



**Address to the
4th Annual Horse Racing and Sports Betting Forum**

The ACCC's perspective on the wagering industry

by

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Introduction

Good afternoon, I am pleased to be here again at the Horse Racing and Sports Betting Forum.

As you are well aware, Australians are renowned for enjoying a flutter. This may be at the races, betting on a favourite footy team or putting a wager on who will win a federal or even US presidential election.

Not surprisingly, the turnover for gambling in Australia is in the billions.

According to the Australian Racing Board's Australian Racing Fact Book 2006/07, the total wagering turnover in thoroughbred racing was about \$12.8 billion.

For that same period, non-thoroughbred turnover which included sports betting was about \$6.6 billion.

And of course as technology has evolved, so has the art of betting. TABs are just one source of placing bets and now there is the capacity to put a wager from just about all corners of the world.

When I spoke to this group in 2006, I mentioned that there had been a flurry of merger activity across many sectors in the economy. This trend has continued and the racing and betting industry has not been immune from such changes.

In a similar vein, the media landscape – the medium through which most punters view the running or results of what they are betting on – has also been transformed.

The ACCC undertakes a thorough and vigorous process when investigating potential breaches of the *Trade Practices Act* (TPA). This approach is also applied to assessing merger proposals where decisions are made on whether the proposal would result in a substantial lessening of competition.

Today, I'd like to take this opportunity to give you an overview of the role of the ACCC and the TPA with respect to the racing and betting industry as well as highlight some key areas that may be of interest to you.

Competition concerns of sports betting

As you all know, regulation plays an important role in the conduct of racing and other sports to ensure their effective and fair operation. The need for strict and clear controls applies even more so when wagering on the outcomes of contests is involved. Thus racing and other sporting bodies and relevant government agencies have formulated rules and regulations to ensure appropriate governance.

In addition however competition in the racing and sports betting sector has traditionally been limited due to each state or territory in essence 'protecting' totalisator licences from interstate competition. This situation reflects that although the wagering industry has been largely privatised, strong regulatory and revenue raising arrangements apply to all aspects of wagering and the relationships within the sector.

As a result, competition has been limited between some participants. Currently, states and territories have issued exclusive licences to operate parimutuel wagering businesses within their jurisdiction. However in the next few years, competition in this part of the sector may be opened up.

For example, in Victoria, Tabcorp's exclusive licence expires in 2012. From 2012, the Victorian Government may allocate another exclusive licence or more than one licence. In Queensland, Unitab's licence expires in 2100 but ceases to be exclusive from 2014. Similarly, the Queensland Government may allocate a second parimutuel wagering licence from 2014.

Although the ACCC does not play any formal role in the issuing of such licences, from a competition perspective the opening up the wagering market within the states will bring benefits to the average punter.

Introducing competition in previous monopoly industries provides incentives for operators to fine-tune their services to meet the needs of consumers and also innovate. It will also provide consumers with choice on how to use their punting dollar

Competition will also be bolstered by the relaxing of advertising restrictions for interstate totalisators in some states. In October this year, the Victorian and NSW Governments announced they would repeal restrictions placed on interstate bookmakers advertising their services.

Victorian Deputy Premier Rob Hulls said the changes were in line with a National Competition Policy recommendation to remove advertising restrictions for interstate bookmakers that his government had supported in principle back in 1999. Mr Hulls also described the changes as an opportunity for Victorian bookmakers to 'take on all corners of the national betting scene.'

Of course these changes have largely been influenced by the High Court's decision in 2007 to overrule legislation by the WA Government to ban its residents lodging bets with Betfair, which is licensed in Tasmania. The High Court held that the WA law was unconstitutional given it was restricted trade between states.

As you are probably aware, allegations were made by new racing entrant Betfair in 2005 about anti-competitive conduct of various participants.

The ACCC conducted a comprehensive investigation and to date no action has been taken.

I'd now like to briefly discuss how the ACCC operates.

How the ACCC operates

The ACCC has eight full-time commissioners who oversee an independent authority with more than 700 staff across Australia. Being on the ground in the regions ensures closer contact with business and consumers and other agencies.

The background of Commissioners varies with a range of legal, economic, business and technical skills. Sitting as a Commission we make all major

decisions but we don't formally manage staff - our operation is more like a board.

