Clouds Over Competition

Plus:
- Heavy handed debt collectors
- Air cargo cartel investigation
- New commissioners introduced
With the global financial crisis now approaching its first anniversary, focus is slowly shifting from the immediate impact on financial institutions and investors to some of the ripple effects on the wider market.

As many developed countries around the world look to jump-start their economies with large fiscal stimulus packages, attention is turning to fears of rising unemployment, falling trade and the longer-term impact on the broader community.

Clearly, the hard times are also being felt by Australia’s business community, and a number of executives have begun calling on regulators and the government to take a more lenient approach to enforcing competition law in light of the current economic climate.

In this edition of ACCC Update, we explore what impact the financial crisis could have on Australia’s long-term competitiveness and the delicate task of balancing the need to respond to immediate concerns while maintaining policies that will stand Australia in good stead once conditions begin to improve.

We also continue our series introducing new commissioners, profiling deputy chairs Peter Kell and Michael Schaper, and petrol commissioner Joe Dimasi.

With a number of changes to consumer laws on the horizon in the coming months and the uncertainty caused by the financial turmoil, 2009 promises to be a turbulent year.
Cover Story
Clouds Over Competition

Global Financial Crisis

Global financial crisis 4
GFC scams 5
Air cargo cartel investigations 7
Hidden costs for goods and services 8
State of the energy market 9
Muscling in on heavy handed collectors 10
Extended warranties 12
Jargonbuster: Statutory rights 13
New guidance for merging firms 14
Regulating the telecommunications market 15
New information policy 16
Profile – Peter Kell 17
Profile – Joe Dimasi 18
Profile – Michael Schaper 19
ACCC recent releases 20
Subscription 23
Contacts 24
Global Financial Crisis

As the full extent of the world’s economic difficulties begins to emerge, the impact of the global financial crisis is starting to threaten more than just the annual bonuses of Wall Street bankers.

Businesses across the entire economy are starting to panic about how they will be able to survive the downturn, and are calling for their governments to make life a little easier for them.

But those signs are worrying competition authorities and economists, who fear the growing calls for assistance may lead to an unwinding of hard-fought competitive reforms of recent decades.

As ACCC chairman Graeme Samuel recently told the Australian Financial Review, businesses with a long-standing opposition to regulation are looking to the current crisis as an opportunity to attack the laws that restrict them from acting anti-competitively.

‘The global financial crisis is being used as the excuse by big business. They are telling us they ought to be able to get bigger and stronger and more dominant in order to survive.’
It is not the first time the regulator has faced such pressure. Opening industries to increased competition may assist consumers by bringing greater choice and lower prices, but it makes life more difficult for businesses that find themselves having to work harder for market share. When the economy contracts and consumers reduce their spending, life gets even more difficult for those firms who in turn start seeking shelter from some of the regulations that expose their business to greater pressure.

It is a phenomenon not confined to Australia.

As The Economist magazine noted recently, during times of crisis long-term benefits of sensible reform are often overlooked in the short-term panic to respond. As the magnitude of the global financial crisis became clear at the end of 2008, the magazine surveyed business executives in a number of countries about their views on the state of international finances. It found only one in ten respondents saw protectionism as the biggest threat to the world economy, the majority were far more concerned about the immediate issues of recession, inflation and the financial crisis.

With confidence in the free market badly shaken by the banking system collapse, some in business and politics are beginning to ask whether competition policy is still delivering all it promises for the economies that have committed to strong policy.

In a speech in December, Chairman of the United Kingdom’s Competition Commission Peter Freeman asked whether the honeymoon was over for competition law.

‘Are we witnessing a turning of the tide … and are we entering a phase where the merits of competition policy are no longer part of the political consensus and may be at risk of being swept away by the tidal wave of financial and economic distress?’

Freeman argues that when whole industries are faced with systemic collapse, concerns about competition do need to be balanced with questions of financial stability. But going too far in assisting struggling businesses to stay afloat may in fact do more harm than good.

‘Those who support competition must speak up for it. There is a real danger that we will otherwise lose the benefits of a free and competitive market economy with all the damage that will follow. We should take care not to kill the goose that lays the golden egg.’

Freeman’s golden egg is the prosperity that citizens in Australia and other countries have enjoyed since competition policy began to flourish.

According to the Australian Bureau of Statistics, in the decade following the introduction of National Competition Policy Reforms in Australia, per capita disposable income increased by around 2.5 per cent every year – significantly above the long-term average growth rate. As the magazine noted, ‘The benefits of sensible competition policy are not a one-off phenomenon but the beginning of a new economic age.’

