ACCCCount

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

1 January to 31 March 2019
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Key outcomes dashboard

Maintaining and promoting competition

Competition enforcement
- 1 cartel case concluded - $1.05 million in penalties
- 12 cases ongoing

Mergers and adjudication
- 79 confidential mergers matters pre-assessed
- 7 public reviews undertaken
- No statements of issues released
- 1 draft and 3 final authorisation determinations
- 1 collective bargaining notification allowed to stand
- 2 final certification trade mark assessments issued

Infrastructure regulation
- Released the Airport Monitoring Report 2017-18
- Released the annual communications market report 2017-18
- Released the fourth Measuring Broadband Australia report
- Released the December quarter petrol monitoring report

Protecting consumers and supporting fair trading

Consumer enforcement
- 1 case commenced
- 4 cases concluded
- 24 cases ongoing
- 5 infringement notices paid
- 1 administrative resolution
- 3 undertakings accepted
- $13.754 million in total penalties

Consumer and small business education
- 1 068 383 consumer education resources accessed
- 873 937 Scamwatch visits
- 81 984 contacts received from consumers and businesses
- 365 855 small business education resources accessed
- 11 email updates to small businesses and franchising networks

Product safety
- 161 recalls assessed
- 929 mandatory injury reports assessed
- 256 reports of unsafe products assessed
- 2069 product lines inspected at 626 sites—111 products requiring further assessment identified

Market studies and research
- Released the first report on the new electricity monitoring inquiry
- Released a report on price monitoring of menstrual products following removal of GST
- Received submissions to the preliminary report on the digital platforms inquiry
- Commenced a review of customer loyalty schemes
Executive Summary

1. The Australian Competition and Consumer Commission (ACCC) works to enhance the welfare of Australians by promoting competition, 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 January to March 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, and
   - advocacy and collaboration to promote competition and fair trading.

3. The ACCC commenced proceedings against STA Travel Pty Ltd for allegedly making false or misleading claims relating to its MultiFLEX Pass product.

4. The ACCC achieved the following penalties:
   - $1.05 million against Cryosite Limited for engaging in cartel conduct in its asset sale agreement with Cell Care Australia Pty Ltd. This represents the ACCC’s first gun-jumping case, where Cryosite ceased competing with Cell Care prior to the finalisation of the proposed sale.
   - $10 million against Optus for misleading consumers.
   - $2.604 million against Ultra Tune for breaching both the Franchising Code of Conduct and the Australian Consumer Law.
   - $900,000 against Click Energy for making misleading claims.
   - $250,000 against Activ8me for making false or misleading misrepresentations.

5. The Country Care Group Ltd, its Managing Director, Rob Hogan, and former employee, Cameron Harrison, were committed to stand trial in the Federal Court of Australia on all criminal cartel charges laid against them in February 2018.

6. The ACCC’s 2019 Compliance and Enforcement Policy and Priorities were launched on 26 February 2019. New priorities identified include consumer guarantees on high value electrical and whitegoods products, consumer and competition issues arising from the pricing of essential services, customer loyalty schemes, collection and use of consumer data by digital platforms, and emerging issues in advertising and subscription service practices on social media platforms, with a focus on younger consumers.

7. The ACCC announced its 2019 Product Safety Priorities, including the Takata airbag recall, button batteries, quad bikes, online product safety, unsafe sleeping products, interconnected devices, and supporting the development of a general safety provision and a product safety incidents database.
8. The ACCC decided not to oppose the proposed acquisition of Dial-a-Dump Industries Pty Ltd by Bingo Industries Limited, and discontinued the review of the proposed Siemens AG and Alstom SA global merger.

9. The ACCC granted authorisation to the Southern Sydney Regional Organisation of Councils to invite tenders for the processing of hard waste.

10. ACCC publications released during the quarter included:
    - the Consumer Data Right draft rules
    - resources to educate consumers and providers of home care services
    - Communication ideas: reaching consumers affected by the compulsory Takata recall
    - Airport Monitoring Report 2017-18
    - Communications market report 2017-18
    - The fourth Measuring Broadband Australia report
    - The December quarter petrol monitoring report
    - The first report on the new electricity monitoring inquiry
    - A report on price monitoring of menstrual products following removal of GST.


12. The ACCC continues to monitor and oversee compliance with the compulsory Takata airbag recall. We released comprehensive state-by-state data detailing the progress of the Takata recall in January 2019 and will continue to update the data on a quarterly basis.

