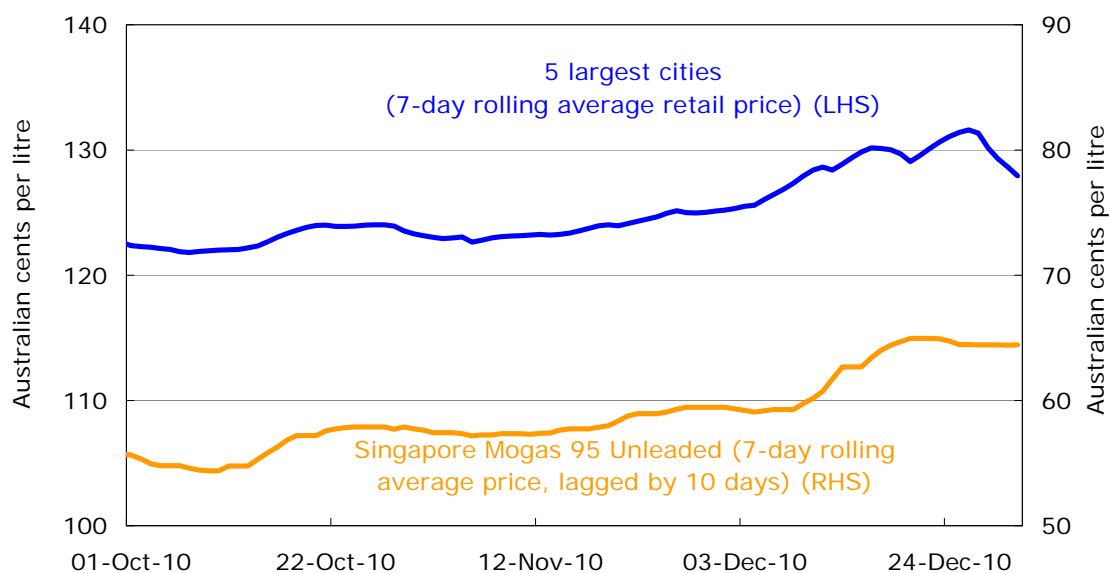
Price movements in the December 2010 quarter

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 10 days) in Australian cents per litre (cpl).

The chart below shows movements in these prices over the period 1 October to 31 December 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 comparisons of movements in these two prices are indicative only and that factors other than international benchmark prices can influence retail petrol prices in the short run. This caveat also applies to the comparisons of movements between retail diesel and automotive LPG prices and their respective international benchmarks.

Chart 5.1 : Movements in retail regular unleaded petrol prices and international benchmark prices — 1 October to 31 December 2010



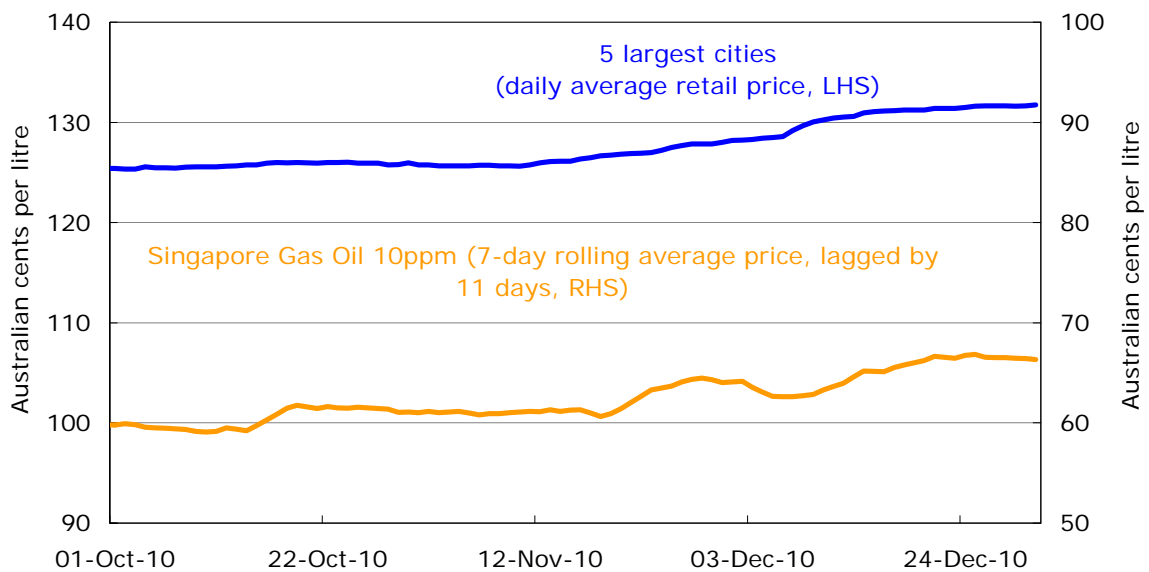
As illustrated in the chart, retail regular unleaded petrol prices broadly tracked movements in the benchmark prices in the December 2010 quarter. Average retail regular unleaded petrol prices across the five largest cities (on a seven-day rolling average basis) increased from 122.4 cpl at the beginning of October 2010 to 127.9 cpl at the end of December 2010 - an increase of 5.5 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 prices over the December 2010 quarter.