Consideration of issues and decision-making occurs through a committee structure – which provides a transparent and rigorous process.

The ACCC administers the *Trade Practices Act*, and our key areas of responsibility under the Act are to:

- take action against parties involved in anti-competitive conduct or arrangements;
- ensure consumers and businesses are not misled or deceived in the course of transactions in the marketplace; and
- provide a safety net against instances of unconscionable conduct.

Characteristics of the Commission's functions are:

- rigorously assessing complaints and trends in behaviour and then where appropriate taking action;
- strong investigative, evidence-gathering and enforcement powers with litigation conducted through the Federal Court and Federal Magistrates Court;
- emphasis on voluntary compliance and the promotion of education and information to assist businesses about meeting their obligations under the *Trade Practices Act*.

The ACCC also has the capacity to agree to authorisation of “anti-competitive conduct” where net public benefit outweighs the detriment. This is a transparent process which provides the applicants with immunity from any form of prosecution if the conduct is found to have public benefits that outweigh anti-competitive detriment.

This brings me to the ACCC's experience of how mergers have impacted on the racing and sports betting sector.

Restructuring – the urge to merge

Since 2000, mergers and acquisitions have changed much of the landscape in the horse racing and sports betting industry. Some of the most significant changes included:

- the merger of Tattersall's Limited and UniTab Limited in 2006;
- the merger of Tabcorp Holdings Limited and TAB Limited in 2003;
- the merger of UniTab Limited and TAB Limited in 2003; and
- TAB Queensland's acquisition of the South Australian TAB in 2001.

All of these mergers and acquisitions were not opposed by the ACCC, after extensive public and industry consultations.

Recently, the ACCC decided not to oppose the proposed merger of Queensland Turf Club Limited and Brisbane Turf Club Limited. The parties are expected to complete the merger in 2009 and I will speak in more detail about this matter shortly.

The ACCC has also publicly opposed the following proposed transactions:

- Tabcorp Holdings Limited's proposal to acquire UniTab Limited in 2006;
- The proposed joint venture between ThoroughVision and Sky Group (ie Sky Channel Pty Ltd and Sky Channel Marketing Pty Ltd) in 2006.

In opposing these transactions, the ACCC was concerned that a lessening of competition would occur resulting in a public detriment.

However I must note the ACCC has authorised a memorandum of understanding between ThoroughVision and Sky, on public benefit grounds in 2007, which provided for the sharing of thoroughbred racing broadcasting content. I'll elaborate on this matter in a short while.

I'll now begin by discussing the proposed merger of the Queensland Turf Club with the Brisbane Turf Club.

Proposed Merger of Queensland Turf Club Limited and Brisbane Turf Club Limited

On 11 November this year, the ACCC announced that it would not oppose the proposed merger of the QTC and BTC.

QTC and BTC are Brisbane horse racing clubs. QTC owns and operates the Eagle Farm Racecourse while BTC owns and operates the Doomben Racecourse.

Before the proposed merger, the ACCC authorised a joint venture between QTC and BTC in 2006 which provided for joint stabling and training facilities and other capital works at the Eagle Farm and Doomben racecourses.

The joint venture deed required QTC and BTC to submit a merger proposal to their members within 5 to 7 years of the joint venture being entered into, but indicated that any merger would be subject to receiving informal clearance from the ACCC.

Following the members of both clubs approving the merger proposal,¹ QTC and BTC jointly sought informal clearance from the ACCC in respect of the proposed merger in September 2008.

The ACCC undertook market inquiries with several industry participants in the course of its review, including regulatory bodies, other race clubs within Queensland and interstate, hospitality venues, betting agencies, and representative associations for jockeys, racehorse owners, punters and trainers.

¹ The members of QTC voted in support of the merger in August 2007. BTC members voted to approve the merger in August 2008 after initially rejecting the proposal in November 2007.

These parties did not raise any concerns about the competition effects of the proposed merger.

The ACCC considered the likely effects of the proposed merger in the following markets:

- race meetings in south-east Queensland;
- thoroughbred racing services (including stabling and training facilities) in south-east Queensland;
- services to racing clubs such as catering, maintenance and IT services; and
- venue hire for functions in Brisbane.