13. The ACCC undertook surveillance across 626 retail outlets to gauge the effectiveness of, and compliance with, particular safety regulations. As a result of this proactive surveillance program, ten products across the following product categories were recalled by their respective suppliers due to non-compliance: baby dummies, combustible candle holders, trolley jacks, vehicle jacks, support stands for vehicles and portable ramps for vehicles.

14. The ACCC was awarded the 2019 Global Competition Agency of the Year at the Global Competition Review (GCR) 9th Annual Awards Ceremony held in Washington DC on 26 March.
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 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 will prioritise 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 continues its focus on enduring priorities relating to cartel conduct causing detriment in Australia and anti-competitive agreements and practices. The ACCC will also continue 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 undertakings¹, administrative resolutions and completing market studies.

Proceedings

1.6. In the March quarter the ACCC was involved in 13 legal proceedings relating to competition enforcement in a range of industries, including shipping, travel, construction and financial services. A complete list of these proceedings is included in the Appendix.

1.7. Of the 13 competition enforcement proceedings:

- 13 cases were carried over from the previous quarter
- 0 new cases were commenced in the quarter
- 1 case was concluded, and
- 12 cases remain ongoing at the end of the quarter.

*Proceedings commenced*

Nil.

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¹ Court-enforceable undertakings accepted under s.87B of the CCA.
Proceedings appealed

Nil.

Proceedings concluded

CRYOSITE LIMITED

In February 2019 the Federal Court ordered Cryosite Limited to pay $1.05 million in penalties for engaging in cartel conduct in its asset sale agreement with Cell Care Australia Pty Ltd.

The Court held, by consent, that Cryosite engaged in cartel conduct when it signed an agreement in June 2017 to sell the assets of its private cord blood and tissue banking business to Cell Care with a clause requiring Cryosite to refer all customer enquiries to Cell Care before the sale was completed, and when it subsequently gave effect to that provision.

Cryosite admitted that the clause in its contract was designed to restrict or limit the supply of cord blood and tissue banking services by Cryosite, and to allocate potential customers to Cell Care. Cryosite also admitted that it gave effect to the cartel provision by ceasing to supply private cord blood and tissue banking services to new customers from the date it signed the sale agreement, setting up a system to refer enquiries from potential customers to Cell Care, and referring enquiries to Cell Care in July and August 2017.

Cartel conduct of this type is known as ‘gun jumping’, when parties to a merger or acquisition are competitors and combine or coordinate their conduct before the actual completion of the transaction.

The Court ordered Cryosite to pay $50,000 towards the ACCC’s costs.

Undertakings accepted and administrative resolutions

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, and
   - establish, or review and improve, compliance programs and culture.

1.9. In the March quarter, no undertakings relating to competition enforcement were accepted by the ACCC.

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 in respect of competition enforcement this quarter.

Agriculture sector

1.12. In the March quarter the ACCC agriculture sector work included:
1.13. Progressing the wine grapes market study, an in-depth analysis of competition and contracting practices between purchasers and growers of wine grapes.

1.14. Advocating for the development of a mandatory code of conduct for the dairy industry. This follows a key recommendation in the ACCC’s Dairy Inquiry. On 15 March 2019 the Commonwealth Minister for Agriculture and Water Resources, the Hon. David Littleproud MP, announced that the code is progressing, and that the next steps will include the development of a draft code, with consultation on this draft to be led by the Department of Agriculture and Water Resources.

1.15. Continuing to advocate for implementation of our Cattle and Beef Market Study recommendations. The ACCC is concerned that practices which impede the greater efficiency of the industry will become entrenched if the Market Study’s recommendations are not implemented.

1.16. Continuing litigation against Mitolo Group Pty Ltd and a related entity (together, Mitolo) alleging that several terms in Mitolo’s standard form contracts with potato farmers are unfair contract terms and that Mitolo has breached the Horticulture Code in its dealings with farmers.

1.17. Issuing audit notices to monitor compliance with the Horticulture Code of Conduct. This process can also inform future enforcement actions in relation to the code.

1.18. Preparations for the next Agriculture Consultative Committee, which will take place in May 2019.

**Financial services**

1.19. The ACCC is currently examining the pricing of foreign currency conversion services in Australia and evaluating whether there are impediments to effective price competition in the sector. Over 200 submissions to the inquiry have been received from consumers, small businesses and market participants. A final report will be provided to the Treasurer by 31 July 2019.

