



Australian  
Competition &  
Consumer  
Commission

# ACCCOUNT

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

1 January to 31 March 2011

Australian Competition and Consumer Commission

23 Marcus Clarke Street, Canberra, Australian Capital Territory 2601

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# Overview

On 1 January 2011 the *Trade Practices Act 1974* became the *Competition and Consumer Act 2010* (the Act) and now incorporates the new Australian Consumer Law (ACL). The Australian Competition and Consumer Commission (ACCC), through securing compliance with the Act enhances the welfare of all Australians by promoting competition, fair trading and protects consumers from unscrupulous business practices. The ACCC, with the Australian Energy Regulator (AER), also has a role in regulating national infrastructure services and other markets where there is limited competition and natural monopoly characteristics.

In meeting these objectives, the ACCC ensures that its processes are efficient, transparent and fair, and that outcomes achieved are communicated to the Australian public. In the March 2011 quarter, the ACCC undertook a range of activities that benefited both businesses and consumers.

In terms of enforcement action, the March 2011 quarter was marked by the conclusion of one major competition focused litigation, *ACCC v April International Marketing Services & Ors*. In this matter, a total of \$4.2 million in penalties was imposed on two overseas-based companies for fixing the price of photocopy paper and uncoated woodfree folio paper supplied to Australian customers.

Important outcomes were also achieved in the fair trading and consumer protection spheres. One party was fined for supplying infant sleeping bags that did not have fire hazard information labels in contravention of a consumer product safety standard, while another party was subject to permanent injunctions and corrective notices in relation to misleading and deceptive conduct in connection with a cancer treatment program.

During the March 2011 quarter, some of the major mergers matters decided by the ACCC included:

- not opposing Cargill Incorporated's proposed acquisition of the commodity management business AWB Limited (owned by Agrium)
- opposing Asahi Holdings (Australia) Pty Ltd's proposed acquisition of P&N Beverages Australia Pty Ltd
- not opposing Sleepyhead's proposed acquisition of Sleepmaker and Dunlop Foams from Pacific Brands; Pacific Brands – proposed acquisition of Wonderlay from Sleepyhead.

Also key for the Mergers and Acquisition group was the Metcash civil proceedings in the Federal Court, Sydney. The final judgement is yet to be handed down.

The ACCC, in its adjudication role, issued 5 determinations in the March 2011 quarter. One of the major matters was granting authorisation for a period of five years to Virgin Blue and Etihad for an air passenger service-related alliance, which would include a commercial cooperation agreement, associated code share agreements, a frequent flyer agreement and a reciprocal lounge agreement.

In the regulatory area of communications, the ACCC continued its work on the National Broadband Network (NBN) and issued a revised list of initial Points of Interconnect for the NBN.

The Australian Energy Regulator (AER) continued its work in the energy sector. It released the access arrangement proposals for the Amadeus Gas Pipeline and is considering the revised access arrangement proposals for Queensland and South Australian gas distribution networks. The AER also issued a final report and guideline regarding its approach to reporting requirements and monitoring standards in the electricity market.

The Water Charge (Infrastructure) Rules 2010 commenced on 12 January 2011 after being made by the Minister for Sustainability, Environment, Water, Population and Communities. The ACCC is responsible for monitoring and enforcing compliance with the new rules as well as assessing applications for accreditation from state regulators to implement price determinations under the rules. Additionally, the ACCC released its annual airport monitoring report for the 2009–2010 financial year.

On 21 March 2011, Mr Chris Chapman was reappointed as an Associate Member of the ACCC until 15 October 2015.

# 1 Enforcement and compliance

## Enforcement and compliance

Maintaining and enhancing compliance with the *Competition and Consumer Act 2010*, formerly the *Trade Practices Act 1974*, 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 March 2011 quarter the ACCC Infocentre responded to 42 864 complaints and inquiries from businesses and consumers (email: 12330 / telephone: 29909 / letter correspondence 625). Of these, 33 489 (98 per cent of total entries) complaints and inquiries were entered into the ACCC's TRACKIT database by Infocentre staff. Major drivers of these contact levels include concerns about scam-based activity, requests for warranty and refunds advice, and complaints about the internet retailing sector.

The Infocentre placed 426 complaints and inquiries into the 'under assessment' category in the ACCC's database for further consideration during the March 2011 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 56 per cent of total contacts for the period. This highlights a continuing trend in the increase of scam-related complaints in terms of the contact to the ACCC.

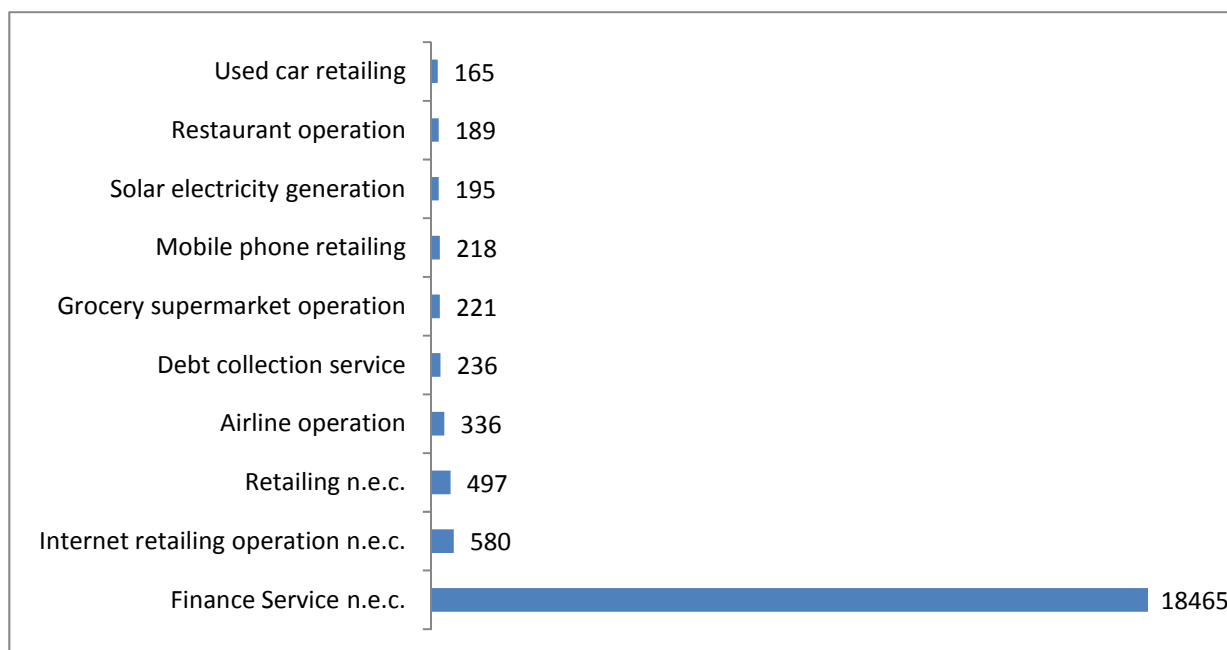


Chart 1.1: The ten industries attracting the most complaints

Of the complaints and inquiries entered into the ACCC's database during the March 2011 quarter, 36 per cent related to consumer protection matters (excluding scam related contacts). Competition matters accounted for 2 per cent of contacts, and scam related contacts accounted for 53 per cent of contacts.

## **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 two first-instance enforcement litigation proceedings in the Federal Court of Australia during the March 2011 quarter for alleged breaches of the Trade Practices Act and/or the Competition and Consumer Act.

#### **Competition**

Nil

#### **Fair trading and consumer protection**

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##### **Gwyneth Graham**

Commenced 11 February 2011 | WAD38/2011

Proceedings under the ACL for alleged misleading and deceptive conduct, and false or misleading representations in relation to 'cancer cures'.

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##### **EDirect Pty Ltd**

Commenced 30 March 2011 | NTD3/2011

Proceedings under Part V for allegedly making false or misleading representations as to the performance characteristics, uses or benefits of its services, the supply of mobile telecommunications services at nominated addresses, in circumstances where, at the time of acceptance there were reasonable grounds, of which EDirect was aware or ought reasonably to have been aware, for believing that EDirect would not be able to supply the said services within a reasonable time.

### **Proceedings concluded**

Four first-instance enforcement litigation proceedings were finalised during the March 2011 quarter.

#### **Competition**

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##### **April International Marketing Services & Ors**

Commenced 6 December 2006 | Concluded 25 February 2011 | NSD2394/2006

Proceedings under Part IV for allegedly entering into arrangements, contracts or understandings with competitors for the supply of fine paper products.

Justice Bennett | Federal Court Sydney | 25 February 2011

Asia Pulp & Paper Co Ltd and PT Indah Kiat Pulp and Paper Tbk | Declarations, injunctions, pecuniary penalties (total of \$4.2 m) and costs (\$300,000).

Justice Bennett | Federal Court Sydney | 29 January 2010

April International Marketing Services Australia Pty Ltd, April Fine Paper Trading Pte Ltd (Singapore) | Injunctions, pecuniary penalties (total of \$4m), and costs (\$250,000).

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### **Fair trading and consumer protection**

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#### **Le Sands Restaurant & Le Sands Cafe Pty Ltd ACN 002 262 286 t/as Signature Brasserie**

Commenced 6 September 2010 | Concluded 8 February 2011 | NSD1161/2010

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

Justice Jagot | Federal Court Sydney

Outcome | Declarations, an injunction, pecuniary penalty (\$15 000); and costs.

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#### **Darryl Peter Jones**

Commenced 24 February 2010 | Concluded 4 February 2011 | QUD54/2010

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

Justice Logan | Federal Court Brisbane

Outcome | Declaration, permanent injunction, corrective notice, costs, orders regarding future actions:

- permanent injunctions were issued restraining Jones from making any representations, and from being knowingly involved with the making of any representations, to the effect that the occurrence or growth of cancer or any medical condition can be prevented or successfully treated by any means whatsoever unless he has first obtained from an appropriately qualified person written advice certifying that the proposed treatment is in the opinion of that person supported by reliable scientific evidence or expert medical opinion and is believed to be effective and safe (and discloses details of this advice to the client and to the ACCC)
  - an order that he take certain steps if he becomes aware that someone else is representing to be him, or to be associated with him or acting on his behalf and making a representation that if made by him would contravene the orders
  - a corrective notice to be placed on his website and any other website controlled by him now or in the next three months to inform the public of the outcome of the case
- 

#### **Philip Robinson**

Commenced 14 May 2010 | Concluded 17 January 2011 | SAD67/2010

Criminal proceedings under Part VC for alleged supply of infant sleeping bags that did not have a fire hazard information label in contravention of a consumer product safety standard.



## **Section 87B Enforceable undertakings accepted**

The ACCC accepted five enforcement-related section 87B undertakings during the March 2011 quarter.

