



# ACCCount

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

1 October to 31 December 2019

Australian Competition and Consumer Commission

23 Marcus Clarke Street, Canberra ACT 2601

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# Key outcomes dashboard

## Maintaining and promoting competition

### Competition enforcement

- 1 case commenced
- 12 cases continuing
- 3 undertakings accepted

### Mergers and adjudication

- 61 confidential merger matters pre-assessed
- 10 public reviews undertaken
- 5 statement of issues released
- 10 draft and 11 final authorisation determinations
- 2 collective bargaining notifications allowed to stand
- 16 final certification trade mark assessments issued

## Protecting consumers and supporting fair trading

### Consumer enforcement

- 4 cases commenced
- 4 cases concluded—\$135.56 million in total penalties
- 30 cases continuing
- 1 administrative resolution
- 3 undertakings accepted
- 14 infringement notices paid by 9 traders

### Consumer and small business education

- 1 004 548 consumer education resources accessed
- 871 446 Scamwatch website visits

- 69 656 contacts received from consumers and businesses
- 333 364 small business education resources accessed
- 11 email updates to small businesses and franchising networks

### Product safety

- 176 voluntary recalls published
- 808 mandatory injury reports received
- 224 reports of unsafe products assessed
- 4945 product lines inspected at 642 sites, identifying 79 products requiring further assessment
- 2 new mandatory safety standards made

## Infrastructure regulation

- Released a decision on proposed price increases by Australia Post
- Applied for review of a decision on user funding at the Port of Newcastle
- Commenced an inquiry into NBN wholesale pricing
- Published an update on competition issues with e-SIMs
- Released reports on topics including petrol prices, container stevedoring, broadband performance, NBN wholesale market indicators and bulk grain ports

## Market studies and research

- Released several publications, including the Customer Loyalty Schemes final report and an e-conveyancing market reform paper
- Commenced an inquiry into home loan pricing

## Executive Summary

1. The Australian Competition and Consumer Commission (ACCC) works to enhance the welfare of Australians by promoting competition and fair trading and regulating national infrastructure.
2. This report highlights the range of activities engaged in by the ACCC to achieve its purpose in the December 2019 quarter, including:
  - enforcing competition laws in relation to cartel conduct, anti-competitive agreements, misuse of market power and mergers that substantially lessen competition
  - protecting consumers from unfair business practices and unsafe products
  - regulating national services, infrastructure and markets with limited competition or natural monopoly characteristics
  - studying, monitoring and reporting on competition and consumer issues in specific markets and industries
  - advocacy and collaboration to promote competition and fair trading.
3. Key enforcement outcomes for the quarter included:
  - \$125 million in penalties against Volkswagen, the largest penalty ever awarded under the Australian Consumer Law (ACL)
  - \$6.4 million in penalties against Optus for making misleading claims about home internet disconnections to consumers
  - \$4.165 million in penalties against training college Unique, bringing total penalties in our VET fee-help actions to date to \$35.165 million
  - the first enforcement outcome in a concerted practices case, with the ACCC accepting court-enforceable undertakings from two Sydney roofing companies following the use of industry social media groups to discuss pricing in a manner than was likely to contravene the attempted price-fixing provisions
  - payment of fourteen infringement notices by nine traders
  - court-enforceable undertakings made by five traders
  - instituting proceedings against TasPorts, the first case taken by the ACCC under the new misuse of market power provision, amended in response to the Harper Review of Australia's competition laws.
4. Key outcomes in the agriculture sector included:
  - Coles agreeing to pay Norco Co-operative Limited around \$5.25 million for distribution to its dairy farmer members
  - the announcement of the introduction of a mandatory dairy industry code, which came into effect from 1 January 2020.
5. The ACCC released a consultation paper regarding the Consumer Data Right (CDR) in the banking sector, seeking views on how best to permit the use of intermediaries in the CDR ecosystem and how to provide for the disclosure of CDR data to non-accredited third parties.

6. The ACCC made a number of merger decisions, including deciding not to oppose the proposed acquisition of GrainCorp Liquid Terminals Australia Pty Ltd by ANZ Terminals Pty Ltd, subject to divestments.
7. The ACCC authorised changes to the Australian Banking Association's Banking Code of Practice for five years, subject to conditions.
8. The ACCC commenced inquiries into NBN wholesale pricing and home loan pricing.
9. The ACCC released a decision not to object to proposed Australia Post price increases.
10. The ACCC collaborated regularly on national product safety issues with the Department of Infrastructure (for motor vehicle safety), the Department of Health, the Department of Home Affairs and Australian Border Force. The ACCC also worked with state and territory ACL regulators, electrical safety and gas safety regulators on a range of recall and consumer product safety issues.
11. The ACCC engaged with the Treasury and Department of Innovation, Industry and Science to communicate the ACCC's views on regulatory reform proposals for country of origin labelling for complementary healthcare products. The ACCC also worked with state and territory ACL regulators to facilitate a consistent compliance approach for country of origin labelling via an information sharing process.
12. The ACCC released a number of publications during the quarter, including the following:
  - the Customer Loyalty Schemes final report
  - monitoring reports on petrol, container stevedoring and bulk grain ports
  - an update on potential competition issues with e-SIMs in Australia
  - a Measuring Broadband Australia program performance report
  - an e-conveyancing market reform paper
  - a paper seeking views on the key issues affecting markets for tradeable water rights in the Murray–Darling Basin
  - the third report of the electricity market monitoring inquiry
  - an interim report for the Northern Australia Insurance Inquiry.
13. The ACCC engaged with competition and consumer protection counterparts on a range of matters, including collaborating with the Organisation for Economic Co-operation and Development (OECD) and the European Commission to co-lead the 2019 OECD global awareness campaign on product recalls.

# 1. Maintaining and promoting competition

## Outcomes addressing harm to consumers and businesses from anti-competitive conduct

- 1.1. Competitive markets lead to lower prices, better quality products and services, greater efficiency and more choice, all of which benefit consumers. As Australia's only national competition regulator, the ACCC works to enhance the welfare of Australians by maintaining and promoting competition.
- 1.2. The ACCC does so by enforcing Part IV of the *Competition and Consumer Act 2010* (CCA) in relation to anti-competitive conduct and assessing whether market structure changes through mergers and acquisitions would substantially lessen competition.
- 1.3. In addition, the ACCC considers applications for authorisation and notifications, which enable some anti-competitive conduct to go ahead where the public benefit outweighs the public harm, including harm from reduced competition.
- 1.4. The ACCC's Compliance and Enforcement Policy sets out priorities for the year and the factors the ACCC takes into account when deciding whether to pursue matters. In 2019 the ACCC prioritised competition issues in the financial services, commercial construction and agriculture sectors, as well as issues arising from opaque and complex pricing of essential services in the energy and telecommunications sectors. The ACCC continued its focus on enduring priorities relating to cartel conduct causing detriment in Australia and anti-competitive agreements and practices. The ACCC also continued to prioritise conduct that may contravene the misuse of market power and concerted practices provisions.
- 1.5. Outcomes are achieved through a variety of means. These include litigated proceedings, accepting court-enforceable undertakings,<sup>1</sup> administrative resolutions and undertaking market studies and inquiries.

### Proceedings

- 1.6. In the December quarter the ACCC was involved in 12 legal proceedings relating to competition enforcement in a range of industries, including shipping and transport related services, construction and financial services. A complete list of these proceedings is included in the Appendix.
- 1.7. Of the 12 competition enforcement proceedings:
  - 11 cases were carried over from the previous quarter
  - 1 new case was commenced in the quarter
  - 0 cases were concluded, and
  - 12 cases were continuing as at the end of the quarter.

### *Proceedings commenced*

#### **TASMANIAN PORTS CORPORATION PTY LTD**

In December 2019 the ACCC instituted Federal Court proceedings against Tasmanian

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<sup>1</sup> Court-enforceable undertakings accepted under s.87B of the CCA.

Ports Corporation Pty Ltd (TasPorts). The ACCC alleges that TasPorts, which owns all but one port in northern Tasmania, sought to stop a new entrant, Engage Marine Tasmania Pty Ltd (Engage Marine), from competing effectively with TasPorts' marine pilotage and towage businesses, with the purpose, effect and likely effect of substantially lessening competition. It is alleged that TasPorts prevented Engage Marine from expanding in Tasmania by failing to provide long term berths for its tug boats, and refusing to place Engage Marine on the shipping schedule, which is necessary for it to provide towage services.

The ACCC also alleges that TasPorts has prevented Engage Marine from providing pilotage services at Port Latta by failing to provide training to Engage Marine's employees, which only they could provide, and demanding that Engage Marine's sole customer pay about \$750 000 a year in fees to TasPorts after the customer stopped contracting with TasPorts.

This is the first case taken by the ACCC under the new misuse of market power provision, which was amended in response to the Harper Review of Australia's competition laws. This law reform was designed to protect the competitive process and help the ACCC address the harm that anti-competitive conduct has on consumers and the Australian economy. The ACCC is seeking injunctions, declarations, penalties and costs.

### **Undertakings accepted**

1.8. The ACCC also resolves alleged contraventions of the CCA by accepting court-enforceable undertakings under s.87B of the CCA. In these undertakings, which are on the public record, companies or individuals generally agree to:

- remedy the conduct
- accept responsibility for their actions
- establish, or review and improve, compliance programs and culture.

1.9. In the December quarter the ACCC accepted three court-enforceable undertakings relating to competition enforcement.

### **ANZ ROOFING PTY LTD**

#### **IVY CONTRACTORS PTY LTD**

In December 2019 the ACCC accepted court-enforceable undertakings from two Sydney roofing companies relating to the use of industry social media groups to discuss pricing in a manner that was likely to contravene s. 45AJ of the CCA (attempted price fixing). This type of conduct could also in some circumstances raise concerns under s. 45(1)(c) of the CCA, which prohibits anti-competitive concerted practices.

ANZ Roofing Pty Ltd and one of its directors, Mark Lee Burtenshaw, and Ivy Contractors Pty Ltd and its sole director, Brent Cameron Callan-Kerkenezov, have acknowledged the ACCC's concerns about messages which appeared on two Facebook groups in December 2018. The messages appeared soon after a damaging Sydney hailstorm.

A message in one Facebook group from Mr Burtenshaw showed an image of a large hailstorm and read, 'I think this latest storm is the perfect opportunity for the roofers of Sydney to increase pricing across the board as a standard that doesn't decrease!' Another message from Mr Kerkenezov stated, 'Let's agree that we start from \$65 and go up', apparently referring to the price per linear metre to install new quad guttering.

The companies, as well as Mr Burtenshaw and Mr Kerkenezov, have undertaken not to repeat the behaviour and for the individual directors to receive compliance training in

competition and consumer law. ANZ Roofing will also publish a post on one of the Facebook groups about prohibited anti-competitive conduct.

This is the ACCC's first enforcement outcome in relation to anti-competitive concerted practices, which have been prohibited since a new law was introduced in November 2017.

### **BROMIC PTY LTD**

In October 2019 the ACCC accepted a court-enforceable undertaking from Bromic Pty Ltd, a national distributor of outdoor heating products, after it admitted to engaging in resale price maintenance when it introduced a 'minimum advertised pricing' policy.

Bromic's policy, introduced in late January 2018, required retailers not to advertise Bromic branded heating products for sale at a price cheaper than a price determined by Bromic, and contained potential sanctions for retailers who did not comply, under a 'three strikes' policy. Bromic stopped referring to and enforcing the policy after April 2018, but did not take any steps to communicate to its retail distributions that the policy was no longer in effect.

Bromic has undertaken to advise retailers that its minimum advertised pricing policy is no longer applicable and to ensure Bromic executives and staff receive practical legal training on the requirements of the CCA, including retail price maintenance.

### **Administrative resolutions**

1.10. The ACCC will sometimes resolve matters administratively. This can involve seeking agreements to stop or change conduct and provide appropriate redress to the conduct in question. In some cases, we will publicly announce these administrative resolutions.

1.11. There were no administrative resolutions this quarter.

### **Non-compliance and other proceedings**

#### **JASON ELLIS**

In October 2019 Jason Ellis, a former general manager of sales and marketing at BlueScope Steel Limited, was charged with two counts of inciting the obstruction of a Commonwealth official in the performance of their functions.

The charges were laid by the Commonwealth Director of Public Prosecutions (CDPP) and relate to actions allegedly taken by Mr Ellis during the ACCC investigation into alleged cartel conduct by BlueScope, which is the subject of separate civil cartel proceedings filed by the ACCC against BlueScope and Mr Ellis in August 2019. Those civil proceedings remain before the Federal Court.

The criminal charges laid against Mr Ellis are offences under the *Criminal Code Act 1995* (Cth) that carry a maximum of two years' imprisonment per offence. This is the first time an individual has been charged with inciting the obstruction of a Commonwealth official in relation to an ACCC investigation.

### **Agriculture sector**

1.12. In the quarter the ACCC's agriculture sector outcomes included:

- Welcoming the announcement of the introduction of a mandatory dairy industry code. A mandatory dairy code of conduct was a key recommendation of the ACCC's 2018 dairy inquiry, which found significant imbalances in bargaining power at each level of the dairy supply chain. The ACCC will be responsible for

enforcing the code, which came into effect from 1 January 2020, and will work with dairy farmers, processors, and our new Dairy Consultative Committee as the code is implemented.

- The first meeting of the ACCC Dairy Consultative Committee was held on 18 December 2019, to discuss strategies to educate the industry, especially farmers and processors, on compliance with the code.
- In December 2019 Coles Group Limited agreed to pay Norco Co-operative Limited around \$5.25 million for distribution to its dairy farmer members. The payments follow an ACCC investigation into whether Coles fully passed on to Norco a 10 cents per litre (cpl) price rise it charged consumers for Coles branded fresh milk, as it claimed it would do in Coles' marketing materials. Further details are provided below at section 2.14.
- A research project into potential competition and consumer issues in the agricultural machinery industry. A discussion paper is being finalised and will be published shortly, along with a survey and call for submissions. Responses to these will inform next steps.
- Advocating for the recommendations made in the ACCC [Wine grape market study: Final report](#), which was released on 24 September 2019.

## Consumer Data Right

- 1.13. The ACCC continues to work towards the launch of the Consumer Data Right (CDR) in the banking sector. The ACCC is working in close coordination with co-regulators and industry to develop and implement the CDR, including through the establishment of an Implementation Advisory Committee chaired by the ACCC with management level members and observers from the major banks, the Treasury, the Data Standards Body and the Australian Banking Association.
- 1.14. On 20 December 2019 the ACCC announced that the launch of the CDR in the banking sector would be postponed from February to July 2020. The ACCC is committed to ensuring that from day one the CDR will be a safe and secure system for the transfer of sensitive consumer banking data. The ACCC formed the view that additional time was required for the ACCC, the four major banks and the initial data recipients to complete development and testing of necessary IT systems and better ensure that necessary security and privacy protections operate effectively.
- 1.15. On 23 December 2019 the ACCC released a consultation paper seeking views from interested parties on how best to permit the use of intermediaries in the CDR ecosystem and how to provide for the disclosure of CDR data to non-accredited third parties. Submissions to the consultation paper close on 3 February 2020.
- 1.16. During the quarter the major banks and potential data recipients continued to undertake rigorous testing of the CDR ecosystem to ensure its end-to-end integrity before launch. In parallel, the ACCC is progressing consideration of draft accreditation applications from potential data recipients. Build and testing of the ACCC's Register and Accreditation Application Platform is progressing.

