

Industry Forum
GST Update

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The GST activities of the ACCC since June

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Introduction

The Australian Competition and Consumer Commission has been given new responsibilities to ensure that consumer's benefit fully from the introduction of the New Tax System. These new responsibilities are conferred on the ACCC by new provisions in the *Trade Practices Act 1974* (the Act), in Part VB. The new functions revolve around the offence of *price exploitation*.

In addition, the existing provisions relating to fair trading (Part V), and more particularly misleading and deceptive conduct, have proved particularly relevant to the Commission as businesses incorporate the GST into their advertising campaigns.

Whilst the Commission has not experienced the full impact of its new responsibilities, because the GST does not commence until the 1 July 2000, the past six months have seen a number of substantial milestones.

- In July, the ACCC released its guidelines on what constitutes price exploitation. These guidelines were the culmination of extensive consultation with business and industry groups.
- On 29 July 1999 there was a reduction in the rate of wholesale sales tax (WST) from 32% to 22% on many electrical goods and some jewellery. Items subject to this reduction included, videos, televisions, watches, clocks, cameras, radios, stereos and precious metal goods and plated ware. The Commission:
 - undertook a price survey of these goods,
 - released easily accessible public information regarding the effect of the changes, and
 - received a large number of consumer inquiries.

- On 1 November the method of levying cigarette excise was changed from a weight basis to a per stick basis. Again, the Commission has
 - monitored prices,
 - received a number of inquiries, and
 - provided information to cigarette manufacturers, retailers and suppliers to ensure that any price increases were a true reflection of the change in excise.
- The Commission received its first Public Compliance Commitment from Qantas, who undertook to, amongst other things:
 - comply with the Act and the guidelines;
 - pass onto consumers any cost benefits associated with the New Tax System changes, and
 - extend its trade practices compliance program to cover the New Tax System changes.
- Finally, an amendment to the Act has been introduced into Parliament which expands the Commission's powers in respect of the period prior to 1 July 2000, in particular, to cover unreasonably high anticipatory price rises with the offence of price exploitation.

The Commission's activities in respect of the New Tax System changes over the past six months have fallen into five broad categories.

- The development and interpretation of the Guidelines.
- Developing strategies for informing businesses and consumers.
- Undertaking price monitoring.
- Developing Public Compliance Commitments.
- Undertaking enforcement activity

I would like to take a little time to give a brief report against each of these functions.

The Development And Interpretation Of The Guidelines

Section 75AU in Part VB sets out the test for price exploitation. Essentially, price exploitation is where the price for a regulated supply is unreasonably high, having regard alone to the New Tax System changes so far as they have taken effect. When considering if a price is unreasonably high supplier's costs, supply and demand conditions and any other relevant matter must be taken into account. Part VB requires the Commission to formulate guidelines about when prices for regulated supplies may be regarded as price exploitation.

The Commission first released draft preliminary guidelines on 23 April 1999. The Guidelines were the subject of discussion at the last industry round table on 2 June 1999. In July 1999 the ACCC issued its guidelines, as required by new Part VB of the Act. The guidelines spell out the ACCC's view about when price exploitation has occurred.

The Commission has had a number of inquiries from industry regarding the interpretation of the guidelines.

The Commission has established a GST Committee made up of a number of Commissioners, including a dedicated GST Commissioner Dr Cousins. This Committee has considered a number of interpretational issues regarding the guidelines.

The introduction of the legislative amendments will require amendments to the Guidelines. This presents a good opportunity to review the Guidelines to identify areas that may benefit from further clarification. These issues will be discussed by Dr Cousins.

Information

The ACCC has already implemented strategies provide information to business and consumers. These include:

- a hotline number - 1300 302 502 at local call cost – to report possible price exploitation, and to obtain advice and information about the prohibition on price exploitation and the guidelines. The Commission has received over 2600 (as at 12/10) calls since July.
- publishing and widely distributing the *Guidelines on Price Exploitation* - to inform business on when the ACCC will regard price exploitation to have occurred;
- launch of a plain-English *News for Business* publication series to provide information to business on emerging issues, over 200,000 have been distributed. A number of new bulletins are being written for release in the next few months, including translations of some of the existing bulletins into other languages.
- consumer bulletins: the first on what to expect in price reductions under the WST change from 29 July 1999; the second on what New Tax System changes occur when; and an outline of the Guidelines for consumers. We have distributed over 215,000 copies
- development of a new ACCC GST website to be launched by the end of November that will provide up-to-date information to business in a user friendly manner.