### **Competition**

**Dragon Alliance South Pacific Pty Ltd** has provided court enforceable undertakings to the ACCC in relation to alleged resale price maintenance of sports equipment and accessories. Dragon Alliance South Pacific has undertaken to:

- cease providing its current online trading agreement to its online traders and replace it with an updated online trading agreement
- send a letter to all online Dragon retailers notifying them of the undertaking and informing them that they can choose the minimum selling price of Dragon products
- establish and implement a Trade Practices Compliance program.

**Global Enterprises (Qld) Pty Ltd t/a Allure Gold** has provided court enforceable undertakings to the ACCC in relation to alleged false representations about the composition, manufacturer and lifetime guarantee of its jewellery and alleged resale price maintenance. Global Enterprises has undertaken to:

- send a letter to all retailers notifying them of the undertaking and informing them that they can choose the minimum selling price of Allure Gold products
- place a corrective notice on the Allure Gold website and ask retailers to place one in-store
- provide a full refund to consumers or retailers that feel they have been misled
- establish and implement a Trade Practices Compliance program.

### **Fair trading and consumer protection**

**Optus Mobile Pty Ltd** has provided court enforceable undertakings to the ACCC in relation to alleged misrepresentations about consumer rights and remedies for faulty mobile phones. Optus has undertaken:

- not to make any misleading representations to consumers regarding their statutory rights
- to continue providing a 24 month extended repair warranty for mobile phone handsets it supplies on 24 month fixed contracts, including Apple iPhones.

**Galdan Investments Pty Ltd t/a Tropic Banana Company** has provided court enforceable undertakings to the ACCC in relation to concerns about alleged contraventions of the Horticulture Code of Conduct. Galdan Investments has undertaken to:

- only trade in horticulture produce with growers where a horticulture produce agreement is in place
- prepare, publish and make publicly available the terms and conditions under which it will trade with growers of horticulture produce

- provide statements to each of its growers for the reporting periods
- arrange trade practices compliance training for its relevant staff
- arrange for the production of a DVD containing a presentation outlining the effect and operation of the Code and to provide a copy of that DVD to all growers with whom it has traded since 14 May 2007, without charge
- publish an information notice in the Queensland Country Life newspaper.

**Patterson Cheney Pty Ltd**, a retailer of new and used motor vehicles, has provided court enforceable undertakings to the ACCC in relation to misrepresentations regarding an offer of 'Lifetime Mechanical Warranty'. Patterson Cheney has undertaken to:

- send a letter to all of its customers who purchased a vehicle to which the Lifetime Mechanical Warranty applied and inform them that they have the option to switch to Patterson Cheney's Premium warranty product
- publish corrective notices on its website, *The Herald Sun* and *The Age*
- establish 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 under the Competition and Consumer Act.

### **Liaison and education activities**

The ACCC works with other regulators, government departments, businesses, industry associations and consumer associations in monitoring emerging trade practices issues and educating relevant stakeholders.

#### **Government departments and agencies**

During the March 2011 quarter, the ACCC met with representatives from Australian Government agencies, including:

- meetings with Department of Health and Ageing and Food Standards Australia and New Zealand (FSANZ) to discuss the process for the whole of government response to the Blewett Review. Other issues discussed with FSANZ included the new 'grown in' defence to country or origin labelling under the ACL and the progress of FSANZ's report on nutrition and health related claims in food labelling
- Treasury, ASIC and state and territory consumer protection agencies in relation to the 2011 national ACL projects and to produce additional guidance material on the ACL, including national point of sale refund/returns signage.
- a number of Commonwealth, state and territory government departments, including a cross-agency meeting with the Australian Tax Office, the Australian Securities and Investments Commission, the Fair Work Ombudsman and the Department of Innovation, Industry, Science and Research to explore ways in which agencies can work together to best engage with small business operators
- a combined ACCC and AER meeting with the WA Energy Regulation Authority to discuss the ACL and the interaction with the National Energy Customer Framework.
- discussions with the New Zealand Ministry of Commerce about debt collection reform in Australia
- the launch of ASIC's MoneySmart website ([www.moneysmart.gov.au](http://www.moneysmart.gov.au))

The ACCC is working closely with the ACCC's state and territory counterparts to ensure that all ACCC communications are complementary to and consistent with broader ACL messaging.

The ACCC's work in relation to consumer guarantees will align with the Standing Committee of Officials of Consumer Affairs advisory committee, Compliance and Dispute Resolution Advisory Committee (CDRAC) national project on consumer guarantees which will be run by Consumer Affairs Victoria with assistance from the ACCC.

As part of the implementation of the unfair contract terms (UCT) provisions, the ACCC has undertaken the following activities:

- market review of the airlines, telecommunications and hire cars industries

- internal guidance and investigations.

## **Business and Industry Associations**

During the quarter, the ACCC focused on educating businesses and consumers, as well as their advisors, about the new rights and obligations contained in the ACL. These efforts included:

- development of guidance materials—*Business snapshot*, online education module, video and publication for consumers
- publication of articles in industry newsletters, including the optometry, security, motor vehicle, accounting, pharmacy and horticulture industries
- presentations at various industry events, materials distributed to businesses around Australia (4500 publications distributed to ARA members, information provided to 20 000 motor vehicle industry members)
- contacting key traders and industry associations (identified through analysis of TRACKIT complaint and enquiry data), inviting them to meet with ACCC representatives to discuss compliance with the ACL.
- ten meetings and 23 presentations nation-wide and a number of trade exhibitions, primarily focussing on the ACL and specific areas of that law including consumer guarantees, sales practices, unfair contract terms, and the national product safety regime
- motor vehicle industry associations in relation to consumer guarantees and the ACL more broadly
- the Law Council of Australia in relation to competition and consumer protection issues for the small business sector

## **Infrastructure Consultative Committee (ICC)**

The ICC was set up to facilitate discussions about infrastructure regulation. Members are representative of the diversity of infrastructure interests including energy, telecommunication, water, rail, port and airports. Topics discussed at the meeting on 4 March 2011 included forecasts for port growth; a single regulatory framework for transport; and an update on the ICC project about the state of market for corporate debt following the global financial crisis.

## **AER Customer Consultative Group (CCG)**

On 18 March 2011 the AER hosted a meeting of the AER CCG, chaired by AER Chairman, Mr Andrew Reeves. The group was established in 2009 to advise the AER in relation to its functions affecting energy consumers. Membership provides organisations with the opportunity to inform the AER about issues affecting the groups they represent.

## Product safety

With the introduction of the ACL on 1 January 2011, this quarter the Product Safety Australia website featured a number of articles and news stories related to the ACL including the new mandatory reporting function.

A number of supplier guides were released either as new publications, or with updates to make them consistent with the ACL, including: *Corded internal window coverings (Curtain and blind cords)*, *Moveable soccer goals*, *Care labelling for clothing and textile products*, *Children's projectile toys*, *Children's nightwear and paper patterns*, *Swimming and floatation aids*, and *Aquatic toys*.

This quarter the ACCC-Monash University report into mobility scooter injuries was released. The report presents data on injuries related to mobility scooter accidents and identified potential opportunities for ACCC and stakeholders to develop and implement strategies for a united approach to minimise deaths and injuries related to mobility scooters.

The ACCC also commissioned usability testing on the Product Safety Australia website ([www.productsafety.gov.au](http://www.productsafety.gov.au)). Results overall were positive—the website received a net promoter score (NPS) of +15 per cent overall, and +45 per cent amongst consumers. The NPS is the percentage of participants who would recommend the website to a friend or colleague. It is calculated by subtracting the percentage of detractors from the percentage of promoters. A NPS can range from -100 per cent to +100 per cent. The results are above the average for government websites -15 per cent. The testing identified areas for improvement including the functionality of the online mandatory reporting form.

The product safety twitter account '@ProductSafetyAU' increased followers this quarter by 50 per cent to 892 followers. Nearly 80 per cent of tweets are retweeted and the click-through rate is estimated at 99 per cent.

## Competition and Consumer Act awareness

The ACCC continued to work with businesses, industry associations and consumer groups to promote awareness of the ACL and the rights and obligations that it provides. This work included the development of articles for inclusion in industry newsletters and journals, presentations at industry events and dissemination of ACCC and joint-agency guidance material through ACCC and other government agency networks.

The ACCC continue to work closely with the Treasury, ASIC and state and territory consumer protection agencies in relation to the 2011 national ACL projects and to produce additional guidance material on the ACL, including national point of sale refund/returns signage.

The relevant national projects for 2011 are:

- Indigenous consumer issues—addressing a number of issues identified in the National Indigenous Consumer Strategy as key to improving the trading practices of traders serving Indigenous consumers
- Unfair contract terms—taking a proactive compliance review of standard form contracts and appropriate enforcement action for non-compliance
- Environmental claims—compliance with energy efficiency measures that are potentially misleading, vague or false

- Consumer guarantees—educating suppliers of goods on the consumer guarantee provision under the ACL
- Mortgage early exit fees—compliance with the National Credit Code and the unfair contract terms provisions of the ASIC Act.

## Scams

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 to this end. Eight SCAMwatch radars were issued during the March quarter to alert consumers and businesses to new scams considered to be of significant concern. Against the background of significant environmental disasters (including flooding in eastern Australia, earthquakes in New Zealand, and the Japanese tsunami) which attracted considerable media interest, warnings about charity scams were particularly pertinent.

The ACCC used Fraud Week to launch SCAMwatch Twitter. In its first month it attracted 424 followers. Tweets issued included the Consumer Fraud Campaign, emerging scams and scam prevention tips. SCAMwatch Twitter is proving to be a useful supporting tool for the SCAMwatch radars.

A range of new topics dealing with personalised scams were also added to SCAMwatch during the March quarter.

## Australian Consumer Law

The ACCC continued to work in partnership with the Treasury and state and territory consumer protection agencies—to maintain a cohesive and coordinated approach to implementation of the new laws.

Key activities in the March quarter include:

- participation in SCOCA's Education and Information Advisory Committee (EIAC), including a face-to-face meeting in February. During this quarter the EIAC group delivered a set of national crisis fact sheets addressing consumer protection issues arising from the flooding through Queensland and Victoria. EIAC is also providing advice on communication strategies to support the Compliance and Dispute Resolution Advisory Committee (CDRAC) national projects
- participation in CDRAC meetings in January, February and March 2011
- participation in the Product Safety Consultative Committee (chaired by the ACCC). This quarter the committee completed the 2010/2 National Product Safety Survey, and commenced the 2011/1 National Product Safety Survey program
- participation in the National Indigenous Consumer Strategy (NICS) meetings. Secured agreement from ASIC to co-brand a revised *Fairstore* publication to be distributed by NICS members and the FaHCSIA Money Managers network
- release of the ACCC publication, *Consumer guarantees—a guide for consumers* in January 2011, as well as updating other key publications
- release of the joint ACCC ASIC, *Dealing with Debt* publication for consumers experiencing financial difficulty or consumers involved in a dispute about a debt.