1.20. The ACCC is also working with the Council of Financial Regulators (CFR) to develop an online calculator that reports on actual interest rates paid by different types of residential mortgage borrowers. The Productivity Commission recommended the development of such a calculator in August 2018 and the Australian Government has asked the CFR to accelerate the development of options for its implementation.

**Consumer Data Right**

1.21. A number of significant Consumer Data Right (CDR) related developments took place this quarter.

1.22. On 13 February 2019 the Treasury Laws Amendment (Consumer Data Right) Bill 2019 (the bill) was introduced into the House of Representatives. Provisions of the bill were then referred to the Economics Legislation Committee for inquiry. The Committee ultimately recommended that the bill be passed. The Committee’s findings were published in its final report on 21 March 2019.

1.23. On 29 March 2019 the ACCC released the CDR draft rules for public consultation. The draft rules cover issues central to the implementation of CDR in banking. While there are a range of matters that need to be finalised before the CDR can be implemented (including the passage of enabling legislation) we have released the draft rules for the CDR to allow potential participants in the CDR system to continue
their planning with the benefit of greater guidance. Interested parties can provide submissions via the ACCC’s consultation hub until 10 May 2019.

1.24. The ACCC also:

- Published a discussion paper on 25 February 2019 to begin consultation on how best to apply the CDR in the energy sector. The ACCC held a public forum to consider issues raised in the paper on 18 March 2019. A record of the forum, as well as non-confidential submissions received in response to the paper, are available here.
- Selected Oakton as its partner for the development of an address book and a platform to manage applications for accreditation of CDR participants. Progress has been made throughout the quarter in the build of the address book.

Assess mergers to prevent structural changes that substantially lessen competition

1.25. The ACCC reviews mergers and acquisitions to assess whether they would be likely to substantially lessen competition.

1.26. Merger parties have two avenues available to have a proposed acquisition considered and assessed by the ACCC on competition grounds: informal clearance process and merger authorisation.

Informal clearance process

1.27. 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.

1.28. We deal 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 we consider are ‘pre-assessed’, enabling us to respond quickly when there are no significant competition concerns.

Table 1: Matters pre-assessed and reviews undertaken – 1 January–31 March 2019

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<th>Confidential</th>
<th>Public</th>
<th>Total</th>
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<tr>
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<td>Public reviews undertaken 1 January–31 March 2019</td>
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<tr>
<td>Total matters assessed and reviews undertaken</td>
<td>79</td>
<td>7</td>
<td>86</td>
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Public reviews by category:

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<th></th>
<th>Confidential</th>
<th>Public</th>
<th>Total</th>
</tr>
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<tbody>
<tr>
<td>Not opposed</td>
<td>0</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>Finished—no decision (including withdrawn)</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Post SOI</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Other</td>
<td>0</td>
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### Merger Authorisation

1.29. 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.

1.30. Merger parties may seek statutory protection from legal action under s.50 of the CCA by lodging an application for merger authorisation.

1.31. 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.

1.32. Merger authorisation may be granted on the basis that the acquisition will not substantially lessen competition, or alternatively, will result in public benefits that outweigh any detriments.

1.33. There have been no applications for merger authorisation made to the ACCC since the revisions to the CCA came into effect.

### Significant Merger Decisions

**Bingo – Proposed Acquisition of Dial-a-Dump**

On 28 February 2019 the ACCC announced that it would not oppose the proposed acquisition of Dial-a-Dump Industries Pty Ltd (Dial-a-Dump) by Bingo Industries Limited (Bingo) after accepting a court enforceable undertaking offered by Bingo.

Bingo and Dial-a-Dump both collect and process building and demolition (B&D) waste in Sydney. Dial-a-Dump also owns a large non-putrescible (dry) landfill at Eastern Creek and Bingo owns a site at Patons Lane which is expected to open as a dry landfill this year. The ACCC examined the effect of the proposed acquisition at each level of the supply chain.

The ACCC was concerned that the proposed acquisition may substantially lessen competition for the supply of B&D waste processing services in the eastern suburbs/inner city of Sydney, where Bingo’s Banksmeadow and Dial-a-Dump’s Alexandria facilities competed closely. The ACCC considered there were limited alternative facilities that accept mixed B&D waste in the area and a low likelihood of new entry or expansion due to a scarcity of available land.