## Assess mergers to prevent structural changes that substantially lessen competition

- 1.17. The ACCC reviews mergers and acquisitions to assess whether they would be likely to substantially lessen competition. Merger parties have two avenues available for having a proposed acquisition considered and assessed by the ACCC on competition grounds: the informal clearance process and merger authorisation.

## Informal clearance process

- 1.18. The informal merger review process enables merger parties to seek the ACCC's view on whether the proposed acquisition is likely to have the effect of substantially lessening competition under s. 50 of the CCA.
- 1.19. The ACCC deals with matters considered under the informal clearance system expeditiously when we determine that they do not require a detailed review because of the low risk that competition concerns will be raised. As indicated in Table 1, a significant proportion of the mergers that we consider are 'pre-assessed', enabling us to respond quickly when there are no significant competition concerns.
- 1.20. In the quarter, three public informal merger reviews were withdrawn after the ACCC issued a Statement of Issues:
- Assa Abloy's acquisition of E Plus building products, which raised competition concerns in relation to fire door cores
  - Bis Industries' acquisition of Cougar Mining Group, which raised concerns in relation to underground mining longwall relocation equipment
  - the New Forests Tasmanian forests deal to acquire RMS, which raised concerns in relation to foreclosure of rivals.

**Table 1: Matters pre-assessed and reviews undertaken**

1 October–31 December 2019	Confidential	Public	Total
Pre-assessed	61	0	61
Public reviews undertaken	0	10	10
Total matters assessed and reviews undertaken	61	10	71
<b>Public reviews by category:</b>			
Not opposed	0	5	5
Finished—no decision (including withdrawn)			
Post SOI	0	3	3
Other	0	0	0
Opposed outright	0	0	0
Confidential review—ACCC concerns expressed	0	0	0
Resolved through undertakings	0	2	2
Variation to undertaking			
Accepted	0	0	0
Rejected	0	0	0

## **ANZ TERMINALS PTY LTD: PROPOSED ACQUISITION OF GRAINCORP LIQUID TERMINALS AUSTRALIA PTY LTD**

On 15 November 2019 the ACCC announced that it would not oppose ANZ Terminals Pty Ltd's (ANZ Terminals) proposed acquisition of GrainCorp Liquid Terminals Australia Pty Ltd (GLT) subject to divestments.

ANZ Terminals and GLT are the two largest port-side bulk liquid storage providers in Australia, each operating in a number of states. ANZ Terminals offers storage and handling services in Australia for a range of liquid products, including industrial chemicals, petroleum fuels, bitumen, marine fuels, aviation fuels, base oils and edible oils and fats. GLT stores and handles bulk liquids, including fats and edible oils, chemicals and petroleum.

The ACCC investigated the effects of the proposed acquisition on competition for the supply of port-side bulk liquid storage services in Victoria, New South Wales and South Australia. The ACCC consulted with a number of interested parties, and was initially of the view that bulk liquid storage customers in these locations would have limited or no storage alternatives, particularly in NSW and South Australia.

The ACCC's decision not to oppose the acquisition follows the provision by ANZ Terminals of a court-enforceable undertaking to divest its Osborne facility in South Australia to a purchaser to be approved by the ACCC. In addition, GLT's bulk liquid facility at Port Kembla in NSW has been excluded from the transaction and will remain part of GrainCorp Limited.

In relation to Melbourne, the ACCC reached the view that customer switching between ANZ Terminals and GLT is quite limited due to the lack of available storage capacity. The ACCC considered that competition is more dependent on the availability of vacant land and found that ANZ Terminals had no ability to expand easily on Coode Island at the Port of Melbourne while others had more options to expand. The ACCC consequently accepted an obligation in the undertaking from ANZ Terminals that it will not lease any more land remaining at Coode Island unless relevant competition clearance has been obtained from the ACCC, Australian Competition Tribunal or Federal Court.

### **Merger review consultation**

- 1.21. During the course of a public review, the ACCC may reach a preliminary view that a proposed merger raises competition concerns that require further investigation. In this circumstance, the ACCC will publicly release a Statement of Issues.
- 1.22. A Statement of Issues provides the ACCC's preliminary views, drawing attention to particular competition issues, as well as identifying further lines of inquiry that the ACCC wishes to undertake. It provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to understand and consider the primary issues identified by the ACCC. It also has the purpose of assisting the merger parties and other interested parties to frame further submissions, should they consider this necessary.
- 1.23. Five Statements of Issues were issued in the quarter:
  - iNova Pharmaceuticals (Australia) Pty Ltd - Juno PC Holdings Pty Ltd - iNova Juno PC
  - Bauer Media Pty Limited - Pacific Magazines Pty Ltd
  - Asahi Group Holdings - Carlton & United Breweries (owned by Anheuser Busch InBev SA/NV)
  - Proposed merger between Cengage Learning and McGraw-Hill Education

- Assa Abloy Australia Pacific Pty Ltd acquisitions of the Seal Doors Group and E Plus Building Products Pty Ltd.

## Merger authorisation

- 1.24. With the revisions to the CCA that came into effect on 6 November 2017, the ACCC has the role of first instance decision maker for merger authorisations, meaning that applications must now be made directly to the ACCC. Previously merger authorisation applications were made directly to the Australian Competition Tribunal.
- 1.25. Merger parties may seek statutory protection from legal action under s. 50 of the CCA by lodging an application for merger authorisation.
- 1.26. No merger authorisations were lodged in the quarter.
- 1.27. While the merger authorisation is in force, the authorised parties will be able to acquire the relevant shares or assets without risk of the ACCC or third parties taking legal action for a contravention of s. 50.
- 1.28. Merger authorisation may be granted on the basis that the acquisition will not substantially lessen competition, or alternatively that it will result in public benefits that outweigh any detriments.

**Table 2: Merger authorisations**

Merger authorisations	Number of applications
	1 October –31 December 2019
Applications lodged	0
Decisions issued	0

## Make decisions on authorisation, notification and certification trademark applications in the public interest

- 1.29. The ACCC assesses and makes decisions about applications for the authorisation and notification of certain types of anti-competitive conduct. We do this primarily by evaluating whether the arrangements or conduct are likely to result in a net public benefit and therefore warrant exemption.
- 1.30. With the revisions to the CCA that came into effect on 6 November 2017 for certain forms of conduct, the ACCC may now also grant authorisation if it is satisfied that no substantial lessening of competition is likely.

## Authorisations

- 1.31. In assessing an authorisation application, the ACCC undertakes a transparent public consultation process, placing submissions on a public register (subject to any claims of confidentiality). After considering submissions, the ACCC will issue a draft decision and provide an opportunity for interested parties to request a conference to discuss the proposal. The ACCC will further consider the application in light of any additional submissions, then release a final decision.

**Table 3: Authorisations received and decisions issued**

Total authorisations received	Number of applications
	1 October –31 December 2019
New	6
Revocation	0
Revocation and substitution	3
Minor variations	0

Decisions issued	Number of applications
	1 October –31 December 2019
Draft determinations	10
Final determinations	11
Interim decisions (prior to draft)	3
Interim decisions (post draft)	0

### **AUSTRALIAN BANKING ASSOCIATION – BANKING CODE AUTHORISATION**

On 21 November 2019 the ACCC authorised changes to the Australian Banking Association’s (ABA) Banking Code of Practice for five years, subject to conditions.

The ABA, on behalf of its 23 members, sought ACCC authorisation for changes to update its Banking Code in response to recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission).

The updated Banking Code prohibits informal overdrafts on low or no fee basic accounts held by eligible customers, unless agreed to by the customer, and it prohibits overdrawn fees and dishonour fees. It also codifies the concept of a basic bank account product, including that it will have no minimum deposits, free direct debit facilities, access to a debit card at no extra cost and free unlimited domestic transactions. In addition, the updated Banking Code will prevent default interest and fees being charged on agricultural loans in areas affected by drought and other natural disasters.

The ACCC considered that there was a likely public benefit from improving the accessibility and affordability of banking services for low income customers and providing relief from default interest for farmers in times of drought and other natural disasters. However the ACCC had concerns that some aspects of the proposed Banking Code changes would not effectively address the Royal Commission’s recommendations meaning that the claimed public benefit would be illusory or unlikely to arise in practice.

The ACCC therefore imposed conditions requiring:

- ABA member banks either not to charge interest or to refund any interest charged on informal overdrafts on basic accounts held by eligible low income customers if the customer has not agreed to an overdraft facility
- ABA member banks to proactively identify customers who may be eligible for a basic account
- the ABA to report regularly to the ACCC on relevant aspects of the member banks' activities, with the reports to be made available on the ACCC's public register.

The ACCC considered that these conditions would ensure the public benefits associated with the ABA implementing the Royal Commission's recommendations and the ABA's other Banking Code changes were likely to occur.

The ACCC considered the proposed Banking Code changes were likely to have a limited impact on competition. It considered that the conditions of authorisation would reduce the likelihood of any public detriment occurring to the extent that the Banking Code changes failed to meaningfully address the harms identified by the Royal Commission.

## Notifications

1.32. Notification is an alternative process to authorisation and is a means for businesses to obtain protection from legal action for exclusive dealing, collective bargaining and resale price maintenance.

### *Exclusive dealing notifications*

1.33. 'Exclusive dealing' describes a business trading with another business imposing restrictions on the other business' freedom to choose with whom, in what, or where, it deals. Exclusive dealing is prohibited under the CCA in certain circumstances. Lodging a notification with the ACCC provides automatic protection from legal action unless revoked by the ACCC. The ACCC can review notifications at any time.

**Table 4: Exclusive dealing notifications**

Exclusive dealing notifications	Number of notifications*
	1 October –31 December 2019
Matters lodged	3
Matters allowed to stand	2

*\*The revisions to the CCA that came into effect on 6 November 2017 have significantly reduced the number of notifications the ACCC receives, because third line forcing (a particular form of exclusive dealing) is no longer a per se breach of the CCA, which means that parties need only notify the ACCC of third line forcing conduct if it risks substantially lessening competition.*

### *Collective bargaining notifications*

1.34. Groups of small businesses can lodge a collective bargaining notification to obtain protection from legal action for a collective bargaining activity. The protection provided by a collective bargaining notification comes into force automatically 14 days after the notification is validly lodged and continues for three years (or another specified period) unless the ACCC objects to it. Notifications can be reviewed at any time.

- 1.35. Businesses seeking to lodge a valid collective bargaining notification must satisfy a number of requirements. For example, each member of the collective bargaining group must reasonably expect that they will make at least one contract with the target and that the value of each member's transactions with the target will not exceed \$3 million per year (this figure differs for certain industries). These requirements do not apply to the authorisation process.

**Table 5: Collective bargaining notifications**

Collective bargaining notifications	Number of notifications
	1 October –31 December 2019
Matters lodged	2
Matters allowed to stand	2

### ***Resale price maintenance notifications***

- 1.36. In broad terms, resale price maintenance occurs when a supplier of goods or services (for example, a manufacturer or wholesaler) specifies a minimum price below which a reseller must not onsell, or advertise for sale, those goods or services. Resale price maintenance is prohibited outright under the CCA, regardless of whether it has the purpose, effect or likely effect of substantially lessening competition.

**Table 6: Resale price maintenance notifications**

Resale price maintenance notifications	Number of notifications
	1 October –31 December 2019
Matters lodged	2
Matters allowed to stand	1

### **Certification trademarks**

- 1.37. Under the *Trade Marks Act 1995*, the ACCC has responsibilities for assessing certification trademarks to ensure that they do not raise competition or consumer protection concerns. A certification trademark (for example, the Woolmark) is used by businesses to indicate to consumers that a product or service meets a particular standard.
- 1.38. The ACCC assesses rules for the use of certification trademarks including:
- requirements that goods, services or persons must meet to be eligible to use a certification trade mark and
  - proposed processes for assessing compliance with certification requirements.

**Table 7: Certification trademarks**

Certification trademarks	Number of related applications (number of certified trademark individual applications*)
	1 October–31 December 2019
Certified trademark applications received	11(12)
Final assessments issued	12(16)

*\*The ACCC generally assesses related certification trademark applications together when they are received from the same applicant at the same time.*

## 2. Protecting consumers and supporting fair trading

### Protecting the interests and safety of consumers, and supporting fair trading in markets affecting consumers and small business

- 2.1. The ACCC enforces the Australian Consumer Law (ACL) to prevent and redress harm to consumers and small businesses. Another key role of the ACCC is to inform businesses and consumers of their rights and obligations under the CCA through engagement, education and the provision of specialised information. This function also includes actions taken to ensure Australian consumers are not harmed by unsafe products.
- 2.2. Each year the ACCC reviews its compliance and enforcement priorities to determine where to focus its efforts to maximise impact, including by preventing and redressing harm to consumers and small businesses.
- 2.3. In 2019 the ACCC's Compliance and Enforcement priorities for consumer and small business protection included:
  - consumer guarantees on high value electrical and whitegoods products, in particular those supplied by large retailers and manufacturers
  - consumer issues arising from opaque and complex pricing of essential services, in particular those in energy and telecommunications
  - consumer issues arising from the collection and use of consumer data by digital platforms, with a focus on the transparency of data practices and the adequacy of disclosure to consumers
  - consumer issues arising from customer loyalty schemes
  - emerging consumer issues in advertising and subscription practices on social media platforms, with a focus on the impact on younger consumers
  - ensuring that small businesses receive protections under the CCA, with a focus on the Franchising Code of Conduct and unfair contract terms
  - fair trading issues in the agriculture sector, with a focus on unfair contract terms in supply agreements and the viticulture sector
  - ensuring the effectiveness of the compulsory recall of vehicles with Takata airbags
  - improving the safety of quad bikes.
- 2.4. Conduct impacting Indigenous Australians is an enduring priority. This recognises that certain conduct in breach of the CCA has the potential to specifically impact on the welfare of Indigenous Australians. We recognise that Indigenous Australians, particularly those living in remote areas, face particular challenges in asserting their consumer rights. This means that we will always prioritise our work in this area while these challenges remain.
- 2.5. Consumer protection for vulnerable and disadvantaged consumers is also an enduring priority for the ACCC.
- 2.6. On 14 March 2019 the ACCC announced its 2019 Product Safety Priorities at the National Consumer Congress. Some priorities carried over from 2018 due to their significance, including the Takata airbag recall, button batteries, quad bikes and online product safety. A number of new priorities were announced, such as unsafe sleeping products, interconnected devices, supporting the development of a new

safety duty (previously known as the general safety provision) and a product safety incidents database. State and territory ACL regulators have endorsed these as national priorities.

## **Outcomes to address harm to consumers and small businesses resulting from non-compliance with the Australia Consumer Law**

- 2.7. Total ACL penalties awarded by the Federal Court in ACCC matters are over \$310.5 million since the introduction of the new consumer law remedies and powers in the CCA in April 2010, together with the introduction of the ACL on 1 January 2011. As at 31 December 2019 this figure encompasses 43 ACCC cases where penalties awarded by the Court have been at or above \$1 million.
- 2.8. In the quarter the ACCC was involved in 34 legal proceedings relating to consumer protection. Of these:
- 30 cases were carried over from the previous quarter
  - 4 cases were commenced
  - 4 cases were concluded
  - 30 cases were continuing as at the end of the quarter.