These activities have enabled the ACCC, together with its state and territory counterparts, to deliver consistent guidance to business and consumers about their rights and obligations under the ACL.

## **Codes of conduct**

As part of its role, the ACCC regularly liaises with relevant government departments and representative associations about the Franchising Code, Horticulture Code and Oilcode. It also provides assistance to industries looking to develop effective voluntary industry codes of conduct.

### **Mandatory codes of conduct**

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

During the March 2011 quarter, the ACCC:

- prepared articles for the Franchising magazine, and Franchisor magazine informing prospective franchisees on the key information they should look for in a franchise agreement before signing a franchise agreement
- continued the promotion of the pre-entry education program for prospective franchisees, administered by Griffith University. There are currently over 1200 registrations for this program.

## Product safety

During the quarter, the ACCC consolidated the successful development and implementation of a number of projects underpinning the introduction of the ACL.

Over the past two years the ACCC and state and territory fair trading agencies have implemented reforms both in terms of the law and the way it is implemented. These changes make the product safety regime more streamlined, and enable a more effective response to product safety issues.

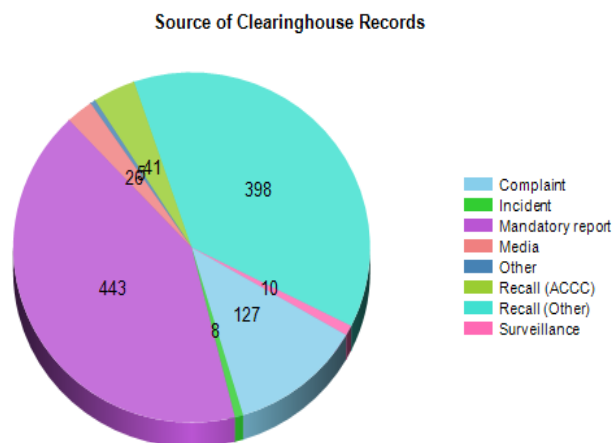
### Emerging hazards identification

The ACCC's ability to identify possible hazardous products at an earlier point has been made more effective by the development of the clearinghouse system and an expansion of data sources.

This function has been further enhanced by the introduction of the mandatory reporting requirement on 1 January 2011. Under this requirement, business are required to notify the ACCC when they become aware that a product (or product-related service) they have supplied has caused, or may have caused, serious injury, illness or death. Mandatory reports are usually made to the ACCC via an online form which is on the Product Safety Australia website ([www.productsafety.gov.au](http://www.productsafety.gov.au)). This quarter, a revised version of the form was released following useability testing and supplier feedback.

During the quarter, a total of 1058 new clearinghouse records were created and 815 assessment decisions were made. Included in this total were the 443 mandatory reports received, of which 190 were referred to other regulators.

Clearinghouse activity, including mandatory reports, triggered 16 recall notifications this quarter. At least 11 of those recalls may not have happened without the interaction of the ACCC with the supplier.



Total number = 1058

Data from 1/01/2011 to 31/03/2011

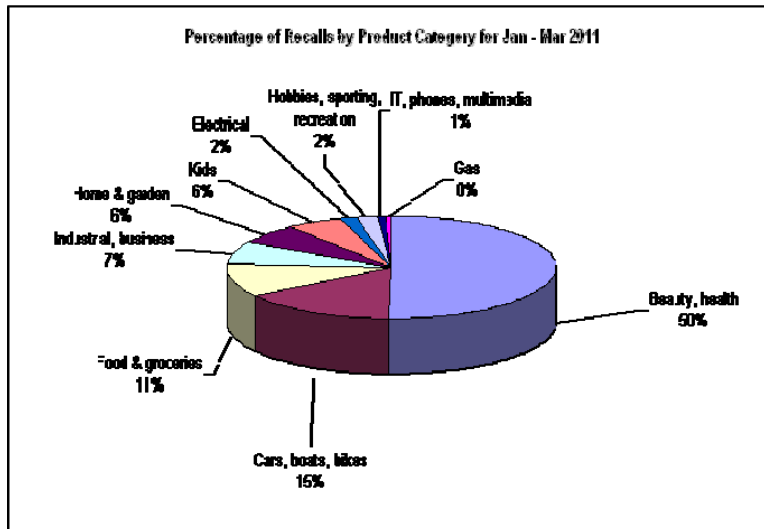


## Recalls

During the quarter, 55 new consumer product recalls were initiated, contributing to the quarterly total of 146 recalls which were monitored and/or managed by the ACCC.

To assist suppliers provide the ACCC with progress updates on their recalls, this quarter the ACCC released a recalls progress reporting e-form which is available via the Recalls Australia website ([www.recalls.gov.au](http://www.recalls.gov.au)).

Recalls overall (including recalls managed by other regulators) continue to be dominated by the 'health & beauty' category. This is consistent with the (financial) year-to-date trend.



### Case study: Consumer guarantees and recalls

On 15 March 2011, Food Standards Australia New Zealand (FSANZ) notified the ACCC of a voluntary recall of the weight-loss food, *The Latin Seed* because it contained yellow oleander seed instead of candlenuts as labelled. The recall notice advised consumers to stop eating *The Latin Seed*, to seek medical attention if necessary, and to return the product to the point of purchase for a full refund.

The ACCC received complaints from consumers that some health food stores were refusing to refund product returned under *The Latin Seed* recall. Some health food stores also complained they were unable to obtain a refund from the distributor. FSANZ and the NSW Food Authority received similar complaints and asked the ACCC for assistance.

Yellow oleander seeds are poisonous and prohibited as unsafe to eat and therefore represent a 'major failure' under the consumer guarantee provisions of the ACL. A 'major failure' entitles consumers to a full refund. The 2010 ACCC Recalls Review also identified incentives such as refunds as critical to the success of consumer good recalls.

The ACCC worked closely with the NSW Food Authority and FSANZ to address this issue. A media release informing consumers and health food suppliers of their refund rights and obligations was issued on 29 March 2011. Investigations are underway to assess whether further action is warranted and to clarify the relevance of consumer guarantees to recalls more generally.

## **Product safety legal framework**

### **Development of mandatory standards and bans**

With the Competition and Consumer Act (CCA) taking effect from 1 January 2011, all 19 existing permanent bans made under the Trade Practices Act were registered as legislative instruments as required by the CCA to ensure that these bans would continue to be enforceable from 1 January 2011.

The ten temporary bans made under the Trade Practices Act translated as interim bans under the CCA from 1 January 2011. In February, these bans were made permanent.

The ACCC also participated in initial meetings on an international project (sponsored by the United States Consumer Product Safety Commission) 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.

### **Chemicals assessment developments**

The ACCC's product safety function also deals with emerging potential chemical risks related to consumer products. One example of an ongoing project in the chemicals area relates to the use of formaldehyde in cosmetics. A number of recalls were triggered late last year following the ACCC's survey of formaldehyde in cosmetics. This quarter, a number of additional cosmetic products have been tested for formaldehyde.

An assessment of benzene and toluene in incense sticks was also conducted following a recall in Europe due to the presence of benzene (a known carcinogen) and toluene in these products. The ACCC's assessment indicated that the levels of benzene detected in the incense sticks both before and after combustion were below the threshold identified in the Hazardous Substances Information System which is used to determine safe workplace exposure limits. This means that any consumer exposure is likely to be even lower.

### **Update on the harmonisation process for information standards**

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 on 1 January 2011.

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 the fibre content labelling of clothing and textile products was the only existing state or territory information standard that should be developed as a possible mandatory information standard under the ACL.

### 3 Mergers

In assessing mergers, acquisitions and asset sales under section 50 of the *Competition and Consumer Act 2010*, 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 March 2011 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 result from the ACCC's monitoring activities.

In the March 2011 quarter, 66 matters were pre-assessed by the ACCC and reviews were conducted on 27 matters, including confidential and public merger reviews. Of the 27 matters reviewed, 89 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. One variation to an existing undertaking was accepted by the ACCC.

**Table 3.1: Matters assessed and reviews undertaken, March 2011 Quarter**

	Confidential	Public	Total
<b>Pre-assessed 1 January – 31 March 2011</b>	<b>66</b>	<b>0</b>	<b>66</b>
<b>Total reviews undertaken</b>			
<b>1 January – 31 March 2011</b>	<b>4</b>	<b>23</b>	<b>27</b>
Total reviews can be broken down into the following categories:			
Not opposed	2	21	23
Finished—no decision (including withdrawn) <sup>1</sup>	1	0	1
Opposed outright	0	1	1
Confidential review—ACCC concerns expressed	1	0	1
Resolved through undertakings <sup>2</sup>	0	0	0
Variation to undertaking accepted	0	1	1
Variation to undertaking rejected	0	0	0
<b>Total matters assessed and reviews undertaken</b>	<b>70</b>	<b>23</b>	<b>93</b>

<sup>1</sup> These are matters that were withdrawn or where no decisions were made. They are not included in the timings in table 3.3 below.

<sup>2</sup> Only public matters can be resolved through undertakings.

**Table 3.2: Comparative financial year merger statistics (to 31 March 2011)**

Financial Year	2009-10	YTD 2010-11
<b>Total matters assessed and reviews undertaken</b>	<b>321</b>	<b>277</b>
<b>MATTERS ASSESSED - NO REVIEW REQUIRED</b>	<b>153</b>	<b>164</b>
<b>REVIEWS UNDERTAKEN</b>	<b>168</b>	<b>113</b>
<i>Total reviews can be broken down into the following categories:</i>		
Not Opposed	131	86
Finished – no decision (incl. withdrawn)	16	14
Publicly Opposed outright	8	3
Confidential review – Opposed or ACCC concerns expressed	6	3
Resolved through undertakings	4	6
Variation to undertaking accepted	2	1
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 March 2011 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 January – 31 March 2011<sup>3</sup>**

Time taken to undertake merger reviews (cumulative)	Number of reviews	Percentage of mergers
Two weeks or less	2	9%
Four weeks or less	3	14%
Six weeks or less	7	33%
Eight weeks or less	17	81%
More than eight weeks	4	19%

<sup>3</sup> This does not include 66 pre-assessed matters, 1 matter where no decision was formed on a confidential basis, 1 variation to an existing undertaking, or 4 reviews of completed mergers.