The ACCC concluded that the proposed merger was unlikely to substantially lessen competition in any of these markets for the following reasons:

- existing competition between QTC and BTC was limited due to regulation by Queensland Racing Limited (QRL) and this would continue to constrain the merged entity in the conduct of race meetings;
- several alternative thoroughbred training facilities were available in the south-east Queensland region; and
- there were several competing providers within the function venue hire market and markets for the provision of services to racing clubs.

The most notable aspect of this merger from the ACCC's perspective was the extent to which competition between thoroughbred racing clubs in Queensland was regulated by QRL.² QRL's functions included:

- licensing of animals, clubs, participants and venues for race meetings;
- assessing the performance of licensed animals, clubs, participants and venues against QRL's policies to ensure their continued suitability for licensing;
- distributing funds to licensed clubs to be used as prize money for races, the clubs' operations, or to undertake research and analysis for the industry;
- allocating funding for, and making decisions about, venue development and other infrastructure; and
- allocating race days to race clubs pursuant to its 'Policy on the allocation of race days and provision of funding to race clubs'.

The allocation of race days and prize money to clubs was a significant aspect of the level of competition between clubs in the conduct of thoroughbred race meetings. Given that QTC and BTC did not have a role in the allocation of prize money or the compilation of race fields, the ACCC considered that the quality of race meetings was unlikely to diminish as a result of the merger.

I'd now like to provide some examples where the ACCC has authorised conduct within the racing sector which would otherwise have been found to have raised concerns under the competition provisions of the *Trade Practices Act*.

² Queensland Racing Limited is an independent statutory authority established under the *Racing Act 2002* (Qld).

Recent immunity decisions

As I mentioned earlier, the ACCC is able to provide immunity from court action for certain conduct that might otherwise raise concerns under the competition provisions of the *Trade Practices Act* if it is in the public interest to do so. Businesses can obtain immunity through two different transparent and public processes known as 'authorisation' and 'notification'. However the onus is on the party or parties wanting to engage in the conduct to satisfy the ACCC that it is in the net public benefit.

The ACCC has considered a number of applications for immunity from the TPA for arrangements related to the racing industry.

The ACCC has authorised Australian Hotels Association Divisions in all Australian states, and the Northern Territory, to collectively bargain with service providers of wagering and broadcasting services including Tabcorp, Sky Channel, ThroughVisioN, UniTab, Racing and Wagering Western Australia and Tote Tasmania.

The AHA Divisions are authorised to collectively bargain on condition that they do not form bargaining groups that are broader than state wide and that bargaining groups in each state do not share information obtained through collective negotiations with bargaining groups in other states.

Last week, the ACCC also granted immunity for Clubs NSW members to collectively bargain with Tabcorp and Sky Channel.

The ACCC has also previously authorised New South Wales Tab Agents to collectively bargain with Tabcorp and Western Australian Tab Agents to collectively bargain with Racing and Wagering Western Australia.

In granting immunity from the TPA for these collective bargaining arrangements, the ACCC has recognised that providing smaller businesses, particularly those involved in negotiations with a larger, well resourced, counterpart, with greater opportunity to provide input into contract terms and conditions through their collective voice, can achieve more efficient commercial outcomes.

The ACCC has considered the public detriment generated by such arrangements is likely to be more limited where:

- the arrangements are voluntary for all parties;
- the scope of bargaining groups is constrained;
- the arrangements do not limit participants ability to compete to supply services, for example, competition to supply wagering services to the public;
- arrangements do not provide for boycott activity if agreement on terms and conditions can not be reached.

Sky Channel, Tabcorp and ThroughVisioN MOU

In July 2007, the ACCC authorised a memorandum of understanding between Sky Channel, Tabcorp and ThroughVisioN (TVN). The MOU concerned the sharing of thoroughbred racing broadcasting content between the parties and was designed to bring to an end a dispute between the parties that had resulted in thoroughbred racing broadcasting content being split between Sky and TVN.

The ACCC had concerns that the MOU could:

- potentially result in Sky and TVN being distributed as a bundled product without Sky being offered separately to venues;
- impact on incentives for Sky and TVN to bid for future broadcast rights as the unsuccessful bidder would still be able to access content, although the ACCC considered incentives to be the primary license holder may mitigate against this.