During times of crisis long-term benefits of sensible reform are often overlooked in the short-term panic to respond.
Global Financial Crisis
continued

‘Any unwinding of competition policy would increase costs, undermine incentives for future productivity improvement and reduce flexibility and adaptability of the economy to changing circumstances.’

One of the clearest warnings issued by the Productivity Commission’s report was the need to resist the constant pressure to wind back the hard-won gains of reform. ‘Just as Australia cannot afford to forgo opportunities for further competition-related and other reform, so too must it avoid backsliding on the many beneficial reforms undertaken over the last two decades. ‘Any unwinding of competition policy would increase costs, undermine incentives for future productivity improvement and reduce flexibility and adaptability of the economy to changing circumstances.’

Though written in 2005, the Productivity Commission’s views remain relevant today and are being echoed by advocates of competition policy facing the current emerging threats.

One point that several competition experts agree on is that when the developed economies finally lift themselves out of recession, they will face even stronger competition from growing economies such as China, India, Russia, South Africa and Brazil.

Those that resist calls to go backwards and can hold a steady course through the turbulent months ahead may just emerge on the other side still clutching their golden goose.
The ACCC has been working alongside a number of competition authorities in the United States, Europe and Asia on what is emerging as one of the largest cartels prosecuted in recent years.

Several airlines have already been penalised in Australia and overseas, while a number of others are under investigation.

In December, the Federal Court in Sydney ordered Qantas to pay $20 million for its role in fixing prices with its competitors.

British Airways has also been ordered to pay $5 million and in February, the Court ordered a further $16 million in total pecuniary penalties against Air France, KLM, Martinair and Cargolux.

At the time of writing, the ACCC had instituted proceedings against Singapore Airlines Cargo, alleging it was also involved in the cartel.

The cartel, alleged to have operated during the 1990s and early 2000s, involved potentially dozens of airlines and has attracted significant penalties overseas in jurisdictions where many airlines conduct the bulk of their business.

More than US$1 billion in fines have already been issued.

In the United States, several airlines have settled litigation with the Department of Justice, and more than US$1 billion in fines have already been issued.

Several senior executives, including one from Qantas, have been ordered to pay personal fines and serve US prison terms.

In New Zealand, the Commerce Commission lodged proceedings in December against 13 airlines and a number of senior staff for their alleged roles in the cartel.

The ACCC continues to investigate other airlines also suspected of being part of the illegal arrangements.
Hidden costs for goods and services

Hidden fees, taxes and a host of other add-on charges will soon be a thing of the past under changes to Australia’s pricing laws.

In May, changes to the Trade Practices Act 1974 come into effect, requiring that businesses provide a single price for the goods and services they sell. For example, airlines will no longer be able to advertise airfares at a particular price ‘plus taxes and charges’.

This requirement will apply to all price representations, including those made in advertisements and price lists.

The genesis of the change dates back to 1999, prior to the introduction of the Goods and Services Tax. At that time, the Federal Government received legal advice that all prices would have to include the GST component, and by implication it was understood that would also apply to other charges and fees.

However, in several test cases taken to court by the ACCC since 2000, it was found that it was legally permissible, under some circumstances, for businesses to charge customers several components, such as one price for the goods, and an additional fee for taxes, without also stating the total price payable by customers.

The changes that come into effect no later than May 26 will address such situations, meaning sellers will have to display a prominent single figure price that is payable by consumers for their products. They will still be able to display the different components of the price, but the single all-inclusive price must be at least as prominent.

Where the final price can’t be accurately calculated at the time of advertising, sellers will be required to disclose the minimum price as a single figure.

The new rules are designed to assist individual consumers, and are not intended to apply to transactions between businesses or between businesses and government.

Sellers will be required to disclose the minimum price as a single figure.
State of the energy market

Energy companies around Australia have begun investing in new infrastructure projects in response to rising electricity demands and high prices, according to the Australian Energy Regulator’s latest market snapshot.

Investment in transmission infrastructure has been strong in the last decade.

The AER, which is part of the ACCC, released its second annual State of the energy market report in late November after a year of volatile prices and emerging challenges.

While prices in the national electricity market eased a little during 2008, demand for natural gas continued to rise as the result of new gas-fired power generators coming on-line. In the longer term, major liquefied natural gas projects in Queensland are likely to lead to an increase in prices for both wholesale and retail customers along the east coast.

South Australia experienced record wholesale electricity prices early in the year as the result of a 15-day heatwave, triggering the unprecedented use of price controls.

Despite the investment response from generators, concerns remain about a lack of energy generation capacity in the coming years.

In 2007, the Australian Energy Commission Reliability Panel reported that forecast demand was growing faster than supply, and that a shortfall was possible by around 2011.