GST Hotline

The ACCC set up a GST hotline which allows business and consumers to: report concerns about GST related pricing practices; and seek information on their obligations under the Act and the guidelines. The calls received on the hotline range from complaints about the increased cost of shampoo in a particular supermarket, through to evidence of substantial Part V or Part VB breaches.

The hotline continues to provide the Commission with market information quickly, as well as providing a new immediate point of access for the broader community. Our

experience already shows that consumers are very watchful of price movements and expect that businesses fully comply with the pricing guidelines.

Education of consumers

The Commission is developing a public awareness campaign aimed at raising consumer awareness about the expected impact of the New Tax System on pricing. The Commission is currently undertaking research into the community's attitudes and understanding of the New Tax System, in order to deliver targeted and effective messages.

The Commission will undertake an extensive media campaign to raise consumer's understanding about price exploitation.

Assistance to Businesses

The Commission is in the process of developing tools and materials to provide to businesses in order to facilitate compliance. A user friendly compliance guide and check lists are currently being prepared. The Commission will provide material to industry associations to assist them to inform their members about their obligations under the Act.

The Commission is developing links with State and Commonwealth agencies who are undertaking GST education in order to incorporate the ACCC message into their education material.

Information to industry

In addition to our newsletters, the Commission has also been busy selling its message to industry groups. For example, David Cousins the GST Commissioner for the ACCC has spoken at a wide variety of industry forums, and conferences. In addition there have been numerous meetings between representatives of industry groups and staff of the Commission.

Price Monitoring

The Commission has recently engaged an economic consultant to provide some information on likely price changes due to the introduction of the New Tax System on 1 July 2000.

On 29 July 1999 there were changes to the WST on a range of goods. In respect of these changes the Commission undertook extensive price monitoring covering 133 towns and cities across Australia, resulting in over 32,000 valid prices collected. The results indicated a high degree of compliance and showed that there was no difference between the average percentage price change between states, and nor were there significant variations in price movements between city and country regions.

The Commission has written to retailers where price changes appear to be unreasonable, requesting an explanation, and will take appropriate action if the explanations are unsatisfactory.

The Commission is currently undertaking a similar price monitoring exercise in respect of the changes to cigarette excise which took place on 1 November 1999. The Commission has surveyed prices across a broad range of retailers, and cigarette brands and is currently analysing the results of the survey.

Finally, the Commission has engaged consultants to undertake price monitoring in respect of the New Tax System changes that will occur on 1 July 2000. Surveys will be comprehensive, covering both regional and metropolitan Australia. This will cover thousands of sites, and a full range of products, demonstrating the ACCC's presence in monitoring prices, and should alleviate to some extent consumer fears that prices will increase unreasonably. Some surveys will be conducted monthly from December this year.

Public Commitments of Compliance

An innovative strategy being adopted by the Commission is to seek Public Compliance Commitments from Australia's largest companies (turnovers in excess of \$100 million). A Public Compliance Commitment is a voluntary commitment made by a company to indicate to the public that it intends to comply with the guidelines. Public Compliance Commitments provide assurance to the community that no unfair advantage will be taken of the New Tax System changes to increase margins.

A Public Compliance Commitment is a statement signed by the CEO of a corporation that the company is committed to complying with the price exploitation guidelines.

It is supported by information to satisfy the Commission that the approach taken by the company to identifying cost savings and reflecting these savings in pricing decision will ensure compliance with the guidelines.

A Public Compliance Commitment provides assurance to companies that the basis for their decisions is sound and, if followed, will minimise the risk of price exploitation. It has benefits for public relations and improved communication with the Commission.

The Public Compliance Commitment, where approved by the Commission, will be placed on the public registrar.

To date, 21 companies have approached the Commission in respect of Public Compliance Commitments. These companies represent a broad range of sectors. Discussions with the 21 companies are at various stages ranging from preliminary meetings with some close to finalisation.