The ACCC was also concerned that any loss of competition between waste processors may also affect competition between B&D waste collectors as collectors rely on access to...
processing facilities at competitive rates to win and retain customers.

Following the release of the Statement of Issues, Bingo offered a court enforceable divestiture undertaking to divest its Banksmeadow facility to an ACCC approved purchaser. The ACCC considered that the divestiture would resolve its competition concerns in relation to both B&D waste processing and collection services by maintaining competition between the Banksmeadow and Alexandria waste processing facilities that would otherwise be lost as a result of the proposed acquisition.

The ACCC also assessed the impact of the future loss of competition between Bingo’s and Dial-a-Dump’s dry landfills in Sydney, including whether the proposed acquisition would be likely to lead to higher landfill gate fees that would otherwise be the case absent the transaction.

The ACCC concluded that the proposed acquisition was unlikely to amount to a substantial lessening of competition due to the collective constraint imposed by a range of actual and potential alternatives to Bingo’s landfills, including:

- alternative landfills in Sydney
- South-East Queensland landfills, noting that the introduction of the Queensland landfill levy will make transporting waste to Queensland less attractive
- regional NSW/ACT landfills
- alternative technologies such as refused derived fuel, and
- increased recycling rates.

In arriving at this conclusion, the ACCC noted that landfill gate fees in Sydney are likely to rise as a result of increased demand following the introduction of the Queensland landfill levy; however these issues would exist with or without the proposed acquisition.

**SIEMENS AG – PROPOSAL TO COMBINE SIEMEN’S MOBILITY BUSINESS WITH ALSTOM SA**

On 7 February 2019 the ACCC announced that it had discontinued its review of the proposed Siemens AG and Alstom SA global merger, in light of the European Commission’s (EC) decision to block the transaction and the statements by the merger parties that the deal was off.

Siemens and Alstom are global suppliers of rail mobility products and associated services. Both are active in Australia in rail signalling, rolling stock and electrification.

Signalling systems provide safety and traffic management controls on rail networks. At their simplest, the role of these systems is to avoid collisions between trains.

Siemens is a listed German conglomerate headquartered in Munich. Alstom is a French company listed on the Euronext Paris stock exchange. The proposed transaction combined Siemens’ Mobility Division with Alstom.

While the ACCC had not made a final decision, the transaction had raised competition concerns in Australia, especially in signalling for heavy rail passenger networks.

The ACCC considered that on Australian passenger networks, a merged Siemens-Alstom may not face sufficient competition from other suppliers of heavy rail signalling, particularly in train interlocking systems and automatic train protection systems.

The ACCC was concerned that incumbency advantages and barriers to entry could increase the risk that customers face higher prices and lower levels of service as a result of
the acquisition, and could decrease incentives to deliver innovation.

The ACCC had been in discussions with the parties about possible divestment remedies, but did not receive a finalised remedy proposal for Australia.

Given the global nature of the proposed merger and the competition issues involved, any remedy affecting Australia would also have had to be considered in the context of the issues raised in Europe by the EC.

The ACCC liaised closely with overseas competition regulators during this review.

Merger review consultation

1.34. 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. 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 it necessary.

1.35. No Statements of Issues were issued in the March quarter.

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

1.36. 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.

1.37. 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

1.38. 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 then further consider the application in light of any additional submissions and release a final decision.
Table 2: Authorisations received and decisions issued

<table>
<thead>
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<th>Total authorisations received</th>
<th>Number of applications</th>
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<td>1 January–31 March 2019</td>
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<tr>
<td>New</td>
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<tr>
<td>Revocation</td>
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<tr>
<td>Revocation and substitution</td>
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<tr>
<td>Minor variations</td>
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<table>
<thead>
<tr>
<th>Decisions issued</th>
<th>Number of applications</th>
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</thead>
<tbody>
<tr>
<td></td>
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<td>Draft determinations</td>
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<td>Final determinations</td>
<td>3</td>
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<tr>
<td>Interim decisions (prior to draft)</td>
<td>2</td>
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</tbody>
</table>

_Significant authorisations_

**SOUTHERN SYDNEY REGIONAL ORGANISATION OF COUNCILS**

On 14 February 2019 the ACCC granted authorisation to the Southern Sydney Regional Organisation of Councils (SSROC) to invite tenders for the processing of hard waste (otherwise known as clean up materials or kerbside clean up). Authorisation was granted until 8 March 2033.