Investment in transmission infrastructure has been strong in the last decade and was forecast to exceed $1.2 billion during 2007–08.

One of the greatest challenges facing the industry is the introduction of a Carbon Pollution Reduction Scheme.

The challenge will be particularly acute for coal-fired electricity generators, which account for around 83 per cent of Australia’s total electricity supply. Coal is emissions intensive and the introduction of the scheme may result in some asset writedowns, sales, and the possible closure of brown coal generating plants.

However AER chairman, Steve Edwell, said the scheme may also bring new opportunities.

“The Carbon Pollution Reduction Scheme has created some uncertainty for the market, but it will also create investment opportunities. In particular, it adds further momentum to the natural gas sector and over time will spur greater interest in clean coal and renewable generation technologies.”

The state of the energy market report is available at www.aer.gov.au.
Muscling in on heavy handed collectors

Australian borrowers continue to report harassment at the hands of debt collectors, despite efforts by the industry and regulators to deal with the problem.
A recent phone-in day, conducted by the Australian Competition and Consumer Commission and the Australian Securities and Investments Commission, found persistent allegations of collectors overstepping the guidelines widely accepted by the industry. The phone-in day was held in July to gauge the level of consumer concern in the community about debt collection practices. It was followed by a debt collection industry forum in September. The forum provided a vehicle for constructive and open discussion of the major issues affecting both consumers and the industry, with a view to achieving outcomes that will minimise consumer detriment from debt collection practices.

These initiatives follow the joint release by the ACCC and ASIC of a debt collection guideline in 2005, designed to set parameters for those in the industry to follow. The publication has been widely accepted by many in the industry, which has taken steps to ensure those involved in debt collection are able to conduct legitimate business without abusing the rights of those they are seeking to recover debts from.

The debt collection sector has made significant efforts to improve trader conduct and professionalism in recent years. Despite the efforts of the majority of businesses, the phone-in day and debt collection forum findings suggest there is still some way to go. A number of debt collectors and creditors continue to adopt unlawful practices when seeking to recover debts.

The ACCC has not seen a reduction in the number of complaints since the guideline was published in 2005. Of the 145 calls received during the phone-in day, around half reported problems with third-party collectors acting as agents or assignees. The most common complaint was of harassment and coercion.

During the campaign, a number of trends emerged. Among the most obvious were disputes about the debt, difficulty accessing information about the debt, multiple collectors approaching the consumer, incorrect identification of who was actually responsible for the debt and the inflexibility of collectors when negotiating payment plans.

Debt collection issues appear likely to affect a larger number of Australians in the coming years as the impact of recent lending practices leads more consumers to the point where they can no longer meet their financial obligations. According to a speech by Reserve Bank Governor Glenn Stevens in September, gross household debt has grown from around 50 per cent of average annual household income during the early 1990s to 160 per cent in 2008.

The results of the recent activities provide much food for thought for all concerned. The ACCC and ASIC will closely analyse the data collected to ensure they are doing everything possible to increase compliance with best-practice guidelines, while taking action against those clearly disregarding the rights of debtors.

Those seeking more information are encouraged to contact the ACCC for a copy of the publications Debt collection guideline: for collectors and creditors and Dealing with debt: your rights and responsibilities. Both are available at www.accc.gov.au or by calling 1300 302 502.
Analysis of complaints to the ACCC has revealed many extended warranties on popular consumer goods may not be as wise an investment as they first appear.

The ACCC report suggests that many consumers who allow themselves to be talked into expensive additional cover find it next to useless when they try to lodge a claim. Extended warranties are like a form of insurance, typically offered on major purchases such as whitegoods or large electronics. They usually claim to cover the customer against faults or defects for an extended period of time and are usually offered at the point of sale, just before payment. These warranties can be quite lucrative products in their own right for the stores offering them.

Complaints received by the ACCC ranged from a waterproof camera not covered for water damage through to key accessories such as laptop batteries and cords being excluded from the warranty’s cover. Some of the greatest frustrations experienced by those calling the ACCC were in relation to extended warranties on...
high-value household items like televisions, computers and washing machines.

The ACCC found that 80 per cent of consumers who reported problems were unaware that they had consumer or statutory rights implied in the sales contract. These legal rights protect the public from faulty or unsatisfactory goods and services by entitling them to a refund, replacement or repair if the goods don’t live up to reasonable expectations, including the goods lasting for a reasonable amount of time.

In fact, some of the extended warranties examined by the ACCC were found to offer customers potentially less than they received automatically at no additional expense under their statutory rights. Extended warranties can also add considerably to the total cost – they are often between 15 and 30 per cent as much again as the original item and in some cases more.