## Statement of issues

Two statements of issues were released during the March quarter:

- InvoCare Limited - proposed acquisition of Bledisloe Group Holdings Pty Ltd – 19 January 2011
- Sleepyhead proposed acquisition of Sleepmaker and Dunlop Foams from Pacific Brands; Pacific Brands proposed acquisition of Wonderlay from Sleepyhead - 19 January 2011

## Public competition assessments

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

The ACCC issued three public competition assessments during this quarter:

- AGL Energy Limited and Origin Energy Limited - proposed acquisitions of assets being sold as part of the New South Wales Energy Privatisation - 17 March 2011 - Electricity
- OneSteel Limited proposed acquisition of Moly-Cop Group S.a.r.l - 28 January 2011 - Grinding media and steel products
- Luxottica Retail Australia Pty Limited - proposed acquisition of Optifashion Australia Pty Limited - 18 January 2011 - Opticals

## Variation to Section 87B undertakings

One review of a variation to an existing section 87B undertaking was completed in the March 2011 quarter:

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

## Major Matters

Major matters decided during the March 2011 quarter included:

- Cargill Incorporated - proposed acquisition of the commodity management businesses of AWB Limited (owned by Agrium)
- Asahi Holdings (Australia) Pty Ltd - proposed acquisition of P&N Beverages Australia Pty Ltd

- Sleepyhead - proposed acquisition of Sleepmaker and Dunlop Foams from Pacific Brands; Pacific Brands - proposed acquisition of Wonderlay from Sleepyhead

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

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**Asahi Holdings (Australia) Pty Ltd - proposed acquisition of P&N Beverages Australia Pty Ltd**

Result: On 9 March 2011 the ACCC decided to oppose the proposed acquisition.

Summary: On 1 September 2010 the ACCC commenced a review of Asahi Holdings (Australia) Pty Limited's (Asahi's) proposed acquisition of P&N Beverages Australia Pty Limited (P&N) business.

Asahi owns Schweppes Australia Pty Ltd, the second largest manufacturer of carbonated soft drinks (CSDs) in Australia and the largest manufacturer of cordial. Its products include the Schweppes and Pepsi range of CSDs, as well as the Cottee's range of cordial.

P&N is the third largest manufacturer of both CSDs and cordial. P&N manufactures CSDs under a number of brands and is the largest supplier of private label soft drinks in Australia. P&N's CSDs play an important role as low priced alternatives to the CSDs supplied by Asahi and Coca-Cola Amatil.

The ACCC conducted an extensive investigation of the proposed acquisition which included releasing a Statement of Issues outlining preliminary competition concerns arising from the proposed acquisition on 2 December 2010.

The ACCC considered information from a wide range of sources, including beverage manufacturers, supermarket retailers, input suppliers, industry groups and other market participants. In addition, it conducted meetings and interviews and scrutinised a substantial number of internal company documents of the merger parties.

Following its investigation the ACCC formed the view on 9 March 2011 that the proposed acquisition was likely to result in a substantial lessening of competition in the markets for the supply of CSDs and cordial.

The ACCC concluded that the proposed acquisition would remove P&N as a vigorous and effective competitor in the CSD market and would result in Asahi and Coca-Cola Amatil being the only remaining significant competitors in the CSD market. The ACCC found that no other CSD supplier is likely to expand sufficiently to replace the lost competitive constraint in the foreseeable future. In particular, other smaller suppliers of CSDs lack the scale, infrastructure and brands to act as a competitive constraint on Asahi post acquisition. Further, following the proposed acquisition, the ACCC considered Asahi would lose the incentive to supply private label CSDs in competition with P&N.

The ACCC also concluded that the proposed acquisition would remove a strong competitive constraint in the cordial market. The ACCC found that P&N has been successful in growing its market share through discounting and product innovation. While there are other sources of competition in the cordial market such as Golden Circle and private label cordial, the ACCC concluded that these constraints were insufficient to replace the competition lost from the removal of P&N.

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

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**Sleepyhead - proposed acquisition of Sleepmaker and Dunlop Foams from Pacific Brands; Pacific Brands - proposed acquisition of Wonderlay from Sleepyhead**

Result: On 9 March 2011 the ACCC decided not to oppose the proposed acquisition.

Summary: On 1 November 2010 the ACCC commenced a review of:

- the proposed acquisition of the Dunlop Foams foam business and Sleepmaker bedding business from Pacific Brands Limited (Pacific Brands) by a subsidiary of Wonderest Limited (trading as Sleepyhead)
- the proposed acquisition of the Wonderlay underlay business by a subsidiary of Pacific Brands from Wonderest Limited

(together, the proposed acquisitions).

The proposed acquisitions were considered in the context of the following markets:

- state-based markets for the manufacture, conversion and wholesale distribution of PU Foam
- the national market for the manufacture and wholesale distribution of bedding products
- the national market for the manufacture and wholesale distribution of carpet underlay.

In relation to the state-based foam markets, the ACCC concluded that Sleepyhead's entry (whether it entered as a supplier to third parties, or limited its activities to self supply providing an imminent threat of entry) was unlikely to materially increase competition such that a substantial lessening of competition would result. In recent years, the relevant foam markets have experienced increased levels of competition as a result of falling demand for foam and competitors' drive to gain sufficient volumes from remaining customers by competing on price. The ACCC considered that it is unlikely that, in the absence of the proposed acquisition of Dunlop Foams, Sleepyhead would have had the incentive to compete vigorously to supply PU foam to other customers in a way that would have materially changed the level of competition in the markets.

In relation to the national bedding market, the ACCC concluded that the proposed acquisition of Sleepmaker by Sleepyhead was unlikely to result in a substantial lessening of competition. The ACCC considered the merged firm will be constrained by a number of existing competitors with excess capacity in the relevant tiers of bedding products.

In relation to the national carpet underlay market, the ACCC concluded that the proposed acquisition of Sleepyhead's carpet underlay business by Pacific Brands is unlikely to substantially lessen competition. The ACCC considered that the proposed acquisition would result in a small increase in market concentration in this market. However, the merged firm was likely to be competitively constrained by existing domestic competitors as well as competition from imports.

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

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**Cargill Incorporated - proposed acquisition of the commodity management businesses of AWB Limited (owned by Agrium)**

Result: On 17 March 2011 the ACCC decided not to oppose the proposed acquisition.

Summary: On 23 December 2010 the ACCC commenced a review of Cargill Incorporated's (Cargill's) proposed acquisition of the commodity management businesses of AWB Limited (owned by Agrium Inc).

While the ACCC did not consider it necessary to form a concluded view in relation to market definition for the purpose of analysing the proposed acquisition, the ACCC considered the likely impact on competition in respect of:

- grain marketing and trading
- grain storage and handling
- flour milling
- oilseed processing.

The ACCC noted that Cargill was a relatively small competitor at the various stages of the grain supply chain in Australia.

In relation to grain trading and marketing, the merged entity would continue to face competition from a number of other grain traders and marketers. The ACCC observed that in recent years, following deregulation of the market, smaller grain traders and marketers had grown and AWB had lost market share. The ACCC considered that the proposed acquisition would be unlikely to enable Cargill to either depress the price paid to growers of grain or raise the price of grain sold to customers due to the competition it would continue to face from other grain traders and marketers.

In relation to grain storage and handling, Cargill had a very small existing presence in the market with an interest in just three storage and handling sites in NSW. AWB had a more significant presence in the market with an interest in ten storage and handling sites in NSW. The merged entity would continue to face competition from GrainCorp which has over 150 storage sites in NSW as well as a small number of other storage providers. The ACCC also noted that there was generally overcapacity of storage in NSW which would be likely to drive competition between storage owners.

Cargill and GrainCorp were joint venture owners of Allied Mills, a major flour producer in Australia. The ACCC considered whether the proposed acquisition would be likely to result in Cargill and/or GrainCorp raising input costs for rival flour millers. Overall, the ACCC considered that the presence of remaining suppliers of wheat - including the remaining grain traders and direct supplies from growers - would make it unlikely that Cargill and/or GrainCorp could raise the input costs of their competitors. In relation to storage and handling, the ACCC considered it unlikely to be practical or profitable for Cargill and/or GrainCorp to foreclose access to storage by rival flour millers. In relation to oilseed processing, the ACCC considered that the merged entity would continue to face competition from rival acquirers of oilseed and rival oilseed processors.



## 4. Adjudication

### ***Authorisations***

During the March quarter 2011, the ACCC received 2 new authorisation applications, covering 2 projects.

At 31 March 2011, a total of 10 authorisation applications, covering 9 projects, were being considered by the ACCC.

### **Matters finalised**

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#### **Rio Tinto Aluminium Limited & Ors - A91205 - A91207**

Summary | On 17 November 2010 Rio Tinto Aluminium Limited and the participants of the Gladstone Power Station (GPS) Joint Venture applied for a minor variation to authorisations A91205-A91207.

On 2 June 2010 the ACCC granted authorisation to the GPS Joint Venture for amendments to agreements in relation to electricity generated by the GPS and supplied to the Boyne Island Aluminium Smelter and the National Electricity Market.

The applicants sought to amend schedule 6 of the Restated Operation and Maintenance Agreement, which sets out the fee to be paid by the GPS Joint Venture to the operator for the provision of services for the GPS.

On 19 January 2011 the ACCC issued a determination granting the minor variation to the authorisations.

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#### **Virgin Blue Airlines Pty Ltd & Ors - A91247 & A91248**

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

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

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

On 3 February 2011, the ACCC issued a determination granting authorisation for a period of five years.

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#### **TLS Association Pty Ltd - A91250**

Summary | On 27 September 2010 the TLS Association Pty Ltd (TLSA) applied for authorisation to negotiate discounts and rebates with companies that supply products

and services to Telstra Licensed Shops, with those discounts and rebates available to licensees who are members of the TLSA.

On 24 February 2011 the ACCC issued a final determination granting conditional authorisation for a period of five years.

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**Transport Workers' Union - A91249**

Summary | On 5 October 2010 the Transport Workers' Union (TWU) sought authorisation for its owner driver members to collectively bargain with Q-crete Premix about terms and conditions for the cartage of concrete.

On 2 March 2011, the ACCC granted authorisation for five years.

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**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). 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 17 February 2011 the ACCC issued a determination granting authorisation to the Code for two years.

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

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**Australian Paint Manufacturers' Federation Inc. - Authorisation - A91251**

Summary | On 12 October 2010 the Australian Paint Manufacturers Federation (APMF) applied for authorisation for an agreement with manufacturers and suppliers of architectural and decorative paint to impose a levy on the wholesale sale of paint. The levy will be used to fund a 12 month waste paint collection scheme trial in Victoria.

In its application for authorisation, the APMF proposed that participating paint manufacturers would impose a levy of 5 cents per litre on the wholesale sale of paint in Victoria. 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.

On 9 March 2011 the ACCC issued a draft determination proposing to grant authorisation for the agreement to impose the levy until 1 June 2012. A copy of the draft determination is available by following the links below.

The ACCC has sought submissions from interested parties in relation to the draft determination and the matter is currently under consideration. The 6 month deadline for the ACCC's consideration of this application for authorisation has been extended until 12 May 2011.