### ***Proceedings commenced***

#### **GOOGLE LLC & GOOGLE AUSTRALIA PTY LTD**

In October 2019 the ACCC instituted proceedings in the Federal Court against Google LLC and Google Australia Pty Ltd (together, Google) alleging they engaged in misleading and deceptive conduct and made false or misleading representations to consumers about the personal location data Google collects, keeps and uses.

The ACCC alleges that from at least January 2017 Google breached the ACL when it made on-screen representations on Android mobile phones and tablets that misled consumers about the location data Google collected or used when certain Google Account settings were enabled or disabled. The representations were made to consumers in setting up a Google Account on the Android mobile phones and tablets and to consumers who later accessed their Google Account settings through their Android mobile phones and tablets.

The ACCC's case regarding the collection of location data focuses on two Google Account settings: one labelled 'Location History', and another labelled 'Web & App Activity.' The ACCC alleges that from January 2017 until late 2018 it was misleading for Google to not properly disclose to consumers that both settings had to be switched off if consumers didn't want Google to collect, keep and use their location data. When consumers set up a Google Account, they were likely to have incorrectly believes that 'Location History' was the only Google Account setting that affected whether Google collected, kept or used data about their location. The ACCC allege that Google misled consumers by staying silent about the fact that another setting also had to be switched off.

The ACCC also alleges that Google's on-screen statements explaining how location data would be used when customers accessed their 'Location History' and 'Web & App Activity' settings were misleading. From March 2017 when a customer accessed their 'Web & App Activity' settings, and from May 2018 when they accessed the 'Location History' setting, Google displayed on-screen messages that represented location data would only be collected and used by Google for the consumer's use of Google services. Google did not disclose that the data may be used by Google for a number of other purposes unrelated to the consumer's use of Google's services.

The ACCC is seeking penalties, declarations and orders requiring the publication of corrective notices and the establishment of a compliance program.

### **MAZDA AUSTRALIA PTY LTD**

In October 2019 the ACCC instituted proceedings in the Federal Court against Mazda Australia Pty Ltd (Mazda) alleging that Mazda made false or misleading representations in its dealings with consumers who bought one of seven new Mazda vehicles between 2013 and 2017.

The ACCC alleges that these consumers began experiencing faults with their vehicles within a year or two of purchase. The faults affected the ability of the consumers to use their vehicles and, in some cases, included the vehicles unexpectedly losing power and decelerating while they were being driven. The vehicles were taken to Mazda dealers for repeated repairs, including multiple engine replacements.

It is alleged consumers were forced to contact Mazda multiple times over months and even years, as they continued to experience faults with their vehicles. The consumers requested a refund or replacement vehicle from Mazda on multiple occasions, but these requests were denied. It is alleged that after repeated attempted repairs, Mazda pressured the consumers to accept offers that were less than what they were entitled to. Mazda offered to refund only a portion of the car's purchase price, or offered to provide a replacement car if the consumer made a significant payment. In one case, Mazda's offer was limited to an extended warranty and free service of the vehicle.

The ACCC is seeking penalties, declarations, injunctions, consumer redress, a publication order, an order requiring the implementation of a compliance program and costs.

### **OSCAR WYLEE PTY LTD**

In December 2019 the ACCC instituted proceedings in the Federal Court against Oscar Wylee Pty Ltd for alleged misleading and deceptive conduct and making false or misleading representations about its charitable donations and affiliations.

Between at least January 2014 and December 2018 Oscar Wylee is alleged to have made representations on its website, social media, in emails and in stores that every time a consumer bought a pair of glasses from Oscar Wylee, it would donate a pair of glasses to someone in need. The ACCC alleges that this was not the case and that Oscar Wylee only donated around 3000 pairs of glasses in the relevant period, despite selling over 320 000 pairs of glasses in that time.

The ACCC also claims that Oscar Wylee made representations until at least December 2018 that it had 'partnered' with Rose Charities to help build sustainable eye care programs in Cambodia and fund a particular individual's study to become an eye surgeon. However, the ACCC alleges that between at least January 2014 and December 2018 Oscar Wylee's entire association with Rose Charities was limited to a single \$2000 donation and 100 frames donated in early 2014. It is alleged that no further donations or support were provided to Rose Charities after January 2014, despite the partnership claims continuing to be made for almost five years.

The ACCC is seeking declarations, penalties, injunctions, corrective publication orders and an order to implement a compliance program.

### **SUPERFONE PTY LTD**

In December 2019 the ACCC instituted proceedings in the Federal Court against Superfone Pty Ltd (Superfone) for alleged false or misleading representations and for alleged breaches

of laws designed to protect consumers from issues arising from unsolicited telemarketing sales. Superfone is a reseller to consumers of mobile, landline and internet services that use major telecommunication companies' networks.

The ACCC claims that between June 2017 and December 2018 telemarketers acting on behalf of Superfone cold-called consumers offering them discounted plans on their existing network if they signed up to a new contract via Superfone. It is alleged Superfone made customers think its offers and services were endorsed by, or affiliated with, their existing telco provider when this was not the case.

It is also alleged Superfone breached the ACL's unsolicited consumer agreements provisions, which were put in place to protect consumers from these sorts of high-pressure telemarketing calls and from signing up to contracts that they may not understand. Superfone's telemarketers repeatedly told consumers they could not terminate the contract without penalty and failed to inform consumers about their cooling-off rights when these rights are enshrined in the ACL.

The ACCC is seeking a consumer redress order, penalties, declarations, an order for corrective notices and costs.

### ***Proceedings concluded***

#### **ASHLEY & MARTIN PTY LTD**

In October 2019 the Federal Court ordered hair loss treatment business Ashley & Martin Pty Ltd to refund money paid by consumers as a result of unfair terms contained in its 'Personal RealGROWTH Program' hair loss treatment program.

This follows the Federal Court's September finding that terms in three standard form contracts with consumers are void because they were unfair.

#### **OPTUS INTERNET PTY LTD & OPTUS MOBILE PTY LIMITED**

In December 2019 the Federal Court ordered Optus Internet Pty Ltd and Optus Mobile Pty Limited (together, Optus) to pay penalties of \$6.4 million for making misleading claims about home internet disconnections to consumers.

On 24 May 2018 Optus emailed 138 988 of its own mobile customers claiming their existing home broadband services, provided by Optus' competitors, would be 'disconnected very soon.' The email encouraged these customers to change to Optus NBN Broadband, telling them to 'make the switch, before it's too late.' The Court found this statement was misleading and deceptive because the customers who received the email were not facing immediate disconnection of their existing broadband services.

This is the second time in two years that, following ACCC action, the Federal Court has ordered Optus to pay significant penalties for misleading consumers about the need to acquire NBN services.

#### **UNIQUE INTERNATIONAL COLLEGE PTY LTD**

In October 2019 the Federal Court ordered Unique International College Pty Ltd (Unique) to pay \$4.165 million in penalties for engaging in unconscionable conduct against five consumers, making false or misleading representations to four of these consumers, and breaching the unsolicited consumer agreements provisions in relation to six consumers.

The Court found that Unique engaged in this conduct when it enrolled these consumers in VET FEE-HELP funded courses costing up to \$22 000. The Court also found Unique lured

some of these consumers with the offer of free laptops to derive revenues from the Commonwealth to the detriment of consumers. These students enrolled by Unique were unlikely to be able to complete the courses, but would have been left with significant lifetime student debt.

Using the new VET FEE-HELP Student Redress measures, the Commonwealth is in the process of cancelling the debts of eligible students enrolled by Unique. Affected consumers should contact the VET Student Loans Ombudsman (part of the Office of the Commonwealth Ombudsman) who will assess and investigate complaints. If it is confirmed that debt was incurred because of inappropriate behaviour by a provider, the Ombudsman may make recommendations to the Department of Employment, Skills, Small and Family Business to cancel VET FEE-HELP debts.

## **VOLKSWAGEN AG**

In December 2019 the Federal Court ordered, by consent, that Volkswagen AG pay \$125 million in penalties for making false representations about compliance with Australian diesel emission standards. This is the highest total penalty order ever made by the Court for contraventions of the ACL.

Volkswagen admitted that, when it sought approval to supply and import more than 57 000 vehicles into Australia between 2011 and 2015, it did not disclose to the Australian Government the existence of 'Two Mode' software. Volkswagen admitted that when switched to 'Mode 1' for the purposes of emissions testing, the software causes its vehicles to produce lower nitrogen oxide (NOx) emissions, but that when driven in on-road conditions, the vehicles switched to 'Mode 2' and produced higher NOx emissions.

Volkswagen engineers designed the Two Mode software in 2006 and it was kept secret until discovered in 2015. All new motor vehicles supplied or imported into Australia must comply with Australian standards for exhaust emissions. If the affected vehicles had been tested while operating in the mode Australians were driving in, they would have exceeded the NOx emissions limits allowed in Australia.

Volkswagen also admitted that it made false representations when applying for the vehicles to be published on the government's Green Vehicle Guide website. The vehicles would not have obtained the ratings they did on the website if the government had been made aware of the effect of Two Mode software on the emissions testing results.

The ACCC instituted proceedings against Volkswagen in September 2016 and against Audi AG, which is owned by Volkswagen, and its Australian subsidiary Audi Australia Pty Ltd in March 2017. The ACCC's proceedings against Audi AG have been discontinued as part of the resolution of these matters.

## ***Appeals commenced***

### **TPG INTERNET PTY LTD**

In November 2018 the ACCC appealed the Federal Court's October 2019 decision to dismiss its case against TPG Internet Pty Ltd (TPG). The ACCC alleges that TPG made false or misleading representations about 'pre-payments' customers had to make on its pre-paid internet, home telephone and mobile plans.

## **Infringement notices**

- 2.9. The ACCC can issue an infringement notice where it has reasonable grounds to believe a person has contravened certain consumer protection laws. The payment of infringement notice penalties is not an admission of a contravention of the ACL.

2.10. In the quarter the ACCC issued 14 infringement notices to nine traders.

### **FURNITURE RETAILERS**

In October 2019 four furniture retailers each paid a penalty of \$12 600 after the ACCC issued them with an infringement notice following an ACCC investigation into the industry's use of 'was/now' price comparisons in advertising.

Plush–Think Sofas Pty Ltd (Plush), Koala & Tree Pty Ltd (t/a Koala Living), ESR Group Holdings Pty Ltd (t/a Early Settler) and Oz Design Furniture Pty Ltd each received an infringement notice. The ACCC had reasonable grounds to believe each retailer had made false or misleading representations by claiming that consumers would save money if they purchased certain furniture items when this was not the case.

### **FLIGHT CENTRE TRAVEL GROUP LIMITED**

In October 2019 Flight Centre Travel Group Limited paid \$252 000 in penalties after the ACCC issued two infringement notices for alleged misleading advertisements promoting holiday vouchers during the 2018 Christmas and 2019 Easter periods.

Flight Centre advertised promotions in store and in print newspapers offering \$250 vouchers to consumers who spend \$1500 on a holiday package with Flight Centre. The vouchers were redeemable on their next holiday booked through Flight Centre.

The ACCC had grounds to believe that these advertisements were liable to mislead consumers because Flight Centre failed to disclose that redeeming the \$250 voucher was subject to certain conditions. These conditions included requiring consumers to book another holiday with Flight Centre worth more than \$5000. The ACCC was also concerned about the limited time frame offered for consumers to redeem the voucher, which was not properly disclosed to consumers. Over 35 000 consumers received cash vouchers as part of these promotions.

Following the ACCC's investigation, Flight Centre waived the \$5000 minimum spend condition and extended the redemption period for vouchers as part of the 2018 Christmas promotion from 30 June 2019 until 31 December 2019. Vouchers provided as part of the 2019 Easter promotion were also valid until 31 December 2019.

### **HAI FENG INTERNATIONAL PTY LTD**

In November 2019 Hai Feng International Pty Ltd (t/a Big Red Jacks) paid a penalty of \$12 600 after the ACCC issued an infringement notice. This notice was in response to ACCC concerns that Big Red Jacks had supplied a vehicle jack that did not comply with the consumer product safety standard for vehicle jacks.

The ACCC took this enforcement action after a national surveillance project in which it inspected 159 vehicle jacks from 99 traders. Big Red Jacks submitted a voluntary recall for the Torin Big Red Jack and five other vehicle jacks after an ACCC inspection.

### **OUTDOOR SUPACENTRE PTY LTD**

In December 2019 Outdoor Supacentre Pty Ltd (t/a 4WD Supacentre) paid \$63 000 in penalties after the ACCC issued five infringement notices for allegedly misleading consumers about 'was/now' price comparisons advertised on its website.

Between December 2018 and January 2019, 4WD Supacentre advertised some of its highest selling products with a high 'was' price and a low 'now' price. This was despite the

products not being advertised or sold by 4WD Supacentre at the 'was' price at any time during the previous three months.

The ACCC was concerned that 4WD Supacentre was misleading consumers into thinking they could achieve significant savings, when this was not necessarily the case.

### **SNAP SEND SOLVE PTY LTD**

In December 2019 Snap Send Solve Pty Ltd paid a penalty of \$12 600 after the ACCC issued an infringement notice to the online platform operator for alleged false or misleading advertisements.

Until August 2019 Snap Send Solve's promotion of their website and mobile app suggested consumers could send photos and reports of issues needing to be fixed, such as cracked footpaths, to any relevant public authority, such as local councils, in Australia or New Zealand. Between November 2018 and August 2019 Snap Send Solve withheld photographs submitted by consumers from councils and authorities who were not paid subscribers.

The ACCC was concerned that Snap Send Solve misled consumers by suggesting local councils would be able to respond effectively to issues reported through its website or app. This may not have been the case, because photos submitted were withheld from local councils without paid subscriptions. This may also have created a situation where local councils felt pressured into fully participating in the platform and paying for a subscription.

### **STREAMOTION PTY LTD**

In December 2019 Streamotion Pty Ltd (t/a Kayo Sports) paid a penalty of \$12 600 after the ACCC issued an infringement notice for allegedly misleading consumers about their eligibility for a subscription service.

From 14 March to 3 April 2019 Kayo's website promoted its Basic Subscription Package to Telstra customers for the price of '2 months for \$5.' It was not made clear that this offer was only available to Telstra customers who had not previously used Kayo. The eligibility requirement appeared in small print on Kayo's website and was significantly less prominent than the headline offer.

## **Undertakings accepted**

- 2.11. The ACCC also resolves alleged contraventions of the CCA by accepting court-enforceable undertakings under s. 87B of the CCA.
- 2.12. In the quarter the ACCC accepted three s. 87B undertakings relating to consumer protection.

### **TARGET AUSTRALIA PTY LTD**

In October 2019 the ACCC accepted a court-enforceable undertaking from Target Australia Pty Ltd in which Target admits it may have breached the ACL by making false or misleading representations in its dealings with customers who purchased faulty Sony PlayStations.

The ACCC was concerned that between at least January 2017 and August 2017 Target customer service staff told some consumers who complained about faulty Sony PlayStations that they had to contact Sony directly for a remedy and were not entitled to any remedy from Target because the fault had occurred after 30 days from the date of purchase.