Regulators and consumer groups in a number of other countries, including the United States, Canada, the United Kingdom and New Zealand, have begun warning consumers to think carefully about whether they actually need extended warranties before paying for them.

Australia’s fair trading laws protect consumers when they buy goods and services. The law requires goods to be fit for sale and allows that customers may have a reasonable claim against a retailer if goods don’t live up to reasonable expectations of quality, don’t match descriptions in advertising or from sales staff, or services are not carried out with due care and skill.

Consumers’ legal rights have no set time limit, other than what is reasonable to expect when taking into account the cost and quality of the item. Those statutory rights are automatic in every sale, regardless of whether goods are covered by a manufacturer’s or extended warranty.

One of the first steps to deciding whether or not to buy an extended warranty is to find out what you are already covered for under state and commonwealth legislation. The ACCC has a number of publications on your warranty rights available free online at www.accc.gov.au or by calling 1300 302 502.

There may be legitimate reasons for customers to pay extra for extended warranties, but these need to be carefully considered ahead of time.

---

**Statutory Rights**

The law protects Australians from faulty, misleading or inappropriate goods and services by attaching statutory rights to every item sold in Australia.

For example, if a new toaster fails to do its job when taken home, the buyer has an automatic legal right to take it back and seek to have the problem addressed, regardless of the warranty offered by the manufacturer or store that sold it.

Those rights do not contain time limits or automatically entitle the buyer to a refund. Instead, they are based on what is reasonable, such as how long a product can reasonably be expected to last.
New guidance for merging firms

Businesses contemplating a merger or acquisition will now have a greater insight into issues that are likely to cause concern to the regulator, with the updating of the ACCC’s merger guidelines.

Last revised in 1999, the guidelines have been thoroughly reviewed to incorporate the latest international best practice, antitrust analysis and ACCC experience to identify and assess whether a merger is likely to cause competitive harm. The guidelines have been developed with a greater emphasis on the competitive theories of harm and the effects of constraints, allowing for a more integrated approach to analysing proposals.

The revised guidelines are not, however, a significant departure from those laid down in 1999. The test of Section 50 of the Trade Practices Act 1974 remains at the heart of all assessments: any merger that would have the effect or likely effect of substantially lessening competition in a market is likely to be opposed.

Because every proposed merger is unique, the ACCC will continue to assess each merger individually on its merits. The guidelines provide a helpful framework for businesses to refer to, though, when considering their plans.

The business community has provided valuable input during the development of the guidelines. There have been a number of changes made in response to the comments received on a draft which was released in early 2008. The most notable of these is a simplifying of the notification threshold. The aim is to focus more closely on those proposals which are the most likely to raise potential competition concerns.

The revised merger guidelines and the expanding body of public competition assessments (available at www.accc.gov.au) mean a greater predictability and certainty for merger parties. Businesses are now strongly encouraged to notify the ACCC if the combined market share of the merging parties is greater than 20 per cent in the relevant market they operate in. This level has been derived from the ACCC’s analysis of past mergers and the Statements of issues that the ACCC has released.

An electronic copy of the revised merger guidelines is available at www.accc.gov.au by following the ‘for businesses’ link.

Any merger that would have the effect or likely effect of substantially lessening competition in a market is likely to be opposed.
Regulating the telecommunications market

Growing investment in Australia’s telecommunications infrastructure is changing the telecommunications markets and leading to a reassessment of regulation of the sector in many parts of the country.

Services are typically regulated where there is a lack of effective competition, for example where there is only one company that has the infrastructure to supply voice or data services to residences and businesses (typically Telstra). In order to increase the likelihood of competition, companies that control this monopoly infrastructure are often required by law to provide access to their services by competitors. However, as other companies move into particular geographic areas and begin installing their own equipment, the types of services they need to reach potential customers may no longer depend on access to all or even any of the services on the incumbent’s network. Once they can begin competing through using their own or alternative infrastructure, some types of regulation become less important and can begin to be wound back – and in some cases the need for any type of regulation can disappear altogether.

In recent years a number of operators have invested in extending the footprint of their own network equipment and have been able to both reduce their reliance on Telstra services and offer an increasing range of services to more customers. The result has been greater control over their own costs and more scope for innovation in the retail offerings of a number of companies, which in turn has prompted Telstra to upgrade its own services.

These changes in the way companies can compete also have implications for regulation. In late August, the ACCC granted Telstra an exemption from its obligations to supply wholesale line rental and local carriage services in 248 exchange service areas, covering some of the more densely populated metropolitan regions. The scope of the exemption granted by the ACCC was more limited than Telstra had been seeking and was dependent on a number of important conditions and limitations.