Average retail diesel prices for the five largest cities (on a seven-day rolling average basis) increased by 6.3 cpl over the December 2010 quarter - from 125.4 cpl to 131.7 cpl.

Chart 5.2: Movements in retail diesel prices and international benchmark prices — 1 October to 31 December 2010

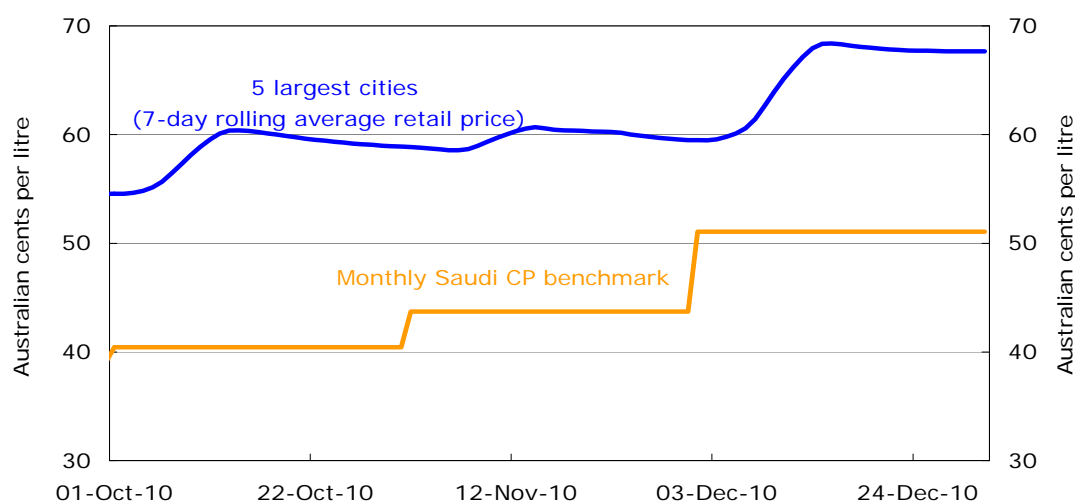


Automotive LPG

The ACCC monitors the movement of retail automotive LPG prices against the average price of Saudi Aramco contract prices (Saudi CP) for propane and butane, which are issued on the first day of the month (see chart below).

Average retail automotive LPG prices for the five largest cities (on a seven-day rolling average basis) increased by 13.1 cpl over the December 2010 quarter - from 54.6 cpl to 67.7 cpl.

Chart 5.3: Movements in retail automotive LPG prices and international benchmark prices — 1 October to 31 December 2010



Monitoring of the Australian petroleum industry—Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia 2010

The ACCC's latest petrol monitoring report *Monitoring of the Australian petroleum industry—Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia 2010* was released on 15 December 2010. The key findings of the report were:

- Australian retail petrol prices closely followed the international benchmark prices of refined petrol (Singapore Mogas 95 Unleaded)
- domestic prices were more stable in 2009-10 compared with earlier years due to more stable international prices and favourable movements in the Australian/US dollar exchange rate
- the weekly retail price cycles were again evident in the larger cities, although there were instances when these cycles did not occur. In addition there were periods when the price cycles moved through the week, resulting in changes to the cheapest day to buy petrol
- further evidence of structural changes in the Australian petrol industry, particularly in retail markets. Mobil effectively exited the Australian retail market selling its retail assets to 7-Eleven and On the Run. This continues a trend in the market of specialist retailers, including the supermarket chains, increasing their involvement in fuel retailing. Also, independent imports of total petroleum products increased substantially
- an increase in sales of ethanol blended petrol (such as E10) as well as premium unleaded petrol, largely in response to the NSW Government's ethanol mandate and in preparation for the Queensland mandate which has now been suspended
- the amount of the bowser price that motorists paid as profits to the petrol companies accounted for an average of 2.9 cpl
- average retail prices in Australia were the fourth lowest in the OECD.