As part of the undertaking, Target published a notice on its website asking consumers to come forward and contact Target if they believe their previous complaints or concerns to Target about their PlayStation were not addressed properly. Target has also undertaken to review and improve its ACL compliance program.

### **WOOLWORTHS GROUP LTD**

In October 2019 the ACCC accepted a court-enforceable undertaking from Woolworths Group Ltd (t/a BIG W) in relation to claims that between at least 30 December 2016 and 30 April 2018 BIG W representatives told customers who complained about faulty Dyson branded products that they must deal directly with Dyson to obtain a remedy if the complaint was made more than 14 days from the date of purchase. BIG W acknowledges it may have misled consumers about their consumer guarantee rights.

As part of the undertaking, BIG W published notices on its website and in-store asking consumers who purchased products from BIG W they believe are faulty to bring the items into a BIG W store along with proof of purchase to receive a refund, repair or replacement. BIG W will also create an 'Australian Consumer Law' webpage that includes an easy-to-read explanation of a consumer's rights under the ACL and review and improve its existing ACL compliance program.

### **ZENIMAX MEDIA INC & ORS**

In October 2019 the ACCC accepted a court-enforceable undertaking from ZeniMax Media Inc, ZeniMax Europe Limited and ZeniMax Australia Pty Ltd (together, ZeniMax) in relation to misleading representations about consumer guarantee rights relating to the Fallout 76 game.

Zenimax has acknowledged that they were likely to have misled certain Australian consumers about their right to a refund when they experienced faults with their Fallout 76 game. Zenimax undertook to refund consumers who contacted them between 24 November 2018 and 1 June 2019 to request a refund and have not already received one. Zenimax has also undertaken to amend its customer service documents and scripts to address the ACCC's concerns about misrepresentations of the consumer guarantee rights under the ACL.

## **Administrative resolutions and other compliance and enforcement tools**

2.13. The ACCC will sometimes resolve matters administratively, often involving agreements to stop or change conduct and provide appropriate redress to the conduct in question. In some cases, we will publicly announce these administrative resolutions. We also use a range of other compliance and enforcement tools to draw attention to consumer protection issues and to improve compliance.

2.14. One administrative resolution was reached in the quarter.

### **COLES GROUP LIMITED**

In December 2019 Coles Group Limited agreed to pay Norco Co-operative Limited around \$5.25 million for distribution to its dairy farmer members. The payments follow an ACCC investigation into whether Coles fully passed on to Norco a 10 cents per litre (cpl) price rise it charged consumers for Coles branded fresh milk, as it claimed it would do in its marketing materials.

Coles has committed in writing to the ACCC that it will pay an additional 7 cpl for 2 litre and

3 litre Coles branded fresh milk, which amounts to around \$5.25 million, to Norco for milk supplied between 1 April 2019 and 30 June 2020.

The ACCC had been investigating allegations that, in a media release, social media posts and in-store signage, Coles represented that the full benefit of the 10 cpl retail price increase of its Coles branded 2 litre and 3 litre milk announcement on 19 March 2019, would be passed on to farmers. The ACCC's investigation focused on claims that when an unrelated 6.5 cpl increase commenced on 1 April 2019, Coles reduced its payments to Norco under the 10 cpl increase from 10 cpl to 3.5 cpl.

The ACCC was prepared to take Coles to court over the conduct, but accepting this commitment meant farmers would receive additional payments from Coles, with the majority of the money to be paid to Norco within seven days. Court action would have taken many months, if not years, with no guarantee that any money would have been paid to farmers as a result.

### **Public warning notices**

- 2.15. In certain circumstances the ACCC may issue a public warning notice to alert consumers to a suspected contravention of certain provisions of the ACL. The ACCC may issue these notices where it has reasonable grounds to suspect a contravention of the ACL, it is satisfied that one or more other persons has suffered or is likely to suffer detriment as a result of the conduct, and it is satisfied that it is in the public interest to do so.
- 2.16. No public warning notices were issued by the ACCC in the quarter.

### **Enhancing the effectiveness of the ACCC's compliance and enforcement initiatives through partnerships**

- 2.17. The ACL provides consumer protection regulators with a single set of provisions to respond to consumer protection issues. It also allows regulators to work collectively on broader issues and take proactive and timely compliance and enforcement action.
- 2.18. The ACCC works closely with the Treasury, the Australian Securities and Investments Commission (ASIC) and state and territory consumer protection agencies on national compliance and enforcement projects. The ACCC also works with businesses, industry associations and consumer groups to promote awareness of the CCA and ACL.

### **Consumer Consultative Committee**

- 2.19. The Consumer Consultative Committee (CCC) is a forum through which the ACCC and consumer representatives can address consumer protection issues collaboratively.
- 2.20. The ACCC held a meeting with the CCC on 22 November 2019. Topics discussed included the right to repair and an update on preparations for the 2020 National Consumer Congress and Ruby Hutchison Memorial Lecture. AER staff also provided members with an update on the Values of Customer Reliability and Retailer Reliability Obligation projects.

### **Small Business and Franchising Consultative Committee**

- 2.21. The Small Business and Franchising Consultative Committee (SBFCC) is a forum for industry and government to discuss competition and consumer law concerns related to the small business and franchising sectors.

- 2.22. The ACCC held a SBFCC meeting on 25 October 2019. Topic discussed at the meeting included the results of the Business Stakeholder Survey and the upcoming ACL reform consultations relevant to small businesses.
- 2.23. In November 2019 an updated 'Overview of function and expectations on members' was published on the SBFCC page of the ACCC website.
- 2.24. The tenure of the current SBFCC membership expired on 31 December 2019. In November, the ACCC released an expression of interest to seek applications for new members to serve on the SBFCC for 2020 and 2021.
- 2.25. The next Committee meeting will be held in May 2020.

### **Scamwatch reports**

- 2.26. Between October and December 2019 Scamwatch received 36 190 reports with over \$36m in financial losses. This compares with 60 095 reports and over \$19m in losses for the same period in 2018.

### **Scams Awareness Network**

- 2.27. The ACCC hosted the Scams Awareness Network's annual meeting on 10 December 2019. Topics of discussion included potential themes for Scams Awareness Week 2020. Invitations to the working group for the campaign have since been distributed.
- 2.28. The ACCC continued sharing Scamwatch report data with Scams Awareness Network partners, including law enforcement agencies.

### **Consumer education**

- 2.29. The ACCC participated in three meetings of the Education Information and Advisory Committee, which brings together ACL regulators, ASIC and the Treasury to collaborate on education initiatives and campaigns.

### **Empowering consumers by increasing awareness of their rights under the ACL**

- 2.30. Educating consumers about their consumer rights is central to the ACCC's work protecting the interests and safety of consumers. The ACCC's education campaigns support consumers to navigate complex or difficult consumer decisions to help them make smart choices.
- 2.31. During the quarter, the ACCC's online consumer education resources were accessed 997 660 times. The top three most accessed pages were:
  - [Petrol price cycles](#): 157 358
  - [Repair, replace, refund](#): 98 781
  - [Make a consumer complaint](#): 74 421.
- 2.32. The top three digital publications viewed during the quarter were:
  - [Debt collection guideline for collectors creditors](#): 9000
  - [Digital platforms inquiry final report](#): 8695
  - [Motor vehicle sales and repairs – an industry guide to the Australian Consumer Law](#): 6842.

## **Educating consumers and businesses about scams**

- 2.33. The ACCC's Scamwatch website provides consumers and small businesses with information about how to identify and avoid scams. This quarter the Scamwatch website attracted 871 446 page views from 1 321 002 session visits.
- 2.34. The Scamwatch website received 36 190 scam reports with over \$36 million in reported losses.
- 2.35. Between October and December 2019 the ACCC's [Little black book of scams](#) was downloaded 2715 times via the Scamwatch website and 23 300 physical copies were distributed around Australia.
- 2.36. This quarter the ACCC issued a media release about online shopping scams. This was part of an intergovernmental micro-campaign on consumer protection during the holiday season. Other agencies involved included the Office of the Australian Information Commissioner, Stay Smart Online and the eSafety Commissioner.
- 2.37. The ACCC issued alerts to 110 338 Scamwatch radar subscribers. Subscribers increased this quarter by 18 341.
- 2.38. The ACCC provided over 30 responses to media outlets about scam related issues during this quarter.
- 2.39. The ACCC also operates a Scamwatch Twitter account, @Scamwatch\_gov, which alerts the public to scams targeting consumers and businesses. The Scamwatch Twitter account continued to expand its reach with 22 094 followers as at 31 December 2019, an increase of 615 followers during the quarter. About 108 tweets or retweets were posted.
- 2.40. During this quarter the ACCC presented to a private industry body, the Securities, Influence and Trust Group, to emphasise the impact of scams and encourage businesses to do more scam prevention and disruption work.
- 2.41. The ACCC continued its regular meetings with the Australian Communications and Media Authority (ACMA), Australian Cyber Security Centre (ACSC) and the Department of Communications in relation to its scams technology project, aimed at finding practical technological solutions to scams.
- 2.42. The ACCC continues to share intelligence with the Australian Federal Police (AFP) and state police agencies in cases of cybercrime and criminal fraud.
- 2.43. During this quarter the ACCC held meetings with Telstra, NBN Co, GoFundMe, the Telecommunications Industry Ombudsman, financial intermediaries, Fintel Alliance, Facebook, Australia Post, the eSafety Commission and the Cyber Security Government Stakeholder group to discuss scams prevention and awareness raising.
- 2.44. The ACCC presented at the National Australia Bank's Interbank Forum on 15 November 2019 and the Department of Home Affairs Industry Summit on 19 November 2019.

## **Consumer directed care**

- 2.45. As at 31 December 2019, the ACCC (through partnered stakeholders) had distributed 74 808 printed consumer brochures and 8089 industry guides relating to consumer directed care.

## Proposed regulatory interventions in the automotive industry

- 2.46. On 29 October 2019 the Assistant Treasurer announced that the Australian Government would seek to establish primary legislation to mandate that all service and repair information that car manufacturers share with their dealership networks be made available for independent repairers to purchase.
- 2.47. This follows the ACCC's *New car retailing industry market study final report*, which recommended that a mandatory scheme be introduced for car manufacturers to share technical information with independent repairers on commercially fair and reasonable terms.
- The Assistant Treasurer's announcement confirmed that the Australian Government would continue to consider feedback from consultations ahead of drafting legislative provisions and undertake broader public consultation.

## Supporting a vibrant small business sector

- 2.48. The ACCC helps to ensure small businesses understand and comply with their obligations and encourages them to exercise their rights under the CCA. The ACCC aims to promote a competitive and fair operating environment for small business and to ensure that small businesses understand how the legislation can help them.
- 2.49. The ACCC continues to focus on education and awareness within the small business sector, including franchising.
- 2.50. During this quarter the ACCC's online business education resources were accessed 333 364 times and we continued to promote our three free online education programs, which are:
- a program for small businesses covering major aspects of the CCA and ACL. Over 47 000 users have accessed this program since its launch in April 2013, including over 1700 this quarter
  - a program for tertiary students studying subjects that touch on the CCA and the ACL. Nearly 49 000 users have accessed this program since its launch in November 2013, including 600 this quarter
  - a franchising pre-entry education program delivered by FranchiseED. Around 18 179 people have enrolled in this program since July 2010, including 220 this quarter.
- 2.51. During this quarter the ACCC sent 11 email updates to small business, franchising and oil code information networks. The updates sought input on the ACCC's Compliance and Enforcement Policy and Priorities for 2020 and expressions of interest for new members of the Small Business and Franchising Consultative Committee. The updates also provided subscribers with information about the release of the Franchise Taskforce's Regulation Impact Statement, which outlined potential options for regulatory reform for the Franchise sector, and the obligations of small businesses when advertising and selling goods and services.
- 2.52. As part of the ACCC's franchising education campaign, we released new and updated guidance, including:
- a [franchising model disclosure document](#), which sets out a recommended format for a franchisor's disclosure document and includes tips to assist franchisors in meeting their disclosure obligations

- the [quick guide to a franchise disclosure document](#) to help prospective franchisees read and understand their franchise disclosure document.

## Country of origin food labelling

- 2.53. Since the Country of Origin Food Labelling Information Standard became mandatory on 1 July 2018, the ACCC has continued to monitor product labelling to ensure that businesses are presenting accurate country of origin information to consumers. Where relevant, this has included undertaking compliance checks.
- 2.54. On 29 October 2019 the ACCC provided a response to the Department of Industry, Innovation and Science's consultation on its 'Eligibility for origin claims in the Complementary Medicines Sector' Consultation Regulatory Impact Statement.
- 2.55. In December 2019 the regulations for country of origin labelling for complementary medicines changed. Changes to the regulations are available in the [Competition and Consumer Amendments \(Australian-made Complementary Medicines\) regulations 2019](#).

## Identifying and addressing the risk of serious injury and death from safety hazards in consumer products

- 2.56. The ACCC draws from numerous data sources to identify safety issues in consumer products. Data sources include mandatory reports of serious illness, injury or death, recalls that have taken place internationally, and information received from the community. After the ACCC assesses the relevant information, action may include:
- negotiating the recall of goods
  - educating industry and consumers
  - negotiating voluntary future changes to packaging labelling or product design
  - working to introduce changes to voluntary or mandatory requirements
  - working to implement new or revised product safety mandatory standards and bans.
- 2.57. More information on how the ACCC identifies, prioritises and addresses product safety risks is available at [ACCC Product Safety Priorities](#).

## Takata airbag recall

- 2.58. As at 31 December 2019 around 3.56 million (or 86.7% of) defective Takata airbags have been replaced in approximately 2.59 million vehicles, leaving 299 128 (or 7.3% of) inflators in 256 670 vehicles remaining for replacement (excluding 246 768 or 6% of inflators in 206 840 vehicles listed as unrepairable by vehicle manufacturers).
- 2.59. As at 31 December 2019 there are 2611 alpha vehicles identified by suppliers as being on Australian roads and outstanding for replacement. Alpha airbags are fitted in certain models of Honda, Toyota, Nissan, BMW, Mazda and Lexus cars sold in Australia between 2001 and 2004. Critical non-alpha vehicles include some Honda and Toyota cars sold in Australia between 2002 and 2012.
- 2.60. Some suppliers (GM Holden, Honda, BMW, Toyota and Mitsubishi) have re-classified several recalls as 'critical'. A vehicle is 'critical' when it is identified by vehicle manufacturers as having a Takata airbag inflator that poses a heightened safety risk and it is critical that replacement occurs immediately. This category applies to alpha airbags and also includes other airbags specified by the vehicle manufacturer. As at

31 December 2019 there were 8585 critical non-alpha vehicles remaining for airbag replacement.

- 2.61. In October 2019 we published updated quarterly figures on the Product Safety Australia website outlining the progress of the recall by vehicle manufacturers, including a state and territory breakdown of vehicles requiring replacement of an airbag inflator. We will continue to publish this data on a quarterly basis, with the next publication to occur in late January 2020.
- 2.62. The ACCC continues to work with the Federal Chamber of Automotive Industries (FCAI) to ensure the effectiveness of the national consumer awareness raising campaign that it is leading on behalf of many vehicle manufacturers (as required by the Recall Notice). The campaign, 'Faulty airbags? Don't die wondering', calls on consumers to use a vehicle look-up tool ([www.IsMyAirbagSafe.com.au](http://www.IsMyAirbagSafe.com.au)) to check if their vehicle is affected. Alternatively, consumers can text 0487 AIRBAG to access this information. As at 31 December 2019 the FCAI reported that over 9.3 million vehicles had been checked using the website's look-up tool, from which over 1.5 million were identified as affected by the recall.
- 2.63. The ACCC continues to communicate with businesses in the automotive industry, including vehicle manufacturers, parallel importers, auction houses and auto recyclers regarding their rights and obligations under the recall notice.
- 2.64. The ACCC also continues to work through the Takata Interagency Group with state and territory fair trading agencies, road traffic authorities and other interested stakeholders on initiatives to increase the effectiveness of the recall. Key initiatives include registration sanction schemes for specified vehicles and a national surveillance and outreach program to raise awareness and take action to address non-compliance within the industry. The surveillance and outreach program, a joint ACCC/state and territory fair trading agencies operation, commenced on 11 November 2019 and will run until 30 June 2020.