In October, Telstra was granted a further exemption from its obligations to also supply access to the older public switch telephone network in a number of metropolitan and capital city areas.

Telstra has also sought to be freed from its obligations to provide Optus with access to all regulated fixed line services in areas that are covered by Optus’s own independent cable network. The cable networks owned by both Optus and Telstra are capable of delivering pay television and high-speed data services, and Optus also uses its network to provide telephone services. However, the ACCC was concerned the singling out of a particular competitor would represent a discriminatory access policy which would be likely to discourage investment and undermine the potential for efficient facilities-based competition in the telecommunications industry.

Telstra’s strong position in the pay TV market and control over content, through its interest in Foxtel, would also be likely to limit any possible competitive benefits from granting the exemption. These decisions all reflect the ACCC’s view that where possible regulation should be kept to a minimum and markets allowed to operate to deliver the best prices and services to consumers. Those areas subject to regulation are therefore regularly reviewed as investment increases and markets develop, and regulation is adjusted or scaled back where appropriate.

However, achieving the right balance between imposing regulation that leads to greater competition and allowing businesses to operate as freely as possible is not always a straightforward process. At the end of 2008, the Australian Competition Tribunal determined that there was an ongoing need for access to Telstra’s network and that the ACCC had proposed scaling back that regulation too soon. The tribunal concluded that it was easier to revisit a decision at a later date and remove regulation at that time than it would be to re-regulate if it was found those restrictions had been removed too early. At the time of writing, Telstra has sought review of this decision by the Full Federal Court.

There are also future possible developments in the sector that may necessitate changes to regulation. Most notably, the Australian Government is currently in the process of assessing proposals to build a national broadband network. Such a network could significantly impact the scope service providers have to control their operations and the offerings available to their customers. In that context, the ACCC has provided a report to the expert panel assessing proposals, and is tasked with providing ongoing advice to the panel throughout the government’s assessment process.
Every year the ACCC and AER receive significant amounts of information from a range of sources including other government agencies, members of the public and their own investigations.

Some of that information is confidential or commercially sensitive and some of it is obtained through the Commission’s legal powers. In some cases, other Australian authorities or international agencies seek access to that information for their own use. The policy is therefore designed to give general guidelines for how and when information will be used, and where it might be passed on to others. For example, information obtained during one investigation will generally be available for use during another investigation.

It also clearly states what is required of those who seek confidentiality when providing information. Parties are usually expected to justify why particular information should be kept confidential before confidentiality is agreed to.

Because the ACCC/AER regard protecting genuine confidentiality as essential to the confidence of businesses and the wider community, they do not take that commitment lightly. Confidential information is treated responsibly and in accordance with the law.

The new information policy is part of the ACCC’s commitment to increasing transparency and certainty for those it deals with.

The ACCC/AER information policy is available on-line at www.accc.gov.au or in hard copy by calling 1300 302 502.
Mr Kell is a former Chief Executive of CHOICE and was appointed as an ACCC Deputy Chair in August 2008. He has also worked in a number of consumer protection roles at the Australian Securities and Investment Commission and has extensive experience in advancing consumer and market reform issues.

With major law reforms under way, Mr Kell is particularly looking forward to working in consumer and competition regulation.

‘Ultimately both the competition and consumer reforms share the aim of making markets work better for the community. On the consumer side, we will see a wide-ranging package of reforms to Australia’s national consumer laws that will significantly improve the ACCC’s enforcement toolkit. This will include the introduction of civil penalties and banning orders, substantiation notices and unfair contracts laws,’ Mr Kell said. ‘This package will improve the ACCC’s consumer protection capacity so that we can more effectively ensure that markets are fair for all consumers.’

Mr Kell also has scams in his sights. Since his appointment, the ripple effect of the global financial crisis has contributed to an increase in scam activity.

In 2008, more than 17 500 complaints and inquiries about scams were received by the ACCC, up from 10 500 in 2007. With such complaints on the rise, Mr Kell led the 2009 Australasian Consumer Fraud Task Force to spread its message about how consumers can protect themselves.

Last year an ABS survey commissioned by the ACFT found almost six million Australians were exposed to scams and frauds during any given year, with more than 800 000 falling victim in some way.

Mr Kell said the ACFT campaign highlighted the real impact scams can have on consumers and the fact that anyone can fall victim in a time when scams are increasingly sophisticated and widespread.

He also represents the ACCC on the international stage through agencies such as the International Consumer Protection and Enforcement Network (ICPEN).