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 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 includes 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:

- 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 December 2010 quarter the ACCC:

- attended and participated in the ICN Cartel Workshop in Yokohama, Japan
- attended and participated in the ICN Mergers Workshop in Rome, Italy
- attended the OECD Competition Committee and related working party meetings in Paris, France
- attended and participated in the ICPEN conference and Best Practices Workshop in Noordwijk, Netherlands
- attended the International Mass Marketing Fraud Working Group meeting in Bruges, Belgium
- attended and presented at the European Competitive Telecoms Association Annual Regulatory Conference in Brussels, Belgium

- attended the International Meeting and Training Symposium, Product Safety Week and OECD Project Safety Meeting in Brussels, Belgium
- attended the Korean 4th International Workshop and ICHPSO meeting in Korea
- attended and presented at the Global Competition Law conference in India
- attended and presented at the Taiwan Fair Trade Commission Regional Capacity Building conference in Jakarta, Indonesia
- participated in the London Action Plan meeting in Melbourne, Victoria
- attended and presented at the 7th 'SMEs in a Global Economy' (small business in the Asia-Pacific region) conference in Sarawak, Malaysia
- attended and presented at the OSITRAN International experiences in transportation infrastructure regulation in Lima, Peru
- participated in Korean Power Exchange International Demand Response Workshop in Seoul, Korea
- attended the International Bar Association Annual Conference in Vancouver, Canada.

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 December 2010 quarter, the ACCC received and/or sought information from counterpart agencies in Belgium, Bhutan, Brazil, Canada, Chile, China, the European Commission, Hong Kong, Indonesia, Ireland, Japan, Namibia, New Zealand, Singapore, Thailand, United Kingdom and the United States.

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 December 2010 quarter the ACCC met with representatives of the following agencies:

- State Administration for Industry and Commerce, China
- Competition Commission, India
- Ministry of Trade, Indonesia
- Fair Trade Commission, Japan
- Fair Trade Commission, Korea
- Ministry of Domestic Trade, Co-operatives & Consumerism, Malaysia
- Office of the Prime Minister, Malta
- Commerce Commission, New Zealand
- Competition Commission, Singapore
- Competition Commission, South Africa
- Consumer Protection Board, Thailand
- Competition Commission, United Kingdom
- Office of Fair Trading, United Kingdom
- Department of Justice, United States
- Ministry of Industry & Trade, Vietnam

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 participated in the OECD/Korea Policy Centre training seminar on competition issues in the banking industry held in Seoul, Korea.

7 Reviews and inquiries

Legislative matters

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

Trade Practices (ACL) Amendment Regulations 2010 (No. 1)

These Regulations were made on 16 November 2010 and amend the *Trade Practices Regulations 1974* (now known as the *Competition and Consumer Regulations 2010*) to give practical effect to the ACL provisions dealing with prescribed requirements for asserting a right to payment, agreements that are not unsolicited consumer agreements, requirements for warranties against defects and repair notices and reporting requirements for goods or product-related services associated with death, serious injury or serious illness.

Telecommunications Legislation Amendment (National Broadband Network Measures—Access Arrangements) Bill 2010

On 25 November 2010 the Government introduced two Bills into the House of Representatives which set out the regulatory framework for the National Broadband Network. The Companies Bill sets out obligations on NBN Co Limited to limit its operations to, and focus them on, wholesale-only telecommunications. The Access Bill establishes open access, transparency and non-discrimination obligations relating to the supply of wholesale services by NBN Co.

Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010

On 29 November 2010 legislation aiming to promote a more open and competitive telecommunications market in Australia was passed by the Parliament. The Royal Assent was granted on 15 December 2010. Among other things, the legislation:

- allows for the structural separation of Telstra
- provides clarity to the telecommunications access regime in Part XIC of the Trade Practices Act by simplifying the process of resolving access disputes between carriers and access seekers
- amends the telecommunications-specific anti-competitive conduct regime in Part XIB of the Trade Practices Act by streamlining the enforcement processes that the ACCC is required to follow and by clarifying the application of the competition notice regime.

Trade Practices (ACL) Amendment Regulations 2010 (No. 1) Amendment Regulations (No.1)

These Regulations were made on 8 December 2010 and amend the *Trade Practices (ACL) Amendment Regulations 2010 (No. 1)* to correct certain drafting errors, and to update references to the *Trade Practices Act 1974* (now known as the *Competition and Consumer Act 2010*) and the *Trade Practices Regulations 1974* to allow for a name change from 1 January 2011.

Other developments

Price signalling

Competition and Consumer (Price Signalling) Amendment Bill 2010

On 22 November 2010 the Coalition introduced a Private Member's Bill into the House of Representatives in relation to price signalling. The Bill:

- prohibits corporations from communicating price-related information to a competitor when it is done for the purpose of inducing or encouraging the competitor to vary the price at which it supplies or acquires goods or services and that information has, or is likely to have the effect of substantially lessening competition in the relevant market
- allows the ACCC to grant, upon application by a corporation, an authorisation to engage in conduct which would otherwise be in contravention of the amendment.