### **Recalls of vehicles containing airbags with a Takata Non-Azide Driver Inflator (NADI) using 5-aminotetrazole (5-AT) propellant**

- 2.65. There is a serious safety risk that Takata airbags with non-azide driver inflators using 5-aminotetrazole may mis-deploy during a collision, killing or injuring vehicle occupants or failing to protect a driver during the collision. A manufacturing defect allows moisture to enter the inflator canister, which can change the properties of the propellant so that it does not react as intended during deployment.
- 2.66. Mis-deployments of NADI 5-AT inflators resulting in fatalities and serious injuries have occurred in Australia and overseas.
- 2.67. These airbag inflators were manufactured by Takata between May 1995 and August 1999 and were installed in almost 78 000 vehicles supplied to the Australian market. Makes of cars affected are manufactured by Audi, BMW, Ford, Honda, Mazda, Mitsubishi, Suzuki and Toyota.
- 2.68. This quarter, the ACCC and Department of Infrastructure negotiated with Audi, BMW and Ford to publish voluntary recalls. Mazda, Suzuki and Toyota commenced recalls in January 2020 and recalls by Honda and Mitsubishi are expected in late January 2020. Recalls for these vehicles have involved the vehicle supplier offering alternative transport arrangements until replacement parts are available or buying back the affected vehicles. These are the first buyback recalls for road-registrable vehicles in Australia.

## Quad bike safety

- 2.69. On 10 October 2019 an extensive 18-month investigation into the safety of quad bikes culminated in the Australian Government making a new safety standard under the ACL. The ACCC welcomed this decision, which will improve the safety of quad bikes. The safety standard has three elements: improved information for potential purchasers, enhanced quad bike stability and rollover protection to reduce injuries and deaths.
- 2.70. The safety standard provides a two-staged transition period (12 and 24 months), providing businesses sufficient time to comply. Since the introduction of the standard, the ACCC has been actively engaging with industry to encourage quad bike manufacturers and suppliers to comply with the standard as early as practicable to deliver the safety benefits to their customers. The ACCC will continue to engage with industry during the transition periods.
- 2.71. This quarter the ACCC has published quad bike safety guidance material for manufacturers, dealers and consumers on the Product Safety Australia Website.

## Product safety recalls

**Table 8: Recalls published 1 October to 31 December 2019**

General consumer goods: ACL regulators including the ACCC	73
Motor vehicles: Department of Infrastructure	83
Food: FSANZ	13
Therapeutic goods: TGA	7
<b>Total</b>	<b>176</b>

*Note: ACCC-negotiated recalls are prompted by consumer complaints, supplier intelligence, market-place surveillance, overseas recalls and other Commonwealth and state/territory regulator referral.*

*Note: The figure for general consumer goods includes Takata airbag inflator recalls*

## Samsung top-loading washing machines recall

- 2.72. There is a serious defect in six models of Samsung top-loading washing machines that may cause, and has caused, electrical fires leading to property loss.
- 2.73. The ACCC continues to monitor the recall of the faulty Samsung washing machines, which is being led by the NSW electrical safety regulator. The recall is compulsory in NSW, but is offered voluntarily on the same terms to consumers in all other states and territories. In November 2019 the recall reached 93.97 per cent completion.
- 2.74. The ACCC met with Samsung in November to discuss communication of the recall and it was agreed that Samsung would refresh their approach in early 2020.

## Recalls and Recalls Monitoring

- 2.75. The ACCC applies a risk-based approach to assessing recall performance and to guide recall monitoring actions.

- 2.76. There are currently 682 open recalls being monitored by the ACCC. This quarter the ACCC assessed 686 recall progress reports submitted by suppliers. Seven recalls were escalated for further assessment.
- 2.77. During this quarter the ACCC received 36 reports and enquiries relating to recalls that required assessment and response.
- 2.78. Two mandatory injury reports relating to recalled products were received and assessed.

### **Mandatory injury reports, complaints and enquiries**

- 2.79. The ACCC receives mandatory injury reports from suppliers, which are assessed directly by the ACCC or are referred to a specialist regulatory agency for assessment. The total number of mandatory injury reports received for this quarter was 808. Of these, 389 were out of jurisdiction or were referred to another agency for assessment, 17 were progressed for further assessment, 48 were assessed as relevant to an existing investigation, and 350 were closed after a review of risk, taking into account the factors in the ACCC's annual Product Safety Priorities for allocating our finite resources.
- 2.80. During this quarter the ACCC received 224 reports of unsafe products and related enquiries that were escalated for hazard analysis and assessment.
- 2.81. The number of consumer enquiries received regarding the Takata compulsory recall increased from 165 to 174 this quarter. This increase is due to both delays experienced by consumers in having their airbags replaced and consumers receiving repeated recall notifications for vehicles they no longer own.

### **Consumer product safety strategies**

- 2.82. The ACCC continues to educate consumers and suppliers about the importance of product safety. Consumers expect the goods and services they purchase to be safe and of acceptable quality. Businesses can better manage their legal risks if they have better buying practices and make sure the goods and services they sell are safe. The ACCC has delivered a number of initiatives to meet these objectives.
- 2.83. The ACCC continued to work proactively with various online platforms to improve product safety in the online marketplace. In particular, the ACCC worked with platforms to distribute product safety information to consumers and sellers regarding banned and non-compliant goods being sold online. The ACCC also facilitated a quarterly online marketplace compliance community of practice forum with state and territory product safety regulators. The recently established forum is run quarterly and is an opportunity to identify issues and collaborate to develop strategies relating to the safety of products sold online.

### **Button batteries**

- 2.84. Consultation on the ACCC's Button Battery Safety Issues Paper closed on 30 September 2019. The ACCC received 29 public responses to the Issues paper which have been published on the ACCC Consultation Hub.
- 2.85. In October 2019 the ACCC had a summary of the Industry Code for Products that Contain Button Batteries translated into 16 languages and published to the Product Safety Australia website. The translated materials were developed to improve accessibility for culturally and linguistically diverse (CALD) businesses and suppliers and improve awareness of and compliance with the industry code.

- 2.86. Since the release of the Issues Paper, the ACCC's Button Battery Taskforce has been engaging with relevant international regulators, analysing existing national and international standards, conducting targeted consultation and reviewing stakeholder submissions.
- 2.87. Following release of the Issues Paper in September 2019, the national standard setting body, Standards Australia, proposed to facilitate the development of a national standard for button batteries, being a horizontal standard covering all products with button batteries. Standards Australia held a Button Batteries Forum on 30 October 2019. At the forum, the ACCC presented the key issues raised in submissions in response to the Button Batteries Issues Paper.
- 2.88. During this quarter the taskforce has been preparing a draft recommendation to the Minister on potential regulatory options to address button battery safety. The ACCC expects to release the draft recommendation for consultation in early 2020.

### **Mandatory safety standards reviews**

- 2.89. The ACCC is responsible for administering and enforcing mandatory safety and information standards for consumer products. These standards are made by the Minister responsible for consumer product safety and specify the minimum safety or information requirements that certain products must meet before they are supplied to the Australian market. Mandatory safety standards seek to prevent the risk of death or serious injury to consumers, while mandatory information standards inform consumers' purchasing decisions.
- 2.90. The ACCC reviews mandatory standards in line with the principles set out in the ACCC's [Consumer Product Safety Priorities](#). Reviews consider a number of factors, including the time since the introduction of the standard or its last review, technical issues with the standard's operation, updates in safety specifications (including from voluntary standards), market changes, innovations in product design and the relative risk of death and serious injury.
- 2.91. As part of these reviews, the ACCC regularly publishes consultation papers seeking stakeholder submissions. Interested stakeholders can subscribe to the mailing list and receive email alerts about future consultation processes by visiting the [ACCC website](#).
- 2.92. As at 31 December 2019 the ACCC has reviewed 18 of the 44 mandatory standards that have been in place since the commencement of the ACL. Additionally, the ACCC has publicly consulted on a further 11 mandatory standards reviews that are currently in progress.
- 2.93. The ACCC finalised its review of the permanent ban on miniature motorbikes (also known as monkey bikes) with unsafe design features following analysis of death and injury statistics and market developments (i.e. the supply of increasingly powerful electrically-powered vehicles). This resulted in the Minister making a new [mandatory safety standard](#) for miniature motorbikes on 18 December 2019.

### **Consumer product safety compliance**

- 2.94. The ACCC uses an established risk-based assessment method to identify priorities for safety inspections of consumer products offered in the market. Before choosing target sectors or products, the ACCC also considers intelligence about marketplace problems, the length of time since a sector or product was last inspected and the opportunities to undertake activities jointly with other agencies. Inspections generally involve visual inspections of products in-store and online, and performance testing by

independent laboratories to check performance requirements mandated by the regulations.

2.95. The ACCC also conducts inspections to gauge the effectiveness of particular safety regulations. During this quarter we undertook surveillance of the following regulated products:

- aquatic toys
- balloon blowing kits
- DEHP in children’s plastic items
- portable swimming pools
- projectile toys
- toys and finger paints containing lead and other elements
- toys for children under three
- undeclared knives or cutters in stationery sets.

2.96. As a result of proactive surveillance programs, four products have been recalled through ongoing recall negotiations across the following product categories due to non-compliance: bunk beds, cosmetics ingredients labelling and toys for children under three.

**Table 9: Quarterly surveillance snapshot**

<b>Total number of retailers/sites surveyed</b>	<b>642</b>
Total number of product lines inspected	4945
Total number of products requiring further assessment	79

## 3. Infrastructure regulation

- 3.1. The ACCC's infrastructure regulation role encompasses key sectors of the economy (including telecommunications, petroleum, rail, ports and airports) and involves:
- regulating access to bottleneck infrastructure and the price for that access. Effective regulation of infrastructure services supports effective competition in upstream and downstream markets and the economically efficient operation of, and investment in, Australia's key infrastructure
  - monitoring and reporting on the prices and quality of particular goods and services to inform industry and consumers about the effects of market conditions in highly concentrated, newly deregulated or emerging markets. This includes annual monitoring reports for container stevedoring, airports, telecommunications and water, and at least quarterly reports on the prices, costs and profits relating to the supply of unleaded petroleum products
  - enforcing industry-specific competition and market rules in some infrastructure sectors to improve the efficient operation of markets
  - advocating for more competitive market outcomes and to address consumer issues in regulated markets, including through advice and submissions to governments and policy processes.

### Fuel

#### **Petrol monitoring report – September quarter 2019**

- 3.2. On 26 November 2019 the ACCC released its petrol monitoring report for the September quarter 2019, which found that average retail petrol prices in the five largest cities (Sydney, Melbourne, Brisbane, Adelaide and Perth) fell slightly in the quarter due to a decrease in international oil prices and a reduction in gross retail margins.
- 3.3. Other key findings included:
- The average retail price in the five largest cities was 142.1 cents per litre (cpl), a decrease of 3.2 cpl compared with the June quarter.
  - In the year to September 2019, Brisbane retail prices were on average 2.0 cpl higher than the average across the other four largest cities, which was significantly lower than a year earlier (3.6 cpl). This decrease may be due to an increase in the number of retail sites, as well as the introduction of the Queensland Government's fuel price reporting trial in December 2018.
  - In Darwin, average petrol prices in the September quarter were 3.0 cpl below the average in the five largest cities, continuing a trend since February 2019. This may have been due to a change of price setter at Coles Express retail sites from Coles Express to Viva Energy in March 2019, and FuelXpress opening a new retail site in Palmerston.

#### **Petrol industry report – Prices by brand in 2018**

- 3.4. On 17 October 2019 the ACCC released a petrol industry report analysing annual and monthly average retail petrol prices in the eight Australian capital cities in 2018 to identify the highest and lowest priced major retailers.
- 3.5. Key findings of the report included:

- The price of petrol is an important factor in a motorist's decision about where to buy petrol. However, there are other reasons why motorists may choose to go to one retail site over another, including: location, retail brand, convenience store, and food and beverage offering.
- In 2018, independent chains were the lowest priced retailers in all eight cities, while Coles Express was the highest priced retailer in almost all cities.
- Savings to motorists from switching from a range of high to low priced petrol retailers in the five largest cities could have totalled around \$275 million in 2018.
- In the five largest cities, the range between the highest and lowest priced major retailer varied from 13.2 cpl in Sydney to 5.7 cpl in Melbourne.

### **ACCC receives new petrol monitoring direction**

- 3.6. On 16 December 2019 the Treasurer issued a new petrol monitoring direction to the ACCC under the Part VIIA provisions of the CCA. The direction requires the ACCC to monitor the prices, costs and profits relating to the supply of petroleum products in Australia and to give the Treasurer a report on the monitoring at least once every quarter during the three years commencing 1 January 2020.

## **Ports**

### **ACCC appeals decision on user funding at the Port of Newcastle**

- 3.7. On 28 November 2019 the ACCC announced that it had applied to the Federal Court for a review of the Australian Competition Tribunal's (the Tribunal) October 2019 decision on the terms of access by Glencore Coal Assets Australia Pty Ltd (Glencore) to certain services at the Port of Newcastle.
- 3.8. The Tribunal re-arbitrated an access dispute between Glencore and Port of Newcastle Operations Pty Ltd (PNO), which was primarily about the charge for ships entering the port to export Glencore's coal. The ACCC was the original arbitrator.
- 3.9. The ACCC is seeking review of the Tribunal's treatment of user funding at the port. A significant part of the dispute is about whether the costs that PNO is allowed to recover should include the costs for dredging the shipping channel that were historically funded by various users of the port.
- 3.10. The ACCC excluded these user-funded amounts in its original arbitration while the Tribunal included these amounts. The Tribunal's decision allows PNO to recover the user funded amounts in its access charge.
- 3.11. The ACCC does not consider it to be economically efficient for a service provider to be allowed to charge any user for costs of assets that have already been funded by users. The ACCC's appeal will argue that there are errors in the way the Tribunal has approached the principles of user funding, which could have implications for other regulatory matters.

## **Postal services**

### **Australia Post price notification**

- 3.12. On 6 December 2019 the ACCC released its decision not to object to proposed increases in the prices of ordinary letters set out in Australia Post's formal price notification of 20 November 2019, which was consistent with a draft price notification provided to the ACCC in August 2019.