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**Refrigerant Reclaim Australia Limited - A91256**

Summary | On 20 October 2010 Refrigerant Reclaim Australia Limited lodged an application for authorisation to continue to operate a product stewardship scheme to recover and reclaim or destroy ozone depleting and synthetic greenhouse gases (refrigerant).

On 3 March 2011 the ACCC released a draft determination proposing to grant authorisation to RRA to apply the levy at the current rate of \$2.00 per kilo of refrigerant imported and sold in Australia, and to expand the scope of the Scheme to allow the RRA Board to discuss and agree to:

- set the value of rebates paid to contractors and wholesalers
- reclaim recovered refrigerant to on-sell, and
- consider alternative destruction services either in Australia or offshore.

The ACCC does not propose to authorise the RRA to amend the level of the levy at this time.

The ACCC is proposing to grant authorisation for five years.

The ACCC has also granted interim authorisation to allow the RRA to continue to operate the Scheme and apply the levy as previously authorised while the ACCC considers the current application for authorisation. Interim authorisation commenced on 1 January 2011 and will remain in place until the date the ACCC's final determination comes into effect or until the ACCC decides to revoke interim authorisation.

The ACCC is currently seeking submissions from the applicant and interested parties about the circumstances in which the levy may be amended, and the benefits and detriments that may result from allowing the RRA to amend the levy.

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**Australian Hotels Association - A91257**

Summary | On 25 October 2010 the Australian Hotels Association lodged application for revocation and substitution A91257.

Following an amendment made on 30 March 2011, the Australian Hotels Association's Divisions are seeking authorisation to collectively bargain on behalf of their current and future members with a range of service providers to the hotel industry, encompassing providers of wagering services, broadcasting services, collective licensing services, suppliers of gaming machines and providers of online accommodation booking services.

On 3 March 2011 the ACCC released a draft decision proposing to authorise the AHA's Divisions to collectively bargain on behalf of members with a number of providers of wagering, broadcast and collective licensing services. The ACCC is proposing to grant authorisation for five years.

The AHA Divisions initially sought an expanded authorisation to permit collective bargaining with a large number of suppliers across a broad and open ended range of goods and services. In its March draft determination the ACCC indicated that it was not proposing to grant authorisation to this aspect of the AHA's proposal.

The ACCC has also granted interim authorisation to allow the AHA Divisions to continue to engage in the arrangements previously authorised by the ACCC in 2006 (A90987) while the current application is being considered. The ACCC is currently considering submissions responding to its draft determination.

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**Australian Swimmers' Association Incorporated - A91260**

Summary | On 5 November 2010 the Australian Swimmers' Association Incorporated (ASA) applied for revocation and substitution of its authorisation to conduct collective negotiations on behalf of its members with Swimming Australia Limited (SAL).

On 23 February 2011 the ACCC issued a draft determination proposing to grant authorisation in respect of the proposed arrangements for ten years.

On 6 April 2011 the ACCC issued a determination granting authorisation in respect of the collective bargaining arrangements for ten years. If no application for review of the determination is made to the Australian Competition Tribunal, it will come into force on 28 April 2011.

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**Pozzolanic Enterprises Pty Ltd - Authorisation - A91261**

Summary | On 7 December 2010 Pozzolanic lodged an application 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 Agreement is proposed to run for approximately three years, commencing if and when authorisation is granted and expiring on 1 March 2014.

On 29 March 2011 the ACCC issued a draft determination proposing to deny authorisation of the proposed arrangements. A pre-decision conference on this matter will be held at the ACCC's Brisbane office on 12 May 2011.

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

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**Western Australian Broiler Growers Association Incorporated - A91262**

Summary | On 8 February 2011 the Western Australian Broiler Growers' Association (WABGA) applied for authorisation, on behalf of its member chicken growers, for its member chicken growers to collectively bargain to establish new contractual terms and conditions with chicken processors. Interim authorisation was granted on 25 February 2011.

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**Australian Dairy Farmers Ltd - A91263**

Summary | On 8 March 2011 the Australian Dairy Farmers have lodged an application for re-authorisation to continue to collectively bargain the terms and conditions of supply contracts between dairy farmers and dairy processors. The ACCC is currently seeking submissions from interested parties. Submissions are due by 8 April 2011.

## **Exclusive dealing notifications**

A notification of interest considered during the quarter was:

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### **Review of Co-operative Bulk Handling Limited – N93439**

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

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

On 8 September 2008 the ACCC decided 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.

On 20 January 2011 held a pre-decision conference to discuss the draft notice.

## **Collective bargaining notifications**

The ACCC did not receive any collective bargaining notifications during the March quarter 2011.

## 5 Regulatory affairs

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

### Communications

In the March 2011 quarter, the ACCC:

- issued Interim Access Determinations (IADs) for six declared fixed line services:
  - unconditioned local loop service (ULLS)
  - line sharing service (LSS)
  - local carriage services (LCS)
  - wholesale line rental (WLR)
  - public switched telephone network originating access (PSTN OA)
  - public switched telephone network terminating access (PSTN TA)which were backdated to commence on 1 January 2011 and expire 31 December 2011
- issued a revised list of initial Points of Interconnect (POIs) for the National Broadband Network (NBN)
- published aggregated data on telecommunications fibre infrastructure
- issued an imputation and non-price terms and conditions report relating to Telstra's performance during the September 2010 quarter.

### Points of Interconnect

The ACCC issued a revised list of initial POIs for the NBN. The revised list of 121 POIs follows a public confirmation process on the 120 initial POIs that was developed by NBN Co in consultation with the ACCC and published in December last year. The 121 POIs includes the relocation, addition and consolidation of a number of the initial 120 POIs.

### Publication of Infrastructure RKR data

In February 2011 the ACCC published information about the availability of competitive fibre infrastructure across the country, based on information collected under the Infrastructure Record Keeping Rule (RKR). The information is in the form of an aggregated list of Exchange Service Areas (ESAs) with more than two fibre infrastructure owners present.

### Access pricing

#### Interim access determinations

On 2 March 2011 the ACCC issued IADs for six declared fixed line services under the new telecommunications regime. The IADs provide price and non-price terms for: ULLS, LSS, LCS, WLR, PSTN OA and PSTN TA.

The IADs are backdated to commence on 1 January 2011 and expire on 31 December 2011. The IADs will be automatically revoked once the ACCC issues final access determinations (FADs) for the declared fixed line services – a public inquiry into the making of FADs is expected to commence in the second quarter of 2011.

### Access disputes

Following recent amendments to Part XIC of the CCA<sup>4</sup>, 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 March 2011 quarter, four new access disputes were notified to the ACCC. Two of these disputes involved the ULLS while the other two involved the LSS service. One access dispute was withdrawn concerning the ULLS service.

The following table summarises the position in relation to access disputes during the March 2011 quarter.

	<b>Total</b>
Active disputes at 1 January 2011	8
Decisions subject to appeal to the Federal Court	0
New arbitrations commenced	4
Final determinations issued	0
Disputes withdrawn	1
Published determinations	0
Active disputes at 31 March 2011	11

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

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<sup>4</sup> The *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010* was passed by the Australian Parliament in November 2011 and made substantial amendments to the telecommunications access regime in Part XIC of the CCA.

## **Australian Energy Regulator**

In the March 2011 quarter, the AER has continued to work across key energy areas to promote and protect the interests of the Australian public. The need to work alongside industry to provide equitable and reliable services has been felt across the work carried out by the AER in the areas of gas, electricity, energy and water.

### **Gas network regulation matters**

#### **Queensland and South Australia gas distribution networks - revised access arrangement – March**

On 23 and 24 March 2011 respectively, APT Allgas and Envestra submitted revised access arrangement proposals for their Queensland and South Australian gas distribution networks. The revised access arrangement proposals relate to the period 1 July 2011 to 30 June 2016.

The revised proposals were submitted in response to the AER's draft decisions on access arrangements for the Queensland and South Australian gas distribution networks issued on 17 February 2011. The AER is seeking submissions on the revised access arrangement proposals and the AER's draft decisions.

#### **Access arrangement draft decisions: Queensland and South Australia gas distribution networks**

On 17 February 2011 the AER released its draft decisions on the access arrangement proposals submitted for APT Allgas's and Envestra Limited's Queensland gas networks, and Envestra Limited's South Australian gas network for the period 1 July 2011 to 30 June 2016. The AER did not accept the proposals and required APT Allgas and Envestra to revise their access arrangement proposals. APT Allgas and Envestra submitted revised access arrangement proposals for their Queensland and South Australian gas distribution networks on 23 and 24 March, on which the AER sought submissions from interested parties by 27 April 2011.

#### **Access arrangement proposal for the Amadeus Gas Pipeline (AGP)**

On 13 January 2011 the AER publicly released the access arrangement proposal for the Amadeus Gas Pipeline (AGP) submitted by N.T. Gas Pty Limited (NT Gas) for the period 1 July 2011 to 30 June 2016 for consideration and comment by interested parties.

The access arrangement proposal establishes the basis for the terms and conditions of access for users and prospective users for the pipeline. The AER sought submissions on the access arrangement proposal, and expects to publish its draft decision on 21 April 2011.

### **Electricity network regulation matters**

#### **Final transmission service target performance incentive scheme version**

On 31 March 2011 the AER released its final decision relating to amendments to the service target performance incentive scheme (STPIS) for electricity transmission network service providers, together with an amended scheme.

Powerlink submitted a proposal to the AER in August 2010 to amend certain aspects of the STPIS as they apply to Powerlink. The AER released its explanatory statement in November 2010 concerning these amendments. The AER received two submissions from Powerlink and TransGrid.



The amendments to the STPIS detailed in this final decision generally relate to parameters and definitions specific to Powerlink, however, there are also some minor amendments to the text in Appendix B of the STPIS, which applies to all TNSPs. The amended scheme will apply to Powerlink from the commencement of its next regulatory control period (1 July 2012).

### **Determination for Endeavour Energy: reporting on the recovery of jurisdictional scheme amounts in respect of the Queensland and NSW Solar Bonus Scheme**

On 24 March 2011 the AER released its determination on how Endeavour Energy (formerly Integral Energy) and Ergon Energy should report on their recovery of Solar Bonus Scheme payments for each year of the current regulatory control period, and on adjustments for over and under recovery of such payments. The AER's determined that Endeavour Energy and Ergon Energy now have the option to elect to recover the costs of Solar Bonus Scheme rebates through its pricing proposals in the current regulatory control period. In order to do so Endeavour Energy and Ergon Energy must first notify the AER in writing of its intention to recover rebates in its pricing proposals, and the AER must accept their election to do so.

### **Ausgrid's revised cost pass through application (NSW Solar Bonus Scheme)**

On 22 March 2011 the AER published its determination on Ausgrid's (formerly EnergyAustralia) revised cost pass through application for costs associated with the introduction of the NSW Solar Bonus Scheme (SBS). The AER decided not to approve Ausgrid's cost pass through application in accordance with chapter 6 of the Transitional Rules.