The ACCC considered that the MOU would result in public benefits including:

- a resolution to the split vision dispute which had lead to punter confusion, decreased wagering, pubs and clubs needing access to two channels and a reduction in funding to the racing industry;
- increased production efficiencies and improved quality of broadcasts for both Sky and TVN;
- reduced transaction costs for pubs, clubs and other commercial venues.

The ACCC granted authorisation subject to a condition that if Sky decided to offer Sky and TVN as a bundled product to commercial venues with wagering facilities it must at least also offer Sky separately to such venues.

I'll now briefly outline some other racing industry authorisations.

TOTE Tasmania participation in SuperTAB Pool

In March 2008 the ACCC authorised an arrangement governing TOTE Tasmania's participation in the SuperTAB pool.

The ACCC considered that the arrangements would enhance wagering products supplied by totalisators, particularly TOTE Tasmania, and assist in maintaining funding for the Tasmanian industry.

Licensing of horse trainers in Western Australia

In August 2007, Racing and Wagering Western Australia (RWWA) lodged a notification about RWWA proposing to offer thoroughbred horse training licences on condition that trainers obtained workers' compensation insurance from an insurer nominated by RWWA. At the time of lodging the notification the nominated insurer was yet to be determined.

In December 2007, the ACCC revoked the immunity afforded by the notification.

The ACCC accepted that the notified conduct had the potential to reduce premiums, facilitate development of a risk management program and ensure trainers had adequate cover.

However, the ACCC was concerned that the arrangements would prevent trainers from shopping around and choosing the workers' compensation insurance provider that best suited their needs.

The ACCC was also concerned that the arrangements would eliminate competition between insurance providers which may reduce their incentives to offer competitive premiums.

Harness Racing Victoria – Race Field Approval Agreement

In July 2007, Harness Racing Victoria (HRV) lodged a notification about the proposed supply of race field data to specified bookmakers, namely Centrebet, International All Sports, Sporting Bet Australia, Sportsbet and Sports Acumen. Under the agreement HRV proposed to provide the race field data for a fee, being 1% of wagering turnover on Victorian harness racing.

The notification lodged with the ACCC concerned an element of the arrangement – namely, the offer of a rebate on the fee otherwise payable in relation to any layoffs or bet-backs placed by the bookmakers with the Victorian TAB on harness races within Australia.

The notification also concerned a requirement that bookmakers hold a relevant license. The ACCC did not express any concerns with this element of the notification.

In September 2007, the ACCC issued a draft notice proposing to revoke the notification.

The ACCC accepted that the arrangements would benefit bookmakers by reducing their fees otherwise payable to HRV and, to the extent that the rebate encouraged bookmakers to place bet-backs and layoffs with the Victorian TAB, would also benefit HRV and the Victorian harness racing industry as a result of joint venture between the industry and Tabcorp.

However, the ACCC was concerned that the arrangements would distort choices of bookmakers in selecting a wagering provider to place bet-backs based on the best odds offered. The ACCC was also concerned that the structure of the rebate would simply result in a transfer of funding from racing industries in other states and territories to the Victorian harness racing industry.

After the ACCC issued its draft notice, HRV withdrew the notification and lodged a new notification in different terms. The replacement notification

involved HRV offering the rebate to bookmakers on condition that they used either Tabcorp or any other wagering operator licensed in Victoria for bet backs and layoffs on Victorian harness racing.

The ACCC considered that the revised notification addressed its concerns and did not take any further action.

Implications of an evolving media sector

Merger activity has not been confined to the racing and sports betting sector. A considerable restructure is underway of the current media players in the Australian marketplace largely due to the changes in media ownership laws which came into effect last year.

The changes make it possible for one company to own two of the three media platforms of print, television or radio in any one market, as long as there remains a minimum of four owner 'voices' in regional areas and five voices in the cities. Any mergers would still have to pass the test of Section 50 of the *Trade Practices Act*, which prevents mergers that represent a substantial lessening of competition.

These changes have implications for the way consumers access racing and other sporting content, and how that content is made available to them.

Some of the major changes we have seen over the past two years included the merger of Fairfax and Rural Press, Channel Seven acquiring a larger share in West Australian Newspapers and the once mighty PBL in the process of being broken up.

Of course the media landscape will probably continue to evolve.

However through our role as the competition regulator, the ACCC will assess mergers that occur in the media sector, and consider the impact on consumers, that is, the viewing public, and how the offerings they receive may be impacted.