- 3.13. Australia Post proposed to increase the prices of ordinary letter services delivered to its regular timetable, including the basic postage rate from \$1.00 to \$1.10, and price increases of 10 per cent for the delivery of ordinary large letters up to 250 grams.
- 3.14. The ACCC was satisfied that the proposed price increases are unlikely to result in Australia Post recovering more than its cost of providing monopoly letter services, given the forecast decline in letter volumes.
- 3.15. The price increases took effect on 2 January 2020 following Australia Post's notification to the Minister for Communications, Cyber Safety and the Arts.

## Rail

### Interstate access undertaking

- 3.16. On 8 November 2019 the ACCC gave written guidance to assist the Australian Rail Track Corporation (ARTC) in preparing its next access undertaking for the Interstate rail track network.
- 3.17. The Interstate Access Undertaking (IAU) contains the terms and conditions on which ARTC commits to provide access to the Interstate rail track network.
- 3.18. The ACCC noted that it would have regard to the depreciated optimised replacement cost (DORC) of the network in considering the reasonableness of the prices contained in the IAU, and would appoint a consultant to assist it in that work.
- 3.19. On 20 December 2019 ARTC provided a public commitment to base its proposed access undertaking on a DORC valuation.

### 2016 Annual Compliance Assessment of ARTC's Hunter Valley Access Undertaking

- 3.20. On 23 December 2019 the ACCC released its final determination on ARTC's compliance with the Hunter Valley Access Undertaking (HVAU) financial model for 2016. Under the HVAU, ARTC is required to submit documentation annually to the ACCC for an assessment of its compliance with the HVAU financial model.
- 3.21. The compliance assessment for the HVAU ensures that ARTC does not abuse its market power and charge prices yielding revenue in excess of efficient costs and normal profits. This promotes an environment for coal producers and associated industries where efficient investment and expenditure can be undertaken.
- 3.22. The ACCC's final determination for 2016 is that ARTC has undertaken prudent capital expenditure and incurred efficient operating expenditure in accordance with the requirements set out in the HVAU. However, the final determination found that ARTC has over-recovered \$39.9 million in revenue that it must refund to Hunter Valley Access Holders (parties that use the Hunter Valley rail network).

## Stevedoring

### Container stevedoring monitoring report 2018-19

- 3.23. The ACCC released its annual container stevedoring report for the 2018–19 financial year on 6 November 2019. The report revealed that higher infrastructure charges imposed on trucks and rail operators at ports helped the container stevedoring industry increase average revenue per container lift for the first time in seven years.

- 3.24. The ACCC has monitored the container stevedoring industry since 1998–99 under a direction from the Australian Government. Container stevedores are an essential element in import and export supply chains for goods to both businesses and consumers. ACCC monitoring of the industry provides information to governments and the community about the level of competition, investment and productivity in the industry.
- 3.25. Other key findings included:
- Revenues generated by infrastructure charges rose by 63 per cent in 2018–19 on the previous year.
  - Profitability across the industry remains low, with return on tangible assets falling from a high of 27.8 per cent in 2011–12 to 3.8 per cent in 2018–19, although it varied widely between stevedores.
  - Stevedores improved productivity on the quayside last year with the productivity of Australian container ports generally on par with ports of a similar size overseas.
  - Competition within ports led to further shifts in the market share of stevedores. New entrant Victoria International Container Terminal has now established itself as an effective competitor in Melbourne.

## Telecommunications

### **NBN wholesale pricing inquiry**

- 3.26. The ACCC began an inquiry on 14 October 2019 to examine wholesale prices paid by retail service providers (RSPs) to NBN Co for network access to supply residential broadband services. The inquiry focuses on whether the wholesale prices for basic speed NBN access products support a smooth transition for consumers to the NBN from legacy services such as ADSL.
- 3.27. The ACCC decided to commence the inquiry because of concerns that NBN Co's wholesale pricing has resulted in inefficient and unfair outcomes for consumers who have no need for the higher speeds that the NBN makes possible. These concerns stem from NBN Co's wholesale pricing changes in late 2018 and the subsequent withdrawal of basic speed retail plans that have left these consumers at risk of being unable to obtain an NBN service at a similar price and quality of their ADSL service. These consumers are nonetheless required to migrate to the NBN in order to keep their home service active.
- 3.28. The inquiry will:
- assess whether NBN Co's most recent pricing offers (in particular, NBN Co's recent changes to its Entry Level Bundle) will allow RSPs to offer comparable retail NBN plans at ADSL-like prices.
  - look at other related matters, including NBN Co's current approach to implementing its basic speed access product constructs through discount notices, and the impacts of service transfer and reversal fees.
- 3.29. The inquiry may lead to the ACCC making a final access determination (FAD), if considered necessary, before the current wholesale broadband agreement expires in November 2020, which would assist in providing RSPs with certainty about the terms and conditions of access to the NBN.

## **ACCC assessment of competition concerns relating to e-SIMs**

- 3.30. On 2 December 2019 the ACCC published on its website an update on its recent assessment of potential competition issues associated with the use and implementation of e-SIMs in Australia.
- 3.31. The ACCC considers that e-SIM technology has the potential to promote competition and greater choice in the mobile sector. While it has not identified any evidence of anti-competitive conduct by mobile network operators or device manufacturers, the ACCC remains concerned about the current inability of mobile virtual network operators to support e-SIMs.
- 3.32. The ACCC will continue to monitor e-SIM technology to ensure the competitive benefits are realised and that competition is not hindered. In April 2018 the ACCC made a commitment in its communications sector market study final report to explore these issues further.

## **Measuring Broadband Australia**

- 3.33. The ACCC released its seventh performance report under the Measuring Broadband Australia (MBA) program on 7 November 2019. The report revealed that Optus has delivered the highest percentage of maximum download speeds during the busy evening period. Other key findings included:
- All RSPs delivered average NBN download speeds of between 76 per cent and 87 per cent of maximum plan speeds during the high-demand evening hours in August 2019.
  - Hybrid fibre coaxial (HFC) connections experienced the highest average daily outage rate, recording one every two to three days. HFC connections also recorded long outages of more than three minutes more often than other technologies.
  - The proportion of underperforming services, considered as services that never come close to reaching their maximum plan speed, dropped from 12.4 per cent to 11.4 per cent of all tested connections. However, almost one in four fibre to the node (FTTN) connections on 50 and 100 Mbps plans continue to be affected.
- 3.34. The MBA provides consumers with accurate and independent information on broadband performance to assist consumers in choosing a fixed broadband service. The ACCC continues to seek more volunteers for the MBA program to provide more detailed information and to expand the range of RSPs and speed plans on which it reports.

## **NBN wholesale market indicators report—September quarter 2019**

- 3.35. The ACCC released its September quarter 2019 NBN wholesale market indicators report on 15 November 2019, which found that:
- The NBN was providing over 6.1 million services.
  - There were at least nine different wholesale access seeker groups directly connected to the NBN at all of the 121 points of interconnection (POIs), while at least ten access seekers were connected at 119 of the POIs. This indicates that smaller service providers are acquiring services in more places across Australia and providing additional competition for the benefit of consumers and businesses who use the NBN.

- Connectivity Virtual Circuit (CVC), which is the NBN bandwidth acquired by wholesale access seekers to provide data to their customers, increased 3.2 per cent on a per user basis over the quarter, from 1.75Mbps to 1.80Mbps.
- 50Mbps plans continue to be the most popular, comprising 57.1 per cent of all NBN residential services.

## **Access determinations**

### ***Fixed line services***

- 3.36. On 1 November 2019 the ACCC released its final decision to maintain existing price and non-price terms for seven declared, or regulated, fixed line wholesale services until 30 June 2024.<sup>2</sup>
- 3.37. The ACCC's decision will provide real wholesale price certainty for the industry in relation to voice and broadband services that are still provided over Telstra's copper network and other legacy infrastructure.

### ***Domestic transmission capacity service***

- 3.38. On 18 December 2019 the ACCC released a final decision varying the 2016 domestic transmission capacity service (DTCS) FAD. To promote downstream competition in the supply of communications services to consumers, the ACCC regulates transmission services in areas where there is a lack of competition between providers.
- 3.39. The decision sets out differentiated prices for access to the DTCS provided between mainland Australia and Christmas Island. The new terms of access replace interim terms set by the ACCC under the Binding Rules of Conduct made in December 2018.

### ***Mobile terminating access service***

- 3.40. The ACCC released a position and consultation paper on making a new mobile terminating access service (MTAS) FAD on 18 December 2019. The ACCC has engaged Analysys Mason to undertake an international benchmarking exercise to inform the ACCC's consideration of price terms for the new FAD.
- 3.41. The existing MTAS FAD was extended for a period of six months to provide for consultation on the pricing methodology.
- 3.42. As mobile operators have a monopoly over termination on their network, regulation of the MTAS promotes competition in downstream retail services by ensuring termination charges are cost based.

## **NBN Co given formal warning on the provision of enterprise services**

- 3.43. On 9 October 2019 the ACCC issued a formal warning to NBN Co for discriminating between RSPs for the supply of upgraded NBN infrastructure to business customers.
- 3.44. NBN Co is prohibited from discriminating between RSPs in the supply of regulated wholesale services and related activities. The ACCC is satisfied that from at least January 2018 NBN Co offered materially different commercial terms to different RSPs as it upgraded NBN infrastructure to support high-speed, business-grade services. In

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<sup>2</sup> The declared fixed line services are the unconditioned local loop service, line sharing service, wholesale line rental, local carriage service, fixed originating and terminating access services and the wholesale ADSL service.

particular, NBN Co provided one RSP with indicative pricing information for its new Enterprise Ethernet service months before it gave the same information to other RSPs.

- 3.45. Following the ACCC's investigation, NBN Co admitted it did not have appropriate processes in place to ensure it was complying with its transparency and non-discrimination obligations. The ACCC has also accepted a court-enforceable undertaking from NBN Co, which includes a commitment by NBN Co to take specific steps to ensure such conduct is not repeated.

### **Optus to pay \$6.4 million for misleading NBN disconnection claims**

- 3.46. On 2 December 2019, following proceedings brought by the ACCC, the Federal Court ordered Optus Internet Pty Limited and Optus Mobile Pty Limited (Optus) to pay \$6.4 million in penalties for making misleading claims to consumers about home internet disconnections.
- 3.47. On 24 May 2018 Optus emailed 138 988 of its mobile customers claiming their existing home broadband services, provided by Optus' competitors, would be 'disconnected very soon'. The email encouraged the customers to change to Optus NBN Broadband, telling them to 'make the switch, before it's too late'.
- 3.48. The Federal Court found that this statement was misleading or deceptive because the customers who received the email were not facing immediate disconnection of their existing broadband services.
- 3.49. This is the second time in two years that the Federal Court has ordered Optus to pay significant penalties for misleading consumers about the need to acquire NBN services following ACCC action.

### **Telstra to contact customers with slow NBN speeds**

- 3.50. On 21 November 2019 the ACCC announced that Telstra and Belong would contact any customers who had upgraded to higher-speed NBN plans but could not get the maximum speed available under their plan. This followed Telstra advising the ACCC that it had failed to check the maximum broadband speeds of 180 000 Telstra and Belong services that had moved to a higher speed tier plan.
- 3.51. Telstra's failure to carry out the speed checks meant that customers were not informed about whether they could achieve the maximum speeds available under the upgraded NBN plans. It also meant that customers who were on a slower speed NBN connection were not offered options to address slow speeds, such as exiting their contract or receiving a refund.
- 3.52. Under a November 2017 court-enforceable undertaking, Telstra is required to check customers' broadband speeds if they were connected to the NBN via FTTN or fibre to the building technology.
- 3.53. The ACCC also accepted similar court-enforceable undertakings from each of Optus, TPG, iiNet, Internode, Dodo, iPrimus and Commander between December 2017 and March 2018.

### **Facilities Access Code Review 2019**

- 3.54. On 21 November 2019 the ACCC published its draft report of the review of the Code of Access to Telecommunications Transmission Towers, Sites of Towers and Underground Facilities (the Facilities Access Code).

- 3.55. The draft report observed that the Facilities Access Code is broadly working well and is used as a basis for negotiating commercial terms and conditions of access. However, in response to concerns around delays in accessing facilities, amendments are proposed to pre-build consultation processes as well as the introduction of mandatory 'use it or lose it' timeframes.
- 3.56. The ACCC's Facilities Access Code governs how access to certain telecommunications facilities owned by telecommunications carriers, including mobile towers and underground ducts, is provided to other carriers seeking to install their equipment on or in those facilities. It seeks to encourage co-location of facilities and promote downstream competition by facilitating new entrants.

### **Digital radio access undertaking for Mandurah**

- 3.57. On 1 November 2019 the ACCC accepted an undertaking from Digital Radio Broadcasting Mandurah Pty Ltd in relation to the commencement of digital radio services in Mandurah, Western Australia.
- 3.58. The digital radio access regime allows commercial and community broadcasters (access seekers) to receive access to digital radio multiplex transmission services at reasonable terms and conditions. The regime ensures licensees (who are also usually commercial broadcasters) do not discriminate anti-competitively between the access seekers. In turn, this is likely to promote competition in downstream markets and provide for greater choice and quality for listeners, as well as providing greater choice for advertisers.

## **Wheat**

### **Bulk grain ports monitoring report 2018–19**

- 3.59. On 19 December 2019 the ACCC released its annual bulk grain ports monitoring report for 2018–19. The ACCC produces the report to fulfil a commitment to ongoing public monitoring of bulk grain exports following a number of decisions in 2015 to reduce the level of regulation applying to specific port terminal facilities.
- 3.60. The report noted that:
- While grain exporters could generally access Australian ports during the 2018–19 shipping year, they remained concerned about the fairness and transparency of their access to bulk export supply chains, especially at facilities operated by CBH and Viterra.
  - The level of competition between port terminals varies significantly among different regions. Exporters and grower groups were still worried about the quality and fairness of port access and their limited ability to negotiate favourable terms with the dominant operators.
- 3.61. In light of the above, the report reiterates the ACCC's support for a range of amendments to the Port Terminal Access (Bulk Wheat) Code of Conduct that would improve the Code's ability to ensure that exporters have fair and transparent access to port terminal services.
- 3.62. The ACCC monitors and enforces compliance with the Code and has a role in relation to port terminal exemptions and capacity allocation systems.

## 4. Market studies and research

- 4.1. The ACCC undertakes market studies, both government-directed and self-initiated, to promote competition, consumer and regulatory outcomes.

### ACCC report on e-conveyancing market reform

- 4.2. On 2 December 2019 the ACCC released an electronic conveyancing (e-conveyancing) market reform paper to assist the Australian Registrars National Electronic Conveyancing Council (ARNECC) and the relevant state and territory policy makers in their consideration of e-conveyancing and the design of this emerging market.
- 4.3. The e-conveyancing market is a relatively new market enabled by the Intergovernmental Agreement (IGA) for an Electronic Conveyancing National Law (ECNL) and supported by technological advancements. The IGA established ARNECC to facilitate the implementation and ongoing management of the regulatory framework for national e-conveyancing.
- 4.4. While the ACCC has no formal role in establishing the regulatory framework for the conveyancing market, the ACCC has been approached by numerous and diverse stakeholders to provide guidance on designing a new framework that will allow competition to develop in the market.
- 4.5. The ACCC's advocacy seeks to support decision makers and inform stakeholders as they seek to develop the market further and consider the merit of introducing certain regulatory arrangements to promote market based competition.