### **Proposed Amendments to Aurora Energy's Cost Allocation Method**

On 18 March 2011 Tasmania's Electricity Distribution Network Service Provider, Aurora Energy, approached the AER seeking to amend its Cost Allocation Method (CAM). Aurora Energy's CAM governs the manner in which Aurora is allowed to allocate costs to the distribution services that it provides. The AER is required to approve or refuse to approve, Aurora Energy's proposed Amended CAM in accordance with the AER's Cost Allocation Guidelines and has sought submissions from interested stakeholders by 5 April 2011.

### **Ring-fencing waiver application: Ergon Energy's photovoltaic installations.**

On 16 March 2011 the AER received an application from Ergon Energy to waive the requirement that it must not carry on a related business. The photovoltaic installations on Ergon Energy's buildings fall within the definition of a 'related business' under the Queensland Electricity Distribution Ring-Fencing Guidelines. The AER administers the Guidelines, September 2000 under the National Electricity Rules. The AER sought submissions from interested parties on Ergon Energy's waiver application by 13 April 2011.

### **Final decision - ElectraNet Contingent Project**

On 15 March 2011 the AER published its final decision on ElectraNet's contingent project application for the Munno Para reinforcement project. The AER determined that the amounts specified in ElectraNet's application met the requirements in the 2008 revenue determination and the NER. Accordingly, the AER approved amending

ElectraNet's 2008-13 revenue cap to allow for the increase in costs attributable to commencing the Munno Para project.

### **Draft decision - Dispute between Sietel Limited and United Energy for the upgrade of electricity supply**

On 7 March 2011 the AER released a draft decision paper on the fairness and reasonableness of United Energy's offer to Sietel Limited for the upgrade of electricity supply at Sietel's premises in Moorabbin Victoria. The term in contention is United Energy's offer to Sietel to enter into a 30 year lease with a 30 year option over the land where supply, including new plant, will be provided. Under United Energy's Electricity Distribution Licence, if a dispute arises, any question as to the fairness and reasonableness of such terms and conditions is to be decided by the AER. The AER sought submissions on its draft decision by 7 April 2011.

### **SP AusNet submits Revised AMI Budget Application for 2009-11**

On 28 February 2011 SP AusNet submitted a Revised budget application for its 2009-11 Advanced Metering Infrastructure (AMI) budget, seeking to vary the AER's Final Decision on the Victorian DNSPs' 2009-11 AMI budgets, which was released in October 2009.

SP AusNet's Revised budget application was submitted under clause 5F of the Victorian Government's Order in Council made under Sections 15A and 46D of the Electricity Industry Act 2000 on 28 August 2007, and as amended thereafter. The AER's final decision for 2009-11 AMI budgets, as well as SP AusNet's original budget proposal for 2009-11 are available on the AER's website.

The AER sought submissions from interested stakeholders, and will assess SP AusNet's Revised budget application by applying a series of tests set out in the Order in Council. The AER will release a draft decision on SP AusNet's Revised budget application in early April 2011, and must make its final decision by 29 April 2011.

### **Victorian distributors submit Advanced Metering Infrastructure (AMI) budget and charges applications for 2012-15**

On 28 February 2011 the five Victorian electricity distributors submitted their AMI budget and charges applications for 2012-15.

These applications set out the distributors' proposed costs for the final years of the AMI rollout in Victoria, as well as charges for these years to cover their proposed costs. The AER will assess the submitted applications by applying a series of tests set out in the Victorian Government's Order in Council made under Sections 15A and 46D of the Electricity Industry Act 2000 on 28 August 2007, and as amended thereafter. The AER will release a draft decision on the distributors' budget and charges applications in July 2011, and must make its final decision by 31 October 2011. Submissions on the applications were sought from interested stakeholders.

### **Powercor cost pass through application**

On 24 February 2011 the AER received an application from Powercor for the pass through of costs resulting from the change in the compliance framework made in response to the Victorian Bushfire Royal Commission recommendations. Powercor

has proposed that additional revenues of \$103.6 million be passed through to distribution network users during the 2011-15 regulatory control period.

The AER must assess Powercor's application and determine whether a positive change event has occurred and if so, it must then determine the approved pass through amount. In making this decision, the AER must take account of the factors in clause 6.6.1(j). The AER has called for submissions on Powercor's application and expects to make its determination in May 2011.

### **Final decision - Victorian electricity distribution network service providers – Advanced Metering Infrastructure remote service charges**

On 15 February 2011 the AER released its final decision, "Victorian electricity distribution network service providers – Advanced Metering Infrastructure remote service charges". The final decision relates to the charges proposed by CitiPower, Powercor, United Energy and Jemena Electricity Networks (JEN) for the provision of AMI remote services, these being:

- Remote re-energisation (connection)
- Remote de-energisation (disconnection)
- Remote special meter reads
- Remote meter reconfiguration.

These services are only provided at a customer's request. Currently these services are delivered to customers manually and require a technician to visit a customer's property. The AER determined that remote AMI services will become available to customers that have AMI meters (i.e. smart meters) installed and where a distribution service provider is in a position to provide remote services. Remote AMI services will remove the need for manual delivery of these services.

### **Queensland Retailer of Last Resort scheme**

On 9 February 2011 Energex requested the AER to determine that the Queensland Retailer of Last Resort scheme (RoLR) is a jurisdictional scheme. Under clause 6.18.7A(n) of the National Electricity Rules (the Rules) the AER must only determine that a scheme is a jurisdictional scheme if the AER considers that the scheme meets the jurisdictional scheme eligibility criteria in the Rules.

The AER considered that the Queensland RoLR scheme satisfied the eligibility criteria, and determined it to be a jurisdictional scheme. On 8 March 2011, the AER published its decision and assessment against the eligibility criteria on its website.

### **Process guideline on how to prepare a transmission network support pass through application**

On 28 January the AER released a draft procedural guideline on how to prepare a transmission network support pass through application. The AER considers the guideline will assist transmission network service providers (TNSPs) lodge an application that complies with the requirements of the National Electricity Rules.

A network support pass through event occurs when the actual amount of network support payments incurred by a TNSP differs to the amount allowed in the revenue determination.

The AER is required under Rules to assess applications from TNSPs to adjust their revenue determination when a network support pass through event occurs. Submissions on the guideline were sought

## **Energy markets**

### **Notice of draft instrument: Statement of Approach, Procedures and Guidelines for compliance with the National Energy Customer Framework**

On 23 March 2011 the AER released its draft Compliance Procedures and Guidelines and Statement of Approach to compliance with the new National Energy Customer Framework.

National legislation giving effect to the Customer Framework passed both houses of South Australian Parliament without amendment on 9 March 2011, and received Royal Assent on 17 March 2011. The Ministerial Council on Energy agreed on 10 December 2010 that jurisdictions would work toward a common target date of 1 July 2012 for commencement of the new Customer Framework.

The Customer Framework is the final stage in the transition to national regulation of the energy markets. The AER will be responsible for monitoring compliance with the new Customer Framework from the date of its commencement. To support this new role, the AER is empowered to develop Compliance Procedures and Guidelines. The AER commenced consultation on approaches to its compliance monitoring and enforcement role with the release of an Issues Paper on 31 May 2010. A draft decision, and preliminary draft Statement of Approach and Compliance Procedures and Guidelines were released on 10 December 2010. The AER has used the earlier consultation to develop the draft guideline and Statement of Approach released with this notice. The AER sought comments on the draft guideline and Statement of Approach by 6 May 2011.

### **Approach to reporting requirements and monitoring standards in the electricity market**

On 18 March 2011, the AER issued a final report and guideline regarding its approach to reporting requirements and monitoring standards in the electricity market (guideline on the imposition of additional or more onerous requirements, procedures or standards under clause 8.7.2(g) of the National Electricity Rules). The final report sets out the AER's reasoning and conclusions regarding the approach it intends to take regarding reporting requirements and monitoring standards in the electricity market, having due regard to submissions received during the consultation process. The guideline reflects the conclusions reached in the final report.

### **Quarterly Compliance Report for October – December 2010**

On 28 February 2011 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 October - December 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.

### **Spot Prices above \$5000/MWh reports**

In January and February the spot electricity price exceeded \$5000/MWh 32 times across the National Electricity Market: nine times in SA on 31 January; three times in Victoria across 31 January and 1 February; 12 times in NSW from 31 January to 2 February; and eight times in Queensland across 1 and 2 February.

Common to the high price events in SA, Victoria and NSW, high temperature drove high demand. Demand reached new record levels in SA and NSW, and the highest level in Victoria for the summer. Other factors contributing to the high prices included generator rebidding (particularly in NSW and Victoria), large volumes of capacity being priced in high price bands (particularly in SA), and a generator trip (in Victoria).

The AER has published four separate reports covering events in each region.

### **Water**

The Water Charge (Infrastructure) Rules 2010 commenced on 12 January 2011 after being made by the Minister for Sustainability, Environment, Water, Population and Communities. The rules create new regulation of charges for water storage, delivery and other infrastructure services provided by rural water infrastructure operators in the Murray Darling Basin

The rules are based on the advice and draft rules provided to the Minister by the ACCC in June 2009 and February 2010. The approach to regulation under the rules differs depending on the size and governance structure of the infrastructure operator. Requirements range from basic publishing requirements to direct price controls under a building block framework.

The ACCC is responsible for monitoring and enforcing compliance with the new rules as well as assessing applications for accreditation from state regulators to implement price determinations under the rules. To assist infrastructure operators to understand their new obligations under the rules, the ACCC released a fact sheet and number of guidelines during the March quarter. The ACCC also met with a number of stakeholders throughout the Murray Darling Basin to discuss the new rules.

The rules complement the other water market and water charge rules which have already made in accordance with the *Water Act 2007*.

## **Transport and General Prices Oversight**

### **Airports**

The ACCC, under directions from the Australian Government pursuant to Part VIIA of the Competition and Consumer Act, monitors the prices, costs and profits relating to the supply of aeronautical services and car parking at Adelaide, Brisbane, Melbourne (Tullamarine), Perth and Sydney (Kingsford Smith) airports. The ACCC is also required to monitor the airports' quality of service in relation to supply of those services.

### **Airport monitoring report 2009-10**

On 7 February 2011, the ACCC released its annual airport monitoring report for the 2009-10 financial year. This year's report raised concerns about monopoly pricing for aeronautical services at Sydney Airport and car parking at Melbourne Airport.

## **Aeronautical services**

Aeronautical services are those services provided by airports that are essential for airlines, passengers and border agencies (such as customs). They include terminal facilities (such as aerobridges, baggage systems and some check-in services) and airside services (such as runways and aircraft parking).

Around 98.1 million passengers passed through the monitored airports in 2009-10, an increase of just over 5 per cent from the previous period. Sydney Airport continued to have the highest passenger throughput, while Perth Airport had the highest growth for the fourth consecutive year.