‘The ACCC takes on the presidency of ICPEN later this year. Consumer markets increasingly operate across borders, and we will be seeking to ensure that ICPEN, which represents consumer protection agencies around the world, helps regulators to cooperate and share information about market problems.

‘Consumer fraud is also an issue where cooperation is increasingly required at an international level as scammers work through the internet. Combating these scams will be a key part of the agenda of ICPEN,’ Mr Kell said.

Mr Kell also chairs the ACCC’s Adjudication Committee and is a member of the Enforcement and Communications Committees.
Two months after Joe Dimasi was appointed as an ACCC petrol commissioner, his colleagues jokingly suggested he’d better think about retiring – and quickly.

While he will sit alongside other commissioners deciding on all issues that come before the commission, his special area of responsibility in petrol will be a major focus.

He says the rapid drop of petrol prices around Christmas was due to the downturn in the economic outlook internationally. Stocks of fuel had built up amid expectation of strong economic activity. As economic conditions deteriorated, retailers began clearing out these stockpiles, with refined petrol at times selling for less than the price of unprocessed oil.

Mr Dimasi says creating the conditions for maximum competition at the wholesale level will be key in ensuring Australians get the best possible prices in the longer term.

‘It’s a dynamic industry that has some fairly high barriers to entry. We’ve got to watch those barriers, things like access to terminals is important, access to retailers is important.

‘What happens in the refineries in the Asian region is also critical for us. As we see new big refineries come online, we know Australia is an attractive market for them, and we need to ensure they aren’t discouraged. That’s where our focus has got to be, on the big structural issues.’

He also thinks it is about time that major oil companies started communicating more effectively with their customers.

‘In the past there was a lot of concentrated decision-making with little explanation – people didn’t really understand what influenced prices. Even now, we are seeing oil companies not really engaging adequately in the public debate.

‘We have these very unusual patterns where we have these price cycles that don’t occur elsewhere in the market and they happen with very little explanation. A lot of the explanation comes from us, other commentators, and the result is we do have this fairly unusual industry that is extremely volatile and confusing for people to work out. That leads to a lot of suspicion.’

With further upheaval predicted at both the retail and wholesale level, the only thing certain for the fuel industry in the coming years is change. In the background, Joe Dimasi and the rest of the ACCC will be working hard to ensure that change leaves everyday motorists the clear winners.
Small business owners have been given a strong new voice and advocate with the appointment of Dr Michael Schaper as a deputy chairman of the ACCC.

Changes to the Trade Practices Act now require the commission to include a deputy chair with small business experience, and the former ACT Small Business Commissioner has been appointed to the role.

Despite a slowing national economy, the former Curtin University academic, researcher and small business expert is positive about the future, and says nurturing a healthy small business sector is about more than just economic activity.

‘Small business isn’t just about people doing a small business activity – it’s about people’s lives, their hopes, and their dreams.

‘It’s about what they want to achieve for themselves, their children and their families. It’s a chance for entrepreneurs to make a lasting contribution not only for their own benefit, but also the benefit of the community.’

As a former small business owner, Dr Schaper understands the immense pressure that can be exerted on small business people and says one of the best ways to assist them is to provide a strong, functional set of laws that everyone can understand.

‘We should remember that the Trade Practices Act as a whole is primarily a pro-small business piece of legislation. In fact, some people have argued if you didn’t have that Act it would be very difficult to have a successful small business sector in Australia. We’d have cartels running riot and we’d have large firms continually using their power to dominate small firms or push them out of existence.’

Every year, the ACCC receives around 3000 queries from small businesses. About 40 per cent of those are requests for information, while the other 60 per cent are about more substantial issues.

‘That’s still not a very large number out of two million-odd businesses, so we want to extend our reach to ensure more businesses are aware of their rights and obligations under the Act.’

Finding out about legal obligations to customers or the limits of dealing with competitors can slip down the list of priorities for business owners with typically busy workloads.

‘There are times when small business operators don’t deal with an issue until it becomes a problem. By and large we are structured in such a way that when people come to us and they’ve got a problem and they are genuine, they will find we are keen to help. It doesn’t mean the law won’t be followed, but ACCC staff tend to approach things with a positive and sensitive approach to the situations small businesses find themselves in.

‘We all want to ensure that everyone is given a fair go. We need to make sure the frameworks and laws we set up not only achieve that but help business people to be successful.’

He says many small business owners are surprised when they learn of the extensive support that is available. The ACCC has a proactive outreach program designed to educate business owners and includes a dedicated small business hotline (1300 302 021), and a range of information on the website www.accc.gov.au.