### Customer loyalty schemes review

- 4.6. On 3 December 2019 the ACCC released its *Customer loyalty schemes - final report*. The release of the report followed consultation on its draft report released in September 2019.
- 4.7. The final report identified a range of concerns with the practices of loyalty scheme operators, including in relation to the disclosure of certain data practices and terms and conditions that can prevent consumers making informed choices.
- 4.8. To address these issues, the report detailed three recommendations directed at loyalty scheme operators and two recommendations calling for broader changes to consumer and privacy law.

### Digital platforms inquiry

- 4.9. On 12 December 2019 the Australian Government released its response to the ACCC Digital Platforms Inquiry. This followed a public 12-week consultation process during which the Treasury received over one hundred written submissions and held numerous stakeholder meetings. The government supported or supported in principle the key components of 16 of the ACCC's recommendations.
- 4.10. The government's immediate response includes:
  - \$26.9 million to set up an ongoing branch in the ACCC to monitor and report on the state of competition and consumer protection in digital platform markets, including to undertake an inquiry into the supply of ad tech services and advertising agencies

- the ACCC is to address bargaining power imbalances between digital platforms and news businesses by working with relevant parties to develop and implement a voluntary code to address these concerns. The ACCC will provide a progress report to government on code negotiations in May 2020, with the code to be finalised no later than November 2020
  - commencement of a staged process to reform media regulation to create a level playing field in the online and offline delivery of media content by media businesses and digital platforms.
- 4.11. Since the last quarter, the ACCC has continued to engage with the Treasury, the Department of Communications and the Arts and the Attorney-General's Department to assist the government in formally responding to the ACCC's recommendations.
- 4.12. The ACCC is also continuing its engagement with international competition and consumer authorities that are considering similar issues, including authorities in the European Union, North America and the Asia-Pacific.

## Electricity market monitoring

### Third report of the electricity market monitoring inquiry

- 4.13. On 22 December 2019 the ACCC released its third report as part of its inquiry into the prices, profits and margins in relation to the supply of electricity in the National Electricity Market (NEM).
- 4.14. The report includes an examination of the cost components of electricity bills using data obtained from retailers for the 2018–19 financial year. The report found that:
- The average annual bill for households in the NEM fell in 2018–19 compared with the previous year, by \$65 or 4 per cent, to \$1509.
  - However, households were still paying about 20 per cent (\$254) more than in 2007–08.
  - Network costs comprised 43 per cent of the average annual bill for residential customers in 2018–19. This was followed by wholesale costs (33 per cent), retail costs (11 per cent), environmental costs (8 per cent) and retail margin (4 per cent). Environmental costs have increased over time in line with the greater take up of rooftop solar and changes in government renewable energy targets. We highlighted the need to continue to take action to place downward pressure on these costs and address concerns about the affordability of electricity.
- 4.15. The report also contains analysis of how pricing of electricity plans on offer has changed since reforms to retailer pricing and advertising came into effect on 1 July 2019. The report observed some positive results, including significant savings for customers on default electricity plans in SA, NSW, south-east Queensland and Victoria.

### Electricity Retail Code and Prohibiting Energy Market Misconduct Bill

- 4.16. The ACCC has been monitoring compliance with the Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019 (the Electricity Retail Code), which came into effect on 1 July 2019. During the quarter the ACCC resolved a small number of instances of non-compliance with the price cap on standing offers.
- 4.17. The Prohibiting Energy Market Misconduct Bill (the PEMM Bill), also referred to by the government as the 'Big Stick' legislation, was passed by Parliament on

25 November 2019 and received royal assent on 10 December 2019. The PEMM Bill introduces three new electricity market specific prohibitions into the CCA, which will come into effect on 10 June 2020. During the quarter, the ACCC began consultation for the development of guidelines on its approach to monitoring and enforcing the prohibitions.

## Home loan price inquiry

- 4.18. On 14 October 2019 the Treasurer directed the ACCC to conduct an inquiry into home loan pricing. This inquiry will investigate a number of issues including differences between advertised prices and prices actually paid, differences in the rates paid by new and existing customers, and the pricing responses by home loan suppliers following cuts by the RBA to the official cash rate. In addition, the inquiry will consider supplier practices and other impediments that prevent more consumers from switching to cheaper home loan suppliers. As part of this, the ACCC will consider matters such as consumer decision-making and biases, information used by consumers and the extent to which suppliers may contribute to consumers paying more than they need to for home loans.
- 4.19. An interim report, focusing on pricing issues, is to be provided to the Treasurer by 30 March 2020. A final report, focusing on impediments to switching, is due by 30 September 2020.

## Murray–Darling Basin inquiry

- 4.20. The ACCC continued its [inquiry into markets for tradeable water rights in the Murray–Darling Basin](#), as directed by the government on 8 August 2019. The inquiry is consulting with a wide range of water market participants and other persons involved in water markets in the Basin to hear their views on the operations, transparency, regulation, competitiveness and efficiency of markets for tradeable water rights.
- 4.21. On 17 October, the ACCC released an [issues paper](#) seeking views on the key issues affecting markets for tradeable water rights in the Murray-Darling Basin. To date the ACCC has received approximately 160 submissions in response to the issues paper.
- 4.22. The ACCC held 10 public forums regarding the inquiry across the Basin throughout November. A large number of irrigators and other market participants attended the forums.
- 4.23. The inquiry is obtaining information and data (through both voluntary and compulsory means). As part of this process, two rounds of statutory compulsory information notices have been issued to a range of water market participants.
- 4.24. The ACCC must provide the Treasurer an interim report on the inquiry by 31 May 2020 and complete the inquiry and provide a report to the Treasurer by 30 November 2020.

## Northern Australian Insurance Inquiry

### Second interim report of the insurance inquiry

- 4.25. On 20 December 2019 the ACCC released its second interim report for the Northern Australia Insurance Inquiry with a series of new findings. The report found that home, contents and strata insurance is becoming increasingly unaffordable in northern Australia, where the rate of households going without insurance is almost double that of the rest of the country.

- 4.26. The report shows home and contents insurance premiums in northern Australia are on average almost double those in the rest of Australia. In some areas the additional insurance costs faced by households are much greater.
- 4.27. The report also considers further measures that could help consumers. While these measures all face challenges and would require significant public funds, they may lead to reduced government spending in future on post-disaster relief to non-insured households.
- 4.28. The final report is due to the Treasurer by 30 November 2020.

## 5. Advocacy, legislative and legal developments

- 5.1. The ACCC engages in a range of advocacy activities regarding privatisations, market contestability and strengthening the functioning of markets to improve consumer outcomes.

### Australian Consumer Law review

- 5.2. During the quarter the ACCC continued to work closely with the Commonwealth Treasury and state and territory regulators to progress recommendations from the *ACL review final report*, including:
- undertaking work to assess consumers' inability to receive a remedy for goods that fail to meet the consumer guarantees, specifically the exploration of potential prohibitions on failing to provide an appropriate remedy.

### Business to business unfair contract terms

- 5.3. On 13 December 2019 the Treasury released a Consultation Regulation Impact Statement (CRIS) on Enhancements to Unfair Contract Term (UCT) Protections. This consultation seeks stakeholder feedback on a range of policy options to address the issues identified by the UCT Review.

### Complementary Healthcare Sector and Country of Origin Labelling Taskforce

- 5.4. On 4 April 2019 the government announced that it would support use of the 'Australian Made' claim and the 'Australian Made' logo for complementary medicines manufactured in Australia in production facilities regulated by the Therapeutic Goods Administration. The consultation Regulatory Impact Statement was released on 3 October 2019.
- 5.5. On 29 October 2019 the ACCC provided a response to the Department of Industry, Innovation and Science's consultation on its 'Eligibility for origin claims in the Complementary Medicines Sector' Consultation Regulatory Impact Statement. Our submission noted the ACCC's role and experience with country of origin labelling and the broader matters relevant to consumer protection and competition issues raised by amending the current regime for complimentary medicines.
- 5.6. On 18 December 2019 the government announced an amendment to the Competition and Consumer Regulations 2010, which allows complementary medicines companies to use the 'Made in Australia' logo for complementary medicines manufactured in Australia in production facilities regulated by the Therapeutic Goods Administration. The changes are available in the [Competition and Consumer Amendments \(Australian-made Complementary Medicines\) Regulations 2019](#).

### Franchising Code of Conduct review

- 5.7. In November 2019 the Franchising Taskforce released a [Franchising Regulation Impact Statement](#) (RIS). The purpose of the RIS was to obtain stakeholder views on options to address the range of issues identified by the Parliamentary Joint Committee on Corporations and Financial Services in its March 2019 [Fairness in franchising final report](#).

- 5.8. The ACCC provided the Franchising Taskforce with a submission, which will be published on the website of the Department of Employment, Skills, Small and Family Business.

### Mobile number pre-porting identity verification

- 5.9. On 6 December 2019 the Australian Communications and Media Authority (ACMA) released a consultation paper and draft Industry Standard to address mobile porting fraud. Consultation closed on 19 January 2020.

### Motorised mobility devices (MMDs)

- 5.10. The ACCC continued to engage with Austroads on the submission we published on 10 October 2019 regarding the safety of motorised mobility scooters and the operation of the consumer law framework in regard to these products.
- 5.11. In August 2019 Austroads released the 'Motorised mobility devices discussion paper: Establishing a nationally consistent framework and adopting technical specification 3695.3.2018'. The discussion paper sought feedback to address the recommendation from the 2017 Senate Inquiry that Austroads establish a nationally consistent regulatory framework and consider licensing and registration arrangements and third-party insurance for MMDs and their users.
- 5.12. Our submission notes that the ACL is not the appropriate mechanism for regulating MMDs because the safety issues identified relate to user behaviour on roads and footpaths and not the design of the product. The submission also notes that the ACCC does not support any of the options put forward in the discussion paper and that consideration should be given to the 2017 Senate inquiry recommendations.

### New safety duty

- 5.13. On 8 October 2019 the Commonwealth Treasury released a Consultation Regulation Impact Statement (CRIS) on improving the effectiveness of the consumer product safety system. The CRIS canvassed a range of reform options to improve product safety interventions and powers, including an option to introduce a new safety duty that would require traders to ensure the safety of their products before they enter the market. The consultation was held over a period of eight weeks, closing on 30 November 2019.
- 5.14. Treasury, on behalf of CAANZ, led the development of the CRIS. The ACCC is continuing to provide support and advice to Treasury and CAANZ during the regulatory impact assessment process, including the operation of the product safety provisions under the ACL.
- 5.15. The ACCC welcomes reforms to strengthen and 'future-proof' the consumer law to facilitate a more responsive and adaptable product safety system.

### Product safety priorities

- 5.16. The ACCC is finalising the development of its 2020 Product Safety Priorities, which set out the principles adopted by the ACCC for prioritising and addressing product safety risks. As part of the development process, the ACCC conducted extensive targeted stakeholder engagement to assist in identifying new and emerging product safety risks.
- 5.17. The 2020 Product Safety Priorities will be announced in the first quarter of 2020.

## 6. International collaboration

- 6.1. The ACCC engages closely with competition and consumer protection counterparts around the world. International cooperation with our partner agencies has become increasingly important as new business models emerge that can affect consumers across multiple jurisdictions.
- 6.2. This applies particularly to trade with Australia's neighbours in the Asian region, with the growth in trade and investment between Australia and Asia expected to result in an increase in Australian competition matters (such as merger and cartel investigations) that have an Asian nexus. The ACCC recognises the value of effective competition and consumer protection regulation and regional cooperation and continues to commit efforts to building relationships and capacity in the Asia-Pacific region.

### Cooperation and assistance

- 6.3. The ACCC facilitates delivery of our organisational goals by effective cooperation with our international counterparts, including on joint and parallel investigations on cross-border matters and through the sharing of information.
- 6.4. During the quarter the ACCC engaged with counterparts on a range of product safety, consumer, competition and regulatory matters including:
  - collaborating with the Organisation for Economic Co-operation and Development (OECD) and the European Commission to co-lead the 2019 OECD global awareness campaign on product recalls, which ran from 21-25 October. Around 20 international jurisdictions actively participated in the campaign
  - three staff-level secondments to the OECD relating to consumer product safety issues and competition
  - communicating regularly with relevant consumer product safety authorities in New Zealand and Canada, ad hoc meetings with Brazil, and referrals to Vietnam and Thailand
  - responding to requests for information from international agencies and organisations, including Canada, Japan, Eswatini, United States, and the United Nations Council on Trade and Development
  - requesting information from international agencies, including Canada, United Kingdom, Germany, Republic of Korea, Japan, United States, Switzerland, Brazil, Hungary, and Denmark
  - engaging with overseas competition and consumer agencies including the European Commission, Canada, United Kingdom, Germany, Netherlands, and the United States about current and emerging trends as part of our annual Strategic Review
  - continuing to engage with various competition and consumer agencies overseas in relation to the ACCC's Digital Platforms Inquiry
  - engaging with international counterparts on developing best practices across a variety of areas including consumer protection and competition enforcement, economic regulation and investigative practices
  - commencing a secondment with the United States Federal Trade Commission
  - continuing a twelve month secondment to the New Zealand Commerce Commission (NZCC)

- hosting a secondee from Mexico's Federal Economic Competition Commission
- participating in regular bilateral enforcement teleconferences with NZCC officials.

## Participation in international forums

- 6.5. Participation in international forums supports the ACCC's capability by strengthening cooperative relationships and informing our people on international practices to assist them in their work. Our participation in these forums also benefits Australian consumers and business, as we contribute to developing international best practice on competition and consumer policy and regulatory frameworks and practices.
- 6.6. In the quarter the ACCC attended several important international events including:
- the 7<sup>th</sup> ASEAN Forum on Consumer Policy, Republic of Korea
  - the 2<sup>nd</sup> Global Product Safety Innovation Forum, Republic of Korea
  - the G20 International Conference on Consumer Policy
  - the OECD's Working Party on Consumer Product Safety 19<sup>th</sup> meeting
  - a workshop on product recall effectiveness hosted by the European Commission, Brussels
  - the OECD's Committee for Consumer Policy 98<sup>th</sup> meeting
  - coordination of the Australian Government's response to the OECD questionnaire on the impact of the Internet of Things on consumer product safety
  - the International Competition Network (ICN) Cartel workshop in Foz do Iguaçu, Brazil
  - the ICN Unilateral Conduct workshop in Mexico City, Mexico
  - meetings of the OECD Competition Committee, Global Forum on Competition, Regulatory Policy Committee, Network of Economic Regulators, Consumer Policy Committee, and OECD Working Party on Consumer Product Safety in Paris
  - presentations by ACCC experts at workshops hosted by the OECD Korea Policy Centre in Tokyo, Japan, and Seoul, Republic of Korea
  - the Utility Regulators Forum in Wellington, New Zealand
  - the 8<sup>th</sup> ASEAN Competition Conference in Cambodia, where ASEAN competition agencies, business representatives and development partners shared practices and perspectives on a range of competition issues, including cartel enforcement, international cooperation and issues important to young competition agencies.
- 6.7. In the December quarter the ACCC continued to deliver capacity building activities under the ASEAN Australia New Zealand Free Trade Area Competition Law Implementation Program (CLIP), including:
- delivering two workshops in the Philippines and Thailand on Market Studies by Competition Agencies to participants from the Philippines, Vietnam, Thailand, Malaysia, Indonesia and Brunei Darussalam to consider the objectives, processes and challenges of competition agencies undertaking market studies
  - delivering a regional workshop in Indonesia for competition and energy regulatory officials from across ASEAN, to strengthen the interface between competition and sectoral regulators.
- 6.8. The ACCC also progressed work on the final output of the ASEAN Australia New Zealand Free Trade Area Consumer Protection Scoping Project, which explored the

merit of extending our cooperation with ASEAN to also encompass consumer protection and proposed a way forward for cooperation on consumer protection among ASEAN, Australia and New Zealand.