A combination of increased passenger numbers and average prices contributed to all of the airports reporting increased revenues and operating margins from aeronautical services. Sydney Airport continued to have the highest total aeronautical revenue and operating margin, while Brisbane Airport had the highest growth for the third consecutive year.

As a complement to monitoring prices, costs and profits, the ACCC also uses a range of indicators to determine an overall rating of the airports' quality of service that includes the views of airlines, passengers and border agencies. For example, the availability and standard of check-in facilities for airlines to service passengers and surveys of passengers' experiences in passing through security screening points.

The ACCC ranked the airports using aeronautical revenue per passenger as a proxy for average prices and overall ratings of the airports' quality of service.

Sydney Airport had the highest aeronautical revenue per passenger and the lowest overall rating for quality of service in 2009-10. In contrast, Melbourne Airport had the lowest aeronautical revenue per passenger and was second only to Brisbane Airport for overall quality of service. Indeed, Brisbane Airport has been ranked first for overall quality of service over the last five years. However, Brisbane Airport also reported the highest growth in aeronautical revenue per passenger over the last three years.

The results point to Sydney Airport earning monopoly rents from aeronautical services

The monitoring results do not provide conclusive evidence as to whether or not the airports are earning monopoly profits from aeronautical services. More definitive findings would require a more detailed evaluation of the airports' performance, including comparisons with an economically efficient benchmark. Such an evaluation is beyond the scope of monitoring. Nevertheless, some indications about the airports' performance can be made based on observations from the monitoring results over time and within the context of the airports' monopoly position.

The ACCC has examined the relationship between airports and airlines in the provision of aeronautical services. It is the airlines that are the direct users of services under the airports' control. Other services use combined assets of the airports, airlines and border agencies. The surveys of the airlines provide an indicator of whether the standard of service that the airports provide to their airline users is satisfactory.

In their survey responses, airlines consistently identified Sydney Airport as the least responsive of the airports with respect to service delivery and quality over a sustained period of time. In particular, the airport's international terminal was rated below satisfactory on average by the airlines between 2002-03 and 2009-10, while prices and profits increased.

Further, despite Sydney Airport recently undertaking an upgrade of its international terminal, the results do not indicate a significant improvement in the service provided to airlines. This raises questions about whether or not Sydney Airport has undertaken sufficient investment in services provided to airlines.

The situation at Sydney Airport is in contrast to the other monitored airports, which appear to have been more responsive to the airlines' needs.

### **Airport car parking**

During the 2009-10 financial year, and since then, at least some car parking charges increased at all of the monitored airports. Combined airport car parking revenue was around \$304 million in 2009-10, an increase of 9.4 per cent from the previous year. All of the airports reported higher car parking revenue in the period.

On an airport-by-airport basis, car parking revenue ranged from \$14 million (Adelaide Airport) to \$104 million (Melbourne Airport). Airport car parking revenue continued to provide the greatest contribution towards total revenue at Melbourne Airport, where it was 20.7 per cent. By comparison, Adelaide Airport reported a revenue share of 9.2 per cent.

Despite most of the airports' expenses for car parking operations increasing, all of the monitored airports reported higher operating margins. Margins ranged from \$10.4 million (Adelaide Airport) to \$80.8 million (Melbourne Airport) in 2009-10.

#### *Car parking prices at Melbourne Airport are of particular concern*

Car parking rates at Brisbane, Melbourne and Sydney airports are generally the highest of the monitored airports. High prices can be a symptom of market power problems, but price levels alone are far from conclusive. Consideration of market power problems in airport car parking needs to include observations about the airports' control over competition for its own car parking. The ACCC therefore requested additional information from the airports and consulted with operators of businesses that compete with on-airport car parking, such as off-airport car parks and private buses.

Melbourne Airport appears to have reduced the ability of off-airport parking and private bus operators to compete with on-airport parking by imposing excessive levies and controlling the available space for those operators. This affects those operators' own prices, convenience and, therefore, attractiveness to consumers. Ultimately, this would have the effect of shifting demand to on-airport parking, which allows the airport to increase its car parking prices. These factors point to Melbourne Airport earning monopoly profits from its car parking operations.

Brisbane and Sydney airports levy charges on operators of off-airport car parks and private buses. This could reduce those operators' ability to compete with on-airport parking. However, compared to Melbourne Airport, it is not apparent that charges to those operators are excessive.

### **Submission to the Productivity Commission's inquiry into the economic regulation of airport services**

On 21 March 2011 the ACCC provided the PC with a submission to its inquiry into the economic regulation of airport services. In response to concerns raised in the ACCC's airport monitoring reports, the Australian Government brought forward the PC's inquiry, which was originally scheduled for 2012. The inquiry will examine the efficiency and effectiveness of the current regime, determine whether new arrangements are required, and make recommendations to the Australian Government

on these matters. The ACCC submits that deemed declaration of aeronautical services and mandatory access undertakings for landside vehicle services under Part IIIA would appropriately address concerns about the exercise of market power by airports.

In summary, the ACCC submits that:

- there are some systematic deficiencies in the current regulatory arrangements for airports. Moreover, the airport regulatory regime, which is based on airport monitoring and the general provisions of Part IIIA of the Competition and Consumer Act, does not create an effective constraint on the major airports' market power. While monitoring has revealed some trends that suggest some airports are exercising their market power, it is limited in its scope to constrain airports' exercise of market power.
- Monopoly behaviour by the major airports in the provision of aeronautical services can lead to a loss of economic welfare, which could reduce living standards of members of the community. The airports could also use their market power to discourage competition in the downstream market for landside access, in which airports offer car parking services.
- In light of the costs and expected benefits of continued monitoring, the ACCC submits that there is a need to consider alternative arrangements that respond appropriately to the identified risks. On the basis of the monitoring experience, there is little justification for a return to price controls. However, the ACCC considers that Part IIIA provides effective 'fit-for-purpose' regulatory tools for promoting commercially negotiated outcomes and constraining market power.

Specifically, the Australian Government could deem aeronautical services to be declared under Part IIIA, thereby enabling airports and airlines to carry on commercial negotiations as usual, but with the prospect of ACCC arbitration if a dispute can not otherwise be resolved. In recognition of the specific characteristics of the market for landside vehicle access services, major airports could be required to submit access undertakings. This approach represents a relatively light-handed yet effective check on airports' market power, while providing certainty for airports and users in the longer term. The inquiry is scheduled to be completed by the end of 2011.

### **Airservices Australia draft price notification**

On 7 March 2011 Airservices Australia provided the ACCC with a draft price notification covering all of its regulated services: terminal navigation (TN), en route navigation (en route), and aviation rescue and fire fighting (ARFF) services.

Airservices is the monopoly provider of air traffic control services in Australia, including both en route air navigation and terminal navigation (TN). It also provides aviation rescue and fire-fighting (ARFF) services at airports in Australia. These services are declared under section 95X of the *Competition and Consumer Act 2010*, which means that Airservices must notify the ACCC when it wishes to increase prices. The ACCC may object or not object to the proposed increases.

Airservices proposes a five-year price path for each of its three regulated services, covering the period 1 July 2011 to 30 June 2016. Airservices states that its price proposal includes an average real price reduction of more than 8 per cent over the five-year period. This is the result of proposed changes to charges for TN and ARFF services, while charges for en route services remain unchanged.



The ACCC released an issues paper in early April seeking public comment on the draft notification.

## **Ports**

### **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 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.

A Draft Decision was released on 24 March 2011 with submissions due by 22 April 2011. The ACCC's preliminary view is that it is appropriate for GrainCorp's existing access arrangements largely to continue, as they have successfully allowed access to GrainCorp's port terminal services by wheat exporters. However, the ACCC has identified some areas of the existing arrangements for improvement and GrainCorp has provided suggested amendments to address these issues. An issue on which the ACCC is also seeking comments concerns capacity management arrangements and whether improved capacity management outcomes may be achieved if shipping slots are transferable between wheat exporters.

### **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 Trade Practices Act (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.

An Issues Paper was released on 20 January 2011. Three interested parties made submissions to the issues paper.

### **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 Trade Practices Act (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.

An Issues Paper was released on 20 January 2011. Seven interested parties made submissions to the issues paper.

### **Cooperative Bulk Handling (CBH) Proposed ports access undertaking**

On 31 March 2011 CBH submitted a new Proposed Undertaking to the ACCC, with arrangements for access by other wheat exporters to its four grain port terminals in Western Australia (Albany, Esperance, Geraldton and Kwinana).

An Issues Paper will shortly be released.

### **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 *Trade Practices Act 1974* 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.

During the March 2011 quarter the ACCC discussed with ARTC revisions to its undertaking to implement the views from the Position Paper. Since the end of the quarter, ARTC has provided a revised draft to meet the ACCC's Position Paper. That draft was published on the ACCC website on 13 April 2011 for consultation.

### **Post**

The ACCC released an issues paper seeking comment on Australia Post's proposal to increase prices across a number of its monopoly business mail letter services on 25 February 2011. The ACCC received eight submissions from interested parties in relation to the issues paper.

Australia Post lodged a draft notification with the ACCC on 25 January 2011. Under the prices surveillance provisions of the Competition and Consumer Act, the ACCC has a role in assessing proposed price increases for Australia Post's monopoly letter services.

The ACCC expects to release its Preliminary view in May 2011.

## 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:

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

### International fora

The ACCC participates in a variety of international fora throughout the year. For example, 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 is also a member of the International Consumer Protection and Enforcement Network (ICPEN). 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, and
- advocating the work of the ACCC internationally.

In particular, during the March 2011 quarter the ACCC:

- participated in regular teleconferences held by the ICN's Steering Group, Working Group Chairs Group, Cartels Working Group and Mergers Working Group, the ICPEN's Advisory Group and the International Mass Marketing Fraud Working Group
- presented at the Small States Network for Economic Development (SSNED) - Competition Law & Policy in Pacific Small States

Workshop on “Small-size Constraints, Institutional Design and Regional Cooperation”, Samoa

- presented at the Canadian Anti-Fraud Centre 8th Annual Integrated Law Enforcement and Private Sector Workshop on the Changing Profile of Mass Marketing Fraud, Canada
- attended the OECD Competition Committee and related working party meetings and Global Forum on Competition, France
- presented at the IBA/European Commission Conference on Merger Regulation in the EU after 20 years, Belgium

## Information requests

The ACCC continues to actively share information regularly with its international counterparts. During the March 2011 quarter, the ACCC received and/or sought information from counterpart agencies in Brazil, Canada, Chile, China, Costa Rica, the European Commission, Germany, India, Ireland, Japan, Kazakhstan, Korea, Malaysia, Mauritius, Mexico, Mongolia, the Netherlands, New Zealand, Philippines, Singapore, South Africa, Spain, United Kingdom, the United States and Vietnam.