With all this activity, the ACCC is already being asked how it will ensure media mergers do not leave the public with less choice of services, rather than more.

With the rise of the internet and cross-over between the different media platforms, clearly the way we assess the impact on competition is changing.

The ACCC has to consider the market for content, advertising and audiences, not just ownership as we have tended to focus on in the past.

Sport and racing, like movies, is generally regarded as premium content – something viewers may be prepared to pay extra for and generally of a much higher value to advertisers because of the number of eyeballs it attracts.

Looking at mobile phones, there has been an increasing investment in mobile technology over recent years, with the four 3G mobile operators continuing to expand and upgrade their networks. Telstra recently confirmed that its

upgrade to its 3G network that will deliver speeds of up to 21 Mbps will be completed by the end of 2008.³

The use of wireless technology to access the internet has also increased dramatically, with the Australian Bureau of Statistics reporting a 90% rise in wireless subscribers in the six months from December 2007 to June 2008.⁴

Another important and emerging issue for mobile services is Mobile TV. Mobile TV has been tipped to be a major source of revenue for the sector. Already, 3 Mobile has been providing mobile cricket TV coverage over the summer season for a number of years, and this year Telstra BigPond launched a weekend sports show, BigPond Sports Weekend, produced solely for mobile TV.⁵ Telstra BigPond is now streaming horseracing content over the Telstra 3G network, recently covering the Melbourne Spring Racing Carnival.⁶ It is also possible to receive Foxtel via subscription services with Telstra.

Similarly, the number of broadband internet subscribers in Australia continues to increase, with the growth primarily occurring in DSL and wireless connections.⁷ Industry participants believe Internet Protocol Television (IPTV) will grow substantially in the next few years. This has been reflected in many companies securing rights to broadcast content over the internet.⁸

It is also worth mentioning the regulation of internet gambling. This is not within the jurisdiction of the ACCC but lies with the Department of Broadband, Communications and the Digital Economy as well as the Australian Communications and Media Authority (ACMA). There are certain wagering services related to racing permitted under the *Interactive Gaming Act 2001*. This includes online wagering as long as bets are not accepted online after a sporting event has started, or utilise real-time, 'ball by ball' betting.⁹

Moving on to Digital TV, this technology allows for a greater amount and diversity of content to become available on Free-to-Air TV. ACMA reported in April 2008 that 42 per cent of homes had adopted digital TV.¹⁰ The Government has announced that the complete switchover to digital services will occur by 31 December 2013.¹¹

³ Telstra, *Telstra boosts network speeds, unveils world's fastest mobile device* (Media release), 6 November 2008.

⁴ Australian Bureau of Statistics (ABS), *Internet Activity*, Australia, June 2008.

⁵ Mahesh Sharma, *Telstra BigPond to launch mobile TV for Aussie sports fans*, *The Australian*, 14 February 2008.

⁶ Telstra, *BigPond saddles-up to offer horse racing live on mobiles* (media release), 1 August 2008.

⁷ ABS, *Internet Activity*, Australia, June 2008.

⁸ Nick Tabakoff, *Sports rights give Foxtel the motivation to expand*, *The Australian*, 21 February 2008.

⁹ Australian Communications and Media Authority (ACMA), Internet Gambling webpage: http://www.acma.gov.au/WEB/STANDARD/pc=PC_90135.

¹⁰ AMCA, *ACMA releases final report on survey of digital television in Australian homes* (media release), 30 June 2008.

¹¹ The Minister for Broadband, Communications and the Digital Economy, Senator Stephen Conroy, *Conroy sets Digital TV switchover timetable* (media release), 19 October 2008.

Network Ten has announced that it will launch a dedicated sports digital channel in 2009, challenging the 24 hour-sports coverage available on pay TV. Ten have already secured the rights to broadcast the AFL, Indian Premier League Cricket, Formula 1, as well as a number of sports from the US.¹²

I'd just like to reiterate that exclusive agreements for the supply of content already exist and are not necessarily anti-competitive.

Having said that, the TPA recognises that exclusive contracts have the potential to be anti-competitive. Section 45 of the TPA prohibits companies from entering any arrangements that result in a substantial lessening of competition. Section 47 is even more explicit: exclusive dealing that causes a substantial lessening of competition is illegal.