# Appendixes

## A Reports and enquiries

**Table A1: ACCC reports about trader conduct, investigations and litigation funnel**

Category	December 2019 quarter
Infocentre contacts received (phone, email and letters)	69 656
Contacts recorded in the database	62 295
Assessments commenced	74
Initial investigations commenced	38
In-depth investigations commenced	23
First instance litigation commenced	6

**Table A2: Reports about trader conduct and enquiries—top ten by industry**

Industry	Contacts
Automotive industry	3 824
Electronics & consumer whitegoods	3 134
Clothing & personal goods	1 428
Other store based retailing	1 314
Construction	1 196
Non store retailing	1 184
Telecommunications	1 083
Ticketing & other administrative services	1 074
Passenger transport & transport services	1 008
Homewares, furniture & manchester	893

**Table A3: Top scam categories reported to the ACCC**

Scam category	Contacts
Attempts to gain your personal information	13 994
Buying or selling	8 345
Threats & extortion	1 836

<b>Scam category</b>	<b>Contacts</b>
Unexpected winnings	1 723
Investment scams	1 156
Dating & romance	951
Unexpected money	894
Jobs & employment	619

## B Enforcement outcomes and matters in court as at 31 December 2019

The priorities referred to in the tables below align with the ACCC compliance and enforcement priorities at the time the ACCC commenced investigation of the matter.

**Table B1: Proceedings commenced**

<b>Competition</b>		
Misuse of market power (2019 priority)	<b>Tasmanian Ports Corporation Pty Ltd</b>	
	commenced	9 December 2019
	jurisdiction	Federal Court Melbourne
<b>Non-compliance and other proceedings</b>		
Inciting the obstruction of a Commonwealth official in the performance of their functions	<b>Jason Ellis</b>	
	commenced	8 October 2019
	jurisdiction	NSW Local Court
<b>Consumer &amp; Small Business Protection</b>		
Misleading and deceptive conduct, false or misleading representations  Digital platforms, algorithms & consumer data (2018 priority)	<b>Google Australia Pty Ltd &amp; Anor</b>	
	commenced	29 October 2019
	jurisdiction	Federal Court Sydney
False or misleading representations, unconscionable conduct  New car retailing (2017 priority)	<b>Mazda Australia Pty Ltd</b>	
	commenced	31 October 2019
	jurisdiction	Federal Court Melbourne
Misleading and deceptive conduct, false or misleading representations  Priority factor – national conduct by large trader	<b>Oscar Wylee Pty Ltd</b>	
	commenced	13 December 2019
	jurisdiction	Federal Court Sydney
Unsolicited consumer agreements  Broadband services (2018 priority)	<b>Superfone Pty Ltd</b>	
	commenced	10 December 2019
	jurisdiction	Federal Court Melbourne

**Table B2: Proceedings continuing**

<b>Competition</b>		
Cartel (enduring priority)	<b>Australia and New Zealand Banking Group Ltd (ANZ) &amp; Ors</b>	
	commenced	5 June 2018
	jurisdiction	Downing Centre Local Court Sydney
Cartel (enduring priority)	<b>BlueScope Steel Limited &amp; Anor</b>	
	commenced	30 August 2019
	jurisdiction	Federal Court Melbourne
Cartel (enduring priority)	<b>Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) &amp; Anor</b>	
	commenced	16 August 2018
	jurisdiction	ACT Magistrates Court
Cartel (enduring priority)	<b>Citigroup Global Markets Australia Pty Limited &amp; Ors</b>	
	commenced	5 June 2018
	jurisdiction	Downing Centre Local Court Sydney
Cartel (enduring priority)	<b>Country Care Pty Ltd &amp; Ors</b>	
	commenced	14 February 2018
	jurisdiction	Magistrate's Court of Victoria
Cartel (enduring priority)	<b>Deutsche Bank Aktiengesellschaft (Deutsche Bank) &amp; Ors</b>	
	commenced	5 June 2018
	jurisdiction	Downing Centre Local Court Sydney
Anti-competitive conduct (enduring priority)	<b>NSW Ports Operations Hold Co Pty Ltd &amp; Ors</b>	
	commenced	10 December 2018
	jurisdiction	Federal Court Sydney
Cartel (enduring priority)	<b>P.T. Garuda Indonesia Ltd (appeal)</b>	
	commenced	18 April 2016
	jurisdiction	Federal Court Sydney
Anti-competitive conduct (enduring priority)	<b>Ramsay Health Care Australia Pty Limited</b>	
	commenced	1 May 2017

	jurisdiction	Federal Court Sydney
Cartel (enduring priority)	<b>Vina Money Transfer Pty Ltd &amp; Ors</b>	
	commenced	11 April 2019
	jurisdiction	Melbourne Magistrates' Court
Cartel (enduring priority)	<b>Wallenius Wilhelmsen Ocean AS</b>	
	commenced	23 August 2019
	jurisdiction	Federal Court Sydney
<b>Consumer and Small Business protection</b>		
False or misleading representations Vulnerable & disadvantaged consumers (enduring priority)	<b>Bupa Aged Care Australia Pty Ltd</b>	
	commenced	17 April 2019
	jurisdiction	Federal Court Melbourne
Misleading & deceptive conduct, unconscionable conduct Vulnerable & disadvantaged consumers (enduring priority)	<b>Australian Institute of Professional Education Pty Ltd</b>	
	commenced	31 March 2016
	jurisdiction	Federal Court Sydney
Misleading & deceptive conduct, unconscionable conduct Priority factor – conduct that results in substantial consumer or small business detriment	<b>Employsure Pty Ltd</b>	
	commenced	21 December 2018
	jurisdiction	Federal Court Sydney
False or misleading representations, unconscionable conduct, failure to act in good faith Industry Codes (2015 priority)	<b>Geowash Pty Ltd</b>	
	commenced	26 May 2017
	jurisdiction	Federal Court Perth
False or misleading representations Consumer issues in the health & medical sector (2016 priority)	<b>GlaxoSmithKline Consumer Healthcare Australia Pty Ltd &amp; Novartis Consumer Health Australasia Pty Ltd</b>	
	commenced	5 December 2017
	jurisdiction	Federal Court Sydney
Misleading & deceptive conduct Digital platforms, algorithms & consumer data (2018 priority)	<b>HealthEngine Pty Ltd</b>	
	commenced	7 August 2019
	jurisdiction	Federal Court Sydney

Misleading & deceptive conduct Energy services (2018 priority)	<b>iSelect Limited</b>	
	commenced	11 April 2019
	jurisdiction	Federal Court Melbourne
False or misleading representations, unconscionable conduct Consumer guarantees (2016 priority)	<b>Jayco Corporation Pty Ltd</b>	
	commenced	29 November 2017
	jurisdiction	Federal Court Melbourne
Misleading & deceptive conduct Franchising Code (2018 priority)	<b>Jump Loops Pty Ltd &amp; Ors</b>	
	commenced	18 June 2019
	jurisdiction	Federal Court Melbourne
False or misleading representations Priority factor – conduct of significant public interest or concern	<b>Kimberly-Clark Australia Pty Ltd (appeal)</b>	
	commenced	12 December 2018
	jurisdiction	Federal Court Sydney
Misleading & deceptive conduct Priority factor – conduct demonstrating a blatant disregard for the law	<b>Kogan Australia Pty Ltd</b>	
	commenced	23 May 2019
	jurisdiction	Federal Court Melbourne
False or misleading representations Priority factor – conduct of significant public interest or concern	<b>Medibank Private Limited (t/a ahm)</b>	
	commenced	3 September 2019
	jurisdiction	Federal Court Melbourne
Misleading & deceptive conduct, false or misleading representations, unconscionable conduct Vulnerable & disadvantaged consumers (enduring priority)	<b>NIB Health Funds Limited</b>	
	commenced	30 May 2017
	jurisdiction	Federal Court Melbourne
False or misleading representations, unconscionable conduct Vulnerable & disadvantaged consumers (enduring priority)	<b>Panthera Finance Pty Ltd</b>	
	commenced	4 July 2019
	jurisdiction	Federal Court Sydney
False or misleading representations, unconscionable conduct	<b>Phoenix Institute of Australia Pty Ltd &amp; Anor</b>	
	commenced	24 November 2015

Vulnerable & disadvantaged consumers (enduring priority)	jurisdiction	Federal Court Sydney
Unconscionable conduct	<b>Productivity Partners Pty Ltd (t/a Captain Cook College)</b>	
Vulnerable & disadvantaged consumers (enduring priority)	commenced	9 November 2018
	jurisdiction	Federal Court Sydney
Misleading & deceptive conduct	<b>Quantum Housing Group Pty Ltd</b>	
Priority factor – conduct of significant public interest or concern	commenced	16 May 2019
	jurisdiction	Federal Court Perth
False or misleading representations	<b>Samsung Electronics Australia Pty Ltd</b>	
Consumer guarantees involving large or national traders (2018 priority)	commenced	4 July 2019
	jurisdiction	Federal Court Melbourne
Misleading & deceptive conduct	<b>Service Seeking Pty Ltd</b>	
Priority factor – where action is likely to have an educative or deterrent effect	commenced	14 December 2018
	jurisdiction	Federal Court Perth
Misleading & deceptive conduct, unconscionable conduct, unfair contract terms	<b>Smart Corporation Pty Ltd (t/a Australian 4WD Hire)</b>	
Priority factor – conduct of significant public interest or concern	commenced	17 April 2019
	jurisdiction	Federal Court Perth
False or misleading representations	<b>Sony Interactive Entertainment Network Europe Limited &amp; Anor</b>	
Priority factor – conduct of significant public interest or concern	commenced	23 May 2019
	jurisdiction	Federal Court Melbourne
Misleading & deceptive conduct	<b>STA Travel Pty Ltd</b>	
Priority factor – conduct of significant public interest or concern	commenced	28 March 2019
	jurisdiction	Federal Court Melbourne
Misleading & deceptive conduct	<b>TPG Internet Pty Ltd (appeal)</b>	
Priority factor – conduct of significant public interest or concern	commenced	4 December 2018
	jurisdiction	Federal Court Melbourne
False or misleading	<b>Trivago N.V.</b>	

representations Priority factor – conduct resulting in substantial consumer or small business detriment	commenced	23 August 2018
	jurisdiction	Federal Court Melbourne
Misleading & deceptive conduct, false or misleading representations Priority factor – conduct resulting in substantial consumer or small business detriment	<b>Viagogo</b>	
	commenced	28 August 2017
	jurisdiction	Federal Court Sydney
False or misleading representations Priority factor – conduct of significant public interest or concern	<b>Woolworths Limited (appeal)</b>	
	commenced	2 March 2018
	jurisdiction	Federal Court Melbourne

**Table B3: Proceedings concluded**

<b>Competition</b>		
Nil		
<b>Consumer and Small Business Protection</b>		
Unfair contract terms Vulnerable & disadvantaged consumers (enduring priority)	<b>Ashley &amp; Martin Pty Ltd</b>	
	commenced	29 November 2017
	concluded	24 October 2019
	jurisdiction	Federal Court Perth
	outcome	Standard contract terms in three standard form consumer contracts are void after being declared unfair contract terms (UCTs). Court ordered Ashley & Martin to refund money paid by consumers as a result of these UCTs.
False or misleading representations Priority factor – conduct of significant public interest or concern	<b>Optus Internet Pty Limited &amp; Anor</b>	
	commenced	24 June 2019
	concluded	2 December 2019
	jurisdiction	Federal Court Melbourne
	outcome	Penalties of \$6.4 million
False or misleading representations, unconscionable conduct,	<b>Unique International College Pty Ltd (appeal)</b>	
	commenced	13 December 2017

unsolicited consumer agreements	concluded	31 October 2019
Vulnerable & disadvantaged consumers (enduring priority)	jurisdiction	Federal Court Sydney
	outcome	Penalties of \$4.165 million
False or misleading representations	<b>Volkswagen AG</b>	
Truth in advertising (2015 priority)	commenced	31 August 2016
	concluded	20 December 2019
	jurisdiction	Federal Court Sydney
	outcome	Penalties of \$125 million

**Table B4: Section 87B undertakings**

<b>Competition</b>		
Price fixing, concerted practices Anti-competitive conduct (enduring priority)	ANZ Roofing Pty Ltd	9 December 2019
Price fixing, concerted practices Anti-competitive conduct (enduring priority)	Ivy Contractors Pty Ltd	9 December 2019
Retail price maintenance Priority factor – where action is likely to have an educative or deterrent effect	Bromic Pty Ltd	16 October 2019
<b>Consumer and Small Business Protection</b>		
False or misleading representations Consumer guarantees (2017 priority)	Target Australia Pty Ltd	15 October 2019
False or misleading representations Consumer guarantees (2017 priority)	Woolworths Group Ltd (t/a BIG W)	15 October 2019
False or misleading representations, consumer guarantees Priority factor – national conduct by large trader	ZeniMax Media Inc & Ors	31 October 2019

## C Use of compulsory information gathering powers

In carrying out its functions, the ACCC may issue notices under the CCA to gather information, documents and evidence. During the quarter the ACCC issued the following notices:

**Table C1: Use of compulsory information gathering powers**

Section of the CCA	Number of notices	Number of variations
51ADD - information or documents kept, generated or published under an applicable industry code	0	0
95ZK - information or documents relevant to a price notification, inquiry or monitoring under Part VIIA of the CCA	30	16
133D - information, documents or evidence regarding consumer goods or product-related services that will or may cause injury	0	0
155(1)(a) - provision of information	1	0
155(1)(b) - provision of documents	16	7
155(1)(a) and (b) - provision of information and documents	32	19
155(1)(c) - giving of sworn evidence at a formal examination	9	1
155AAA - notices regarding the ACCC sharing information with other regulators	0	0

## D Major speeches

During the quarter the ACCC took part in numerous speaking events, including the following:

[Australia's electricity and gas affordability crisis](#)

Mr Rod Sims, Chair  
AFR National Energy Summit  
10 October 2019

[Latest actions and enforcement priorities of the ACCC](#)

Mr Mick Keogh, Deputy Chair  
National Franchise Convention  
20 October 2019

[Data \(R\)Evolution: Consumer welfare and growth in the digital economy](#)

Mr Rod Sims, Chair  
Consumer Policy Research Centre 2019 conference  
19 November 2019

[Improving Australia's productivity and consumer welfare](#)

Mr Rod Sims, Chair  
RBB Economics Conference  
21 November 2019