Information shared between the ACCC and its counterpart agencies relates to a range of the ACCC's activities, including market inquiries, best practice processes for investigations, product safety standards, outreach methodology, cross-border cartels, mergers and marketing fraud, and general information about the ACCC's role and functions and Australia's competition, regulatory and consumer protection laws and policies. The ACCC has also exchanged information to assist with enforcement investigations and measures against scam activity, and provided technical assistance.

## Bilateral/multilateral meetings and visits

In addition to information requests, the ACCC hosts visits by counterpart agencies which provide an opportunity to share information, experiences and expertise. In addition to hosting meetings in Australia, the ACCC also holds meetings with counterpart agencies at international events. During the March 2011 quarter the ACCC met with representatives of the following agencies:

- *Department of Economic Planning and Development, Brunei*
- *Competition Bureau Canada*
- *Antimonopoly Bureau, China*
- *Fiji Commerce Commission*
- *Consumer Affairs Agency, Japan*
- *Malaysia's Prime Minister's Department*

- *Malaysia's Ministry of Domestic Trade, Co-operatives and Consumerism*
- *Malta Fair Trading Commission*
- *New Zealand Commerce Commission*
- *New Zealand Ministry of Economic Development*
- *New Zealand Treasury*
- *Vice Ministry of Foreign Trade, Peru*
- *Competition Commission Singapore*
- *Independent Commission on Banking, United Kingdom*
- *US Federal Trade Commission*
- *US Department of Justice*
- *Vietnam Competition Authority*
- *Ministry of Justice, Vietnam.*

The ACCC is hosting an intern for three months from the Japan Fair Trade Commission.

## **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. During the quarter, the ACCC has received requests for meetings and assistance from a number of jurisdictions including India, Mongolia and Vietnam, and participated in the Small States Network for Economic Development Competition Law & Policy in Pacific Small States Workshop, Samoa. The ACCC also provided comments to the Philippines Department of Justice on its draft competition law.

## **Free trade agreements**

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

- are compatible with Australia's competition and consumer protection law and regulations
- are practical in implementation, and

- 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:

- the Trans-Pacific Partnership Agreement
- Australia-Thailand ('in-built agenda' discussions).

## 7 Reviews and inquiries

### Legislative matters

The following legislation came before the Australian Parliament during the March 2011 quarter.

#### **Competition and Consumer Amendment Bill (No. 1) 2011**

On 24 March 2011 the Government introduced legislation implementing some of its reforms to promote competition in the banking sector. The Bill empowers the ACCC to investigate anti-competitive price signalling and information exchanges.

The Bill has two prohibitions – a *per se* prohibition and a general prohibition. The *per se* prohibition outlaws corporations from disclosing information relating to price to competitors, in private. The general prohibition prohibits corporations from disclosing information relating to price or other strategic information if that disclosure is made for the purpose of substantially lessening competition in a market.

The Bill also contains a number of exceptions applicable to the prohibitions and sets out the procedures available for parties to apply for an exemption from the ACCC on net public benefit grounds.

Debate on the Bill has been adjourned until the next sittings of Parliament in May.

#### **Key Legislative Developments**

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.

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

The Access Bill establishes open access, transparency and non-discrimination obligations relating to the supply of wholesale services by NBN Co.

#### **(ii) National Broadband Companies Bill 2010 (Companies Bill)**

The Companies Bill establishes the regulatory framework for the ownership and operations of NBN Co. The bill sets out obligations on NBN Co Limited to limit its operations to, and focus them on, wholesale-only telecommunications.

On 25 and 28 March 2011 the Senate and House of Representatives passed both bills. The bills received royal assent and commenced on 12 and 13 April 2011, respectively.

#### **Civil Dispute Resolution Bill 2010**

On 24 March 2011 legislation aiming to ensure that, as far as possible, people take genuine steps to resolve disputes before certain civil proceedings are instituted was passed by the Parliament.

#### **National Energy Retail Law (South Australia) Bill**

National legislation giving effect to the Customer Framework passed both houses of the South Australian Parliament without amendment on 9 March 2011, and received

Royal Assent on 17 March 2011. The Ministerial Council on Energy agreed on 10 December 2010 that jurisdictions would work toward a common target date of 1 July 2012 for commencement of the new Customer Framework.

## **Parliamentary inquiries**

### **Additional Estimates**

On 24 February 2011 the ACCC and AER appeared before the Senate Economics Legislation Committee as part of the Additional Estimates 2010–11 process.

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

On 10 February 2011 the Senate jointly referred the National Broadband Network Companies Bill 2010 and the Telecommunications Legislation Amendment (National Broadband Network Measures-Access Arrangements) Bill 2010 for inquiry and report.

On 9 March 2011 the ACCC appeared before the Senate Standing Committees on Environment and Communications.

On 16 March 2011 the Committee released its final report. The recommendations included that the Companies Bill be passed. Secondly, subject to the amendment passed by the House of Representatives regarding the application of the *Freedom of Information Act 1982* to NBN Co., the Committee recommended that the Access Bill be passed.

### **The Impacts of Supermarket Price Decisions on the Dairy Industry**

On 10 February 2011 the Senate referred an inquiry into the impacts of supermarket price decisions on the dairy industry to the Senate Economics Committee for report on 1 October 2011. The terms of reference considered the impacts of heavily discounted milk and other dairy products on the Australian dairy industry. On 9 March 2011 the ACCC appeared before the Senate Economics Committee.

On 21 March 2011, Mr John Cobb moved a motion in the House of Representatives. He called on the Government to request the ACCC to immediately undertake an investigation into the big supermarkets and milk wholesalers after recent price cuts to ensure they do not have too much market power and are not anticompetitive in their behaviour.

On 20 April 2011, the Committee released an interim report. The interim report noted considerable interest received by the inquiry. The Committee did not consider it had sufficient opportunity to adequately consider the information presented. The Committee will present a further interim report before 10 May 2011. The final report will be tabled by 1 October 2011.

### **Regulation of Billboard and Outdoor Advertising**

On 14 December 2010 the Attorney General asked the House Standing Committee on Social Policy and Legal Affairs to inquire into and report matters relating to the extent to which the current arrangements for the regulation of billboard and outdoor advertising continues to be an effective method for managing this form of advertising in Australia, in line with Australian community expectations.



On 3 March 2011 the ACCC appeared before the House Standing Committee on Social Policy and Legal Affairs.

## Other developments

### Committee Inquiries

The ACCC appeared before the following committees during the March 2011 quarter:

- 25 January 2011 – the ACCC appeared before the Senate Economics References Committee in regard to an inquiry about competition within the Australian banking sector. A report is due 27 April 2011.
- 18 February 2011 – the ACCC appeared before the House of Representatives Standing Committee on Economics in regard to the *Competition and Consumer (Price Signalling) Amendment Bill 2010*. This Bill was introduced into the House of Representatives by the Coalition and referred to committee for inquiry with a report due 30 May 2011.

# Appendix

## Speeches

During the March quarter the ACCC delivered 32 addresses including:

Australian Consumer and Contract Law

Peter Kell, Deputy Chairman

ANU College of Law, 17 February 2011

Competition and Consumer Law: not just buyer beware but seller must be fair

Graeme Samuel, Chairman

The Angus Mitchell Oration, rotary Australia, 23 February 2011

Points of Interconnect: Choices and implications for access seekers

Mr Michael Cosgrave, Group General Manager, Communications Group

Broadband and Beyond Conference, Sydney, 23 February 2011

Merger Regulation in the EU after 20 years – past, present and future

Jill Walker, Commissioner

International Bar Association, 11 March 2011

## News releases

During the March 2011 quarter the ACCC issued 77 news releases and the AER issued four news releases.

## Publications

The following publications were released during the March 2011 quarter.

### Corporate

*ACCCCount: A report of the Australian Competition and Consumer Commission's activities, 1 October to 31 December 2010*

*ACCC update, issue 30*

### For business

*ACCC Enterprise Agreement 2010-11*

*ACCC immunity policy for cartel conduct, July 2009*

*ACCC power to issue infringement, substantiation and public warning-Business snapshot*

*Advertising and selling*

*Being smart about your new franchise checklist before signing a lease agreement*

*Business snapshot - Australian Consumer Law: what you need to know*

*Business snapshot - Component price advertising*

*Business snapshot - Consumer guarantees*

*Business snapshot - Fair sales practices*

*Business snapshot - Fair sales practices*

*Carbon claims and the ACL*

*Competition and consumer law: an overview for small business*

*Consumer Guarantees - A guide for consumers*

*Consumer guarantees explained DVD*

*Consumers and unfair contract terms*

*Disclosure under the Franchising Code of Conduct*

*Don't take advantage of disadvantage*

*Fair trading in the rental car sector*

*Franchising code of conduct compliance manual for franchisors and master franchisees*

*Franchisee Manual*

*Franchisee start-up checklist*

*Guide to collective bargaining notifications*

*IMPORTANT NOTICE\_ACL replaces C&C ACT*

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

*Green marketing and the Australian consumer law*

*Kick start your career become an ACCC graduate*

*Merger guidelines November 2008*

*Monitoring of the Australian petroleum industry - Report of the ACCC December 2010*

*Overview of the Franchising Code of Conduct*

*Pricing manual for the motor vehicle industry*

*Pricing manual for the travel industry*

*Report to the Australian Senate on anti-competitive and other practices by health funds and providers in relation to private health insurance*

*Resolving franchising disputes*

*Safety alert Blind and curtain cords brochure*

*Supplier guide - Aquatic toys*

*Supplier guide - Care labelling for clothing and textile products*

*Supplier guide - Children's nightwear and paper patterns for children's nightwear*

*Supplier guide - Children's projectile toys*  
*Supplier guide - Flotation aids*  
*Supplier guide - Folding cots*  
*Supplier guide - Moveable Soccer Goals*  
*Supplier guide - Prams and strollers*  
*Supplier guide - Reduced fire risk cigarettes*  
*Supplier guide - Treadmills*  
*Supplier guide - Vehicle jacks*  
*Targeting scams - Report of the ACCC on scam activity 2010*  
*Tips for a fine time shopping online*  
*Water brokers and exchanges - your fair trading obligations*  
*Water charge (infrastructure) Rules 2010 Factsheet Tier One Requirements*  
*Water trading - a guide to your trading rights when using brokers and exchanges*  
*Water trading - an overview of your fair trading rights when using brokers and exchanges*  
*Your consumer rights: Environmental claims*

## **ACCC reports**

In February 2011, the ACCC published the 'Imputation and Non-price Terms and Conditions Report' for Telstra relating to the September 2010 quarter.

In November 2010, the Communications Committee released the 'Telstra's compliance with the price control arrangements-1 July 2009 to 30 June 2010' report to the Minister for Broadband, Communications and the Digital Economy, as required by the CCA.