On 27 September 1999, the Commission received its first Public Compliance Commitment from Qantas Airways. The Public Compliance Commitment involves a clear statement of the corporations intent to:

- comply with the principles of Part VB of the Act;
- comply with the price exploitation guidelines;
- pass onto consumers any cost benefits realised as a result of the tax changes;

- advertise and display prices on a GST inclusive basis in a manner which is not misleading or deceptive; and
- extend its trade practices compliance program to cover the New Tax System changes.

Enforcement Activity

Strategy

The Commission has developed a strategy for dealing with GST enforcement action to allow for a consistent and coordinated response to any potential contraventions of the act.

Part VB

Part VB enforcement action refers to the new statutory offence of price exploitation. The nature of the offence of price exploitation is described above.

Most of the Commission's Part VB investigations and enforcement activity has revolved around the WST reduction that occurred on 29 July 1999. The Commission is still pursuing a number of instances of non compliance and has accepted an enforceable undertaking from businesses acting contrary to the guidelines. Most of the complaints received related to the cost of televisions, stereos, cameras and watches, with watches the subject of the largest number of complaints

Brumar, a chain of service stations, offered an enforceable undertaking in response to ACCC advice that the failure to put down the prices of aerial watches constituted price exploitation. Brumar admitted the conduct, undertook corrective advertising, offered a full refund to any affected consumer, and has entered into a trade practices compliance program for 3 years.

Part V

In addition to the provisions of Part VB, the Act places clear obligations on businesses that pricing claims not be misleading or deceptive. The guidelines provide examples on what constitutes misleading and deceptive advertising.

Most of the Commission's enforcement activity over the past six months has related to misleading and deceptive advertising as there is a potential for businesses attempt to take advantage of consumer confusion over the impact of the GST. The majority of complaints regarding misleading and deceptive conduct have focussed on three industries: building, motor traders, and insurance.

Building

The building industry has been the subject of a large number of complaints, and the Commission has been involved in enforcement activity against a number of builders.

The most common complaint is that builders are claiming that their increased prices are due to the GST. In other words representing that consumers must pay a GST component, even if their house is finished before the 1 July 2000. The other common complaint regarding the building industry is the representations regarding the exact impact of the GST on prices of new homes post 1 July 2000.

The Commission has an enforceable undertaking from Tropical Homes, after Tropical Homes made representations to the effect that the prices of new homes and land were due to increase by up to 15% as a result of the imposition of the GST, or that it had been predicted to have that effect. Tropical Homes has acknowledged that industry sources had estimated the effect of the GST to be below 10%, and provided undertakings that it would not make representations of concern in the future, publish corrective advertising, and implement a trade practices compliance program to ensure advertising won't mislead consumers in the future.

The Commission is also pursuing another building company, and two other companies have instituted voluntary compliance programs in response to Commission inquiries.

Motor Traders

Car dealers have also been the subject of a large number of complaints. The main issue has been advertising campaigns using the concept of "buy now and beat the GST". This is of particular concern in the car industry where prices for new cars are expected to fall, and to encourage consumers to buy now and beat the GST is potentially misleading as it creates the impression that the GST will be a disincentive to buy a car.

The Commission has two enforceable undertakings, in respect of Lennox Motors in Canberra and Werribee Motors in Victoria, for campaigns of this nature.

Insurance

The final sector which has been the subject of a large number of complaints is the insurance industry. Insurer's will be liable to remit GST for insurance policies which extend beyond 1 July 2000. The GST will be only on that portion of the policy which falls after 1 July 2000. Insurance companies have, therefore, been collecting their GST liability on those policies which extend beyond 30 June 2000.

Whilst it is legitimate for insurance companies to collect that GST liability from the relevant consumers, they have often failed to adequately explain how and why a GST charge is included on a policy which commences prior to the introduction of the GST.

In addition to consumer confusion in respect of the GST, the level of premium increases has been a large concern to consumers. Subsequently the Treasurer announced that the ACCC would review premium increases. The Commission is currently undertaking that investigation and is aiming to report before the end of the year.

Conclusion

The last six months have been about preparing and laying the foundations to allow a smooth transition to the New Tax System. The excise change on 1 Nov 1999 and the WST change on 29 July 1999 have allowed the ACCC to develop and test systems, ready for the larger changes on 1 July 2000.

The next six months will focus on providing a high level and breadth of information to business and consumers about the impact of the New Tax System on prices.