What is primarily of concern in this area is the locking up of content, shutting out certain players from competing in the market for the broadcasting of sports and racing coverage, and large or dominant players abusing their market power by boycotting certain racing or services in order to squeeze out competition or extract a lopsided deal from those who have little option other than to capitulate under the weight of a market heavyweight.

The ACCC wants to ensure that traditional incumbents cannot inhibit the emergence of new players or products by using their existing market power to tie up access to compelling content.

Racing software scams

Finally, I'd like to touch upon the growth of racing scams, with particular emphasis on betting prediction software.

Gambling software packages promise to accurately predict the results of horse races and sports events.

Betting software scams typically claim that the predictions are based on weather conditions, the state of the horse, the draw or the condition of the jockey. Such scams also claim to track the money that may have been placed on a race by professional betters.

Scammers can charge a lot of money for this software, ranging from around \$1000 up to \$15 000 or even more. For your money you may get equipment like calculators, a program on a disk, a newsletter subscription or a whole computer system.

The software promises huge returns based on past results and trends. However past performance is not a guarantee of future performance when evaluating the results advertised. Once purchased the systems do not work as promised and buyers can't get their money back.

¹² Ten Network Holdings, *New sports digital multi-channel to launch in 2009: One* (media release), 28 October 2008.

This year, the ACCC has received 417 complaints and inquiries about betting prediction software since January 2008, with victims reporting losses of over \$3.5 million dollars.

I'd just like to qualify that figure is the amount reported to the ACCC by punters and it may include actual losses but also projected losses caused by not reaping the awards promised by racing prediction software.

The scammers primarily use advertisements presenting such systems as business opportunities or investments (approaches are also made by unsolicited emails, letters or phone calls). Often professional people or those getting close to retirement are targeted.

These fraudsters are a blight on the legitimate industry, and threaten the viability and the reputation of law-abiding operators.

Unfortunately, some of the reports we receive are heart-breaking, and it's often only after the damage is done that many victims learn they have been ripped off.

Our research suggests that those behind the scams often change names to avoid detection, and in some cases to sting the same victim numerous times under a different guise. Telemarketing and high-pressure sales techniques seem to be the distribution method of choice, but scammers are also heavy users of letterbox drops or newspaper advertisements, usually in the business opportunities section of the classifieds.

The ACCC has seen the devastating effects scams can have on people and their families.

Whilst the ACCC has successfully shut down and prosecuted several scams, one of the best ways to combat this kind of fraud is to help consumers take measures to prevent being caught out in the first place.

Accordingly, consumer education is a strong component of the ACCC's compliance program on this issue, so as to arm consumers with the capacity to recognise and protect themselves from scams.

The ACCC plays an active role in alerting and educating the public about scams through the SCAMwatch website (www.scamwatch.gov.au) and its publication *The Little Black Book of Scams*.

SCAMwatch and the *Little Black Book of Scams* explains how scams operate and offers guidance to consumers and small business operators about how to identify scams and ways that they can protect themselves from being scammed.

Remember prevention is better than cure. So here are some tips that punters and members of the racing and betting sector should be aware of:

- Remember there are no get-rich-quick schemes—the only people who make money are the scammers.

- Do not let anyone pressure you into making decisions about money or investments—always get independent financial advice.
- Be wary of investments promising a high return with little or no risk.
- If it looks too good to be true—it probably is.

The ACCC continues to work closely with fair trading offices around the country to shut down as many of these schemes as possible where they emerge.

For further information about horse racing and other scams, visit the SCAMwatch website: www.scamwatch.gov.au

Conclusion

As illustrated today, the horse racing and sports betting industry will continue to evolve. The sector will be shaped by further mergers and acquisitions, the potential for new players in parimutuel wagering, the changing media landscape, and new opportunities for competition.

This situation provides challenges for the betting sector as well as competition regulators and state governments.

From the ACCC's perspective, competition can only benefit the sector as it provides punters with more access to products and services and encourage providers to innovate.

However unfortunately the scourge of scammers continues to threaten the legitimate activities of the industry.

The ACCC will continue to educate the public about racing scams along with other regulators as well as take action where possible, against such scammers.

On behalf of the ACCC, I look forward to the growth and success of horse racing and sports betting in Australia by ensuring activities uphold the competition and consumer provisions of the *Trade Practices Act*.

Thank you.