The Bill was referred to the House Standing Committee on Economics on 23 November 2010 for inquiry with a report due 30 May 2011.

On 12 December 2010 the Australian Government announced a series of reforms to promote competition in the banking sector, including reforms to empower the ACCC to investigate anti-competitive price signalling.

The Government's reforms would give the ACCC the power to take action against businesses in specified sectors that signal their prices or other strategic information to their competitors in order to undermine competition. This reform will apply initially to banks, with the capacity for other sectors to be specified in future after further review.

ACL Regulations

On 16 November 2010 the Trade Practices (ACL) Amendment Regulations 2010 (No. 1) were made by the Governor-General. The regulations form part of the ACL and commenced on 1 January 2011.

The ACL Regulations give practical effect to the ACL provisions dealing with:

- prescribed requirements for asserting a right to payment
- agreements that are not unsolicited consumer agreements
- requirements for warranties against defects and repair notices
- reporting requirements for goods or product-related services associated with death, serious injury or serious illness.

Reports

During the December 2010 quarter the ACCC and AER published the following reports:

- Monitoring of the Australian petroleum industry—Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia 2010
- Container stevedoring: monitoring report no. 12

- State of the energy market 2010.

Consultative committees

Franchising Consultative Committee (FCC)

On 29 October 2010 the ACCC held a meeting of the FCC, a consultative body that helps inform the ACCC on issues relating to franchising. Members of the Franchising Consultative Committee include franchisees, franchisors, lawyers, business advisors, government agencies and franchising researchers.

Small Business Consultative Committee (SBCC)

On 5 November 2010 the SBCC held a meeting chaired by Deputy Chair Schaper. The SBCC was established by the ACCC to provide a forum through which trade practices concerns related to the small business sector could be considered and addressed collaboratively.

Infrastructure Consultative Committee (ICC)

On 26 November 2010 the ICC met. The function of the ICC is to facilitate discussions on the broad issues of infrastructure and infrastructure regulation. The committee was selected to be representative of the diversity of infrastructure interests and includes representatives from energy, telecommunication, water, rail, port and airports.

Consumer Consultative Committee (CCC)

On 7 December 2010 the second meeting with new membership of the CCC took place and was again chaired by Chris Connelly. Major issues for discussion were energy marketing and new national sales practices laws under the ACL. The ACCC established the Consumer Consultative Committee (CCC) in 2001 to provide a forum through which consumer protection issues could be considered and addressed collaboratively between consumer representatives and the ACCC.

Appendix

Speeches

During the December 2010 quarter the ACCC delivered 37 speeches, including:

The TPA and Professions and Not-For-Profits

Michael Schaper, Deputy Chairman

Australian Association of Executives, Melbourne, 26 October 2010

ACL

Peter Kell, Deputy Chairman

WA Department of Commerce Seminar, Perth, 18 November 2010

Competition Markets and Social Justice

Graeme Samuel, Chairman

Law School Costello Lecture, Monash University, Melbourne, 24 November 2010

Regulatory Pricing Models in Telecommunications

Ed Willett, Commissioner

European Competitive Telecoms Association Annual Regulatory Conference, Brussels, 30 November 2010

News releases

During the December 2010 quarter the ACCC issued 82 news releases and the AER issued six news releases.

Publications

The following publications were released during the December 2010 quarter.

Corporate

ACCCCount: A report of the Australian Competition and Consumer Commission's activities, 1 July to 31 September 2010

ACCC update, issue 29

For business

Authorising and Notifying Cartel Conduct

Authorisation process – the Basics

Authorisations and notifications – A Summary

Business Snapshot- Component pricing- electrical goods, white goods and furniture advertising

Business Snapshot- Consumer Guarantees

Business Snapshot- Component Pricing- restaurants, cafes and hotels

Business Snapshot- ACL: what you need to know

Collective bargaining notifications – A Summary

Competition and Consumer Law: and overview for business

Compliance and enforcement policy

Exclusive Dealing notification process – the basics

Export agreements and the Competition and Consumer Act

Guidelines for Excluding information from the public register for authorisation and notification processes

Streamlined collective bargaining for small business

Supplier Guide – Portable spas, pools, potty skimmers and outlets

Supplier Guide – Children’s toys containing magnets

Supplier Guide – Projectile toys

Unconscionable conduct in the Indigenous art and craft sector – Small business fact sheet

Unit Pricing – a Guide for grocery retailers

Unit pricing – A quick guide

ACCC reports

State of the Energy Market 2010 Report

ACCC Water Monitoring 2009-10 Update to the Minister for Sustainability, Environment, Water, Population, and Communities.

For regulated industries

Network, issue 37 and 38

Regulatory observer, issue 10 - 15