‘We also provide information to the network of business advisors across Australia, so that if you do have a question you should be able to get in touch with someone fairly easily who can give you a clear answer.’
ACCC recent releases

To order call 1300 302 502
View these publications online at www.accc.gov.au

FOR CONSUMERS

Consumer information in your language
Information on what the ACCC can do to help consumers in English, Arabic, Croatian, Dinka, Greek, Italian, Japanese, Khmer, Korean, Macedonian, Persian, Serbian, Spanish, Traditional Chinese, Turkish and Vietnamese.

Domestic treadmills, safety alert
Over the last three years, more than 100 serious accidents associated with treadmills have occurred in Australian homes. This brochure offers safety guidelines for protecting your children.

Lotteries, sweepstakes and competition scams
Beware of any claims telling you that you have won the lottery, sweepstakes or a prize. You cannot be chosen as a random winner if you don’t have an entry.

Money transfer scams
Money transfer scams are on the rise—watch out for all the different versions of this scam. Be very careful when someone offers you money to help transfer their funds.

Phishing scams
Phishing scams are all about luring you into handing over your personal and banking details to scammers. This fact sheet gives you some warning signs and common tricks used by scammers to protect yourself from being scammed.
Fact sheet, 2008, ISBN 978 1 921393 89 1

Your consumer rights: Mobile phone premium services
There’s a lot more you can do on your mobile phone these days. Often referred to as mobile premium services, these extras tend to cost more than a standard SMS or phone call.

FOR BUSINESS

Merger guidelines 2008
This publication outlines the analytical and evaluative framework applied by the ACCC when reviewing mergers under the Trade Practices Act. It provides guidance on the factors the ACCC considers relevant to its consideration of mergers and includes discussion of the issues relevant to enforceable undertakings. This publication replaces the Merger guidelines 1999.
76 pp., 2008, ISBN 978 1 921393 85 3 (electronic only)

Outreach newsletter, December 2008
This second edition of Outreach—the ACCC’s supporter network newsletter—provides stories from the ACCC’s regional outreach managers who have made regional visits to assist various groups in the community.
4 pp., 2008, ISSN 1835 3770 (electronic only)
Water brokers and exchanges – Your fair trading obligations
This publication will help brokers and exchanges understand their fair trading obligations under the TPA when dealing with irrigators.

Water trading – A guide to your fair trading rights when using brokers and exchanges
This publication is a comprehensive guide to assist irrigators understand their fair trading rights when dealing with brokers and exchanges.

Water trading – An overview of your fair trading rights when using brokers and exchanges
This publication provides a short overview of your fair trading rights when using brokers and exchanges.

ACCC REPORTS

ACCC examination of fertiliser prices
On 8 February 2008, the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs requested that the ACCC undertake an analysis of fertiliser prices, particularly the reasons for recent increases in prices.
A report outlining the findings of the ACCC in relation to fertiliser prices was provided to the minister on 31 July 2008.
36 pp., 2008, ISBN 978 1 921393 82 2 (electronic only)

Container stevedoring: monitoring report no.10
The ACCC’s container stevedoring monitoring program is undertaken under a direction from the Federal Treasurer pursuant to Part VIIA of the Trade Practices Act 1974. The ACCC is required to monitor prices, costs and profits of container terminal operator companies at the ports of Adelaide, Brisbane, Burnie, Fremantle, Melbourne and Sydney.

Monitoring of the Australian petroleum industry – Report of the ACCC into the prices, costs and profits of unleaded petrol in Australia
The Assistant Treasurer and Minister for Competition and Consumer Affairs, the Hon. Chris Bowen MP directed the ACCC to monitor the prices, costs and profits of unleaded petrol products for a period of three years and report to him by 17 December each year.
179 pp., 2008, ISBN 978 1 921581 02 1 ($20 for a printed copy)

Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries
On 22 January 2008 the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs requested the ACCC to hold a public inquiry into the competitiveness of retail prices for standard groceries pursuant to Part VIIA of the Trade Practices Act 1974. The ACCC provided its report to the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs on 31 July 2008.

State of the energy market report, 2008
The 2008 edition of the State of the energy market report provides a comprehensive overview of Australia’s electricity and natural gas markets. It supplements the more technical reports the AER publishes and is written for a wide audience including government, industry and the broader community.
ABOUT THE ACCC

ACCC annual report 2007–08
In accordance with subsections 44AAJ and 171(1) of the Trade Practices Act 1974, the ACCC and the Australian Energy Regulator (AER) present the annual report, covering the operations for the year ended 30 June 2008.
289 pp., 2008, ISSN 1327 4767 ISBN 978 1 921393 80 8
$15 for a printed copy.

ACCC corporate plan 2008–09
For the ACCC, the year ahead will see a range of reforms debated and introduced, if parliament agrees, relating to the three key pillars of competition law—provisions relating to anti-competitive agreements (particularly cartels), anti-competitive mergers and the abuse of market power. Other reforms being discussed will affect the entire framework of consumer protection law with the proposal for a single national law and a significant strengthening of that law.
15 pp., 2008, ISBN 978 1 921393 91 4

ACCC–AER information policy: The collection, use and disclosure of information
This guideline sets out the general policy of the ACCC and the AER on the collection, use and disclosure of information.
27 pp., 2008, ISBN 978 1 921393 93 8

ACCCount – A report of the ACCC’s activities, 1 July to 30 September 2008
ACCCount details the ACCC’s activities in the enforcement of the Trade Practices Act 1974, merger reviews, compliance initiatives, adjudication issues, economic regulation, international cooperation and interaction with other Australian competition, consumer protection and regulatory agencies.
Subscribe online at www.accc.gov.au to receive regular issues of this publication.
69 pp., 2008, ISBN 978 1 921393 81 5 (electronic only)

FOR REGULATED INDUSTRIES

Draft water charge (termination fees) rules

Draft water market rules and advice to the minister on the draft water market rules

Water charge rules for water planning and management charges, issues paper – October 2008

Water charge rules for charges payable to irrigation infrastructure operators and bulk water operators, position paper – September 2008
SUBSCRIBE TO ACCC UPDATE

Subscribe to ACCC Update for the latest news from the Australian Competition and Consumer Commission.

ACCC Update is a quarterly magazine.

To be added to our mailing list, please fill in the details below and return to:
The editor, ACCC Update
Australian Competition and Consumer Commission
GPO Box 3131, Canberra ACT 2601
Fax (02) 6243 1149
email: publishing.unit@accc.gov.au
Subscribe online: http://www.accc.gov.au/ACCCUpdateSubscription
(Please note: This web address is case sensitive)

FAXBACK FORM

Name: ____________________________

Position: ____________________________

Organisation: ____________________________

Address: ____________________________

Postcode: ____________________________

Telephone: ____________________________

Fax: ____________________________

Email: ____________________________

For more information on ACCC Update:
visit www.accc.gov.au
email: publishing.unit@accc.gov.au
phone the ACCC Infocentre 1300 302 502.
ACCC contacts

Infocentre: 1300 302 502
Website: www.accc.gov.au

Callers who are deaf or have a hearing or speech impairment can contact the ACCC through the National Relay Service: www.relayservice.com.au.

Voice-only (speak and listen) users—phone 1300 555 727 and ask for 1300 302 502.

Addresses

National office
23 Marcus Clarke Street
Canberra ACT 2601
GPO Box 3131
Canberra ACT 2601
Tel: (02) 6243 1111
Fax: (02) 6243 1199

New South Wales
Level 7, Angel Place
123 Pitt Street
Sydney NSW 2000
GPO Box 3648
Sydney NSW 2001
Tel: (02) 9230 9133
Fax: (02) 9223 1092

Victoria
Level 35, The Tower
360 Elizabeth Street
Melbourne Central
Melbourne Vic 3000
GPO Box 520
Melbourne Vic 3001
Tel: (03) 9290 1800
Fax: (03) 9663 3699

Queensland
Brisbane
Level 3
500 Queen Street
Brisbane Qld 4000
PO Box 10048
Adelaide Street Post Office
Brisbane Qld 4000
Tel: (07) 3835 4666
Fax: (07) 3832 0372

Townsville
Level 6
370 Central Plaza Building
Flinders Mall
Townsville Qld 4810
PO Box 2016
Townsville Qld 4810
Tel: (07) 4729 2666
Fax: (07) 4721 1538

Western Australia
3rd floor, East Point Plaza
233 Adelaide Terrace
Perth WA 6000
PO Box 6381
East Perth WA 6892
Tel: (08) 9325 0600
Fax: (08) 9325 5976

South Australia
Level 2
19 Grenfell Street
Adelaide SA 5001
GPO Box 922
Adelaide SA 5001
Tel: (08) 8213 3444
Fax: (08) 8410 4155

Northern Territory
Level 8 National Mutual Centre
9–11 Cavenagh St
Darwin NT 0800
GPO Box 3056
Darwin NT 0801
Tel: (08) 8946 9666
Fax: (08) 8946 9600

Tasmania
3rd floor, AMP Building
86 Collins Street
(Cnr Elizabeth and Collins streets)
Hobart Tas 7000
GPO Box 1210
Hobart Tas 7001
Tel: (03) 6215 9333
Fax: (03) 6234 7796