SSROC, on behalf of Bayside, Burwood, Georges River, Inner West, Strathfield, Waverley and Woollahra Councils, sought authorisation to tender for the processing and disposal (not collection) of hard waste. Each of the councils will then choose which tenderer they wish to contract with for the provision of the services.

Having sought views from interested parties, the ACCC received only one submission, from Macarthur Strategic Waste Alliance, which supported the application.

The ACCC considered that the joint tender process was likely to result in substantial public benefits in the form of:

- increased competition by encouraging new entry and encouraging tenderers to provide more competitive tenders than they may have otherwise provided
- economic benefits through reduced transaction costs, by reducing the total administrative, legal, preparation and evaluation costs borne by councils and waste service providers in conducting the tenders and managing the contracts separately
- environmental benefits by increasing the recovery of resources from hard waste and therefore decreasing the amount of waste disposed of in landfill (particularly when compared to compacting of hard waste).
The ACCC concluded that the joint tender process was likely to result in minimal public detriments, because:

- waste service providers would be free to tender to supply as many or as few councils as they wished
- there was significant population in the Sydney region not covered by the arrangements, which remained open for providers of hard waste processing services, such that the procurement process was unlikely to lessen competition for future contracts, and
- each council was free to choose its own service provider on an individual basis.

The ACCC granted authorisation on the basis that it was satisfied the arrangements were likely to result in public benefit which would outweigh any likely detriment to the public.

Notifications

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

Exclusive dealing notifications

1.40. ‘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, and is prohibited under the CCA in certain circumstances.

1.41. Lodging a notification with the ACCC provides automatic protection from legal action unless revoked by the ACCC. Notifications can be reviewed by the ACCC at any time.

Table 3: Exclusive dealing notifications

<table>
<thead>
<tr>
<th>Exclusive Dealing Notifications</th>
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<tr>
<td>Matters lodged in the quarter</td>
<td></td>
</tr>
<tr>
<td>Matters allowed to stand</td>
<td>0</td>
</tr>
</tbody>
</table>

1 January – 31 March 2019

3

*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 is at risk of substantially lessening competition.

Collective bargaining notifications

1.42. 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.

1.43. 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 4: Collective bargaining notifications

<table>
<thead>
<tr>
<th>Collective Bargaining Notifications</th>
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</tr>
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<tbody>
<tr>
<td>1 January–31 March 2019</td>
<td></td>
</tr>
<tr>
<td>Matters lodged in the quarter</td>
<td>3</td>
</tr>
<tr>
<td>Matters allowed to stand</td>
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Significant collective bargaining notifications

**MOOD MEDIA AND STINGRAY GROUP**

On 28 March 2019 the ACCC decided not to object to the notification lodged by Mood Media Australia Pty Ltd (Mood Media), on behalf of itself and Stingray Group Inc (Stingray Group) to enable Mood Media and Stingray Group to collectively negotiate the terms and conditions of music licence arrangements to be entered into between each of them and APRA AMCOS, including licence fees. The notification was lodged on 11 February 2019 and the ACCC has allowed it to remain in force for a period of 10 years from that date (unless revoked earlier) instead of the default period of three years.

Mood Media and Stingray Group supply background music to a range of businesses including restaurants and retailers. Under copyright law, when businesses play music in public, including as background music, they are required to obtain permission from the music owner. The background music supplier also requires the permission of the music owner to supply music to businesses. APRA AMCOS grants blanket licences to businesses and other users, including background music suppliers, so they are able to play music in public without contacting individual music owners for permission. APRA AMCOS distributes the licence fees it collects to its songwriter, composer and music publisher members.

The ACCC considers that the collective bargaining arrangements are likely to result in public benefits from improved efficiency through reducing transaction costs such as negotiation and contracting costs, and the time taken to negotiate. The ACCC also considers that the arrangements may allow Mood Media and Stingray Group to have better input into contracts than they would if they were each negotiating with APRA AMCOS on their own.

The ACCC considers it is unlikely these arrangements will reduce competition between Mood Media and Stingray Group in acquiring licences from APRA AMCOS. In reaching this view, the ACCC notes the following:

- APRA AMCOS has significant market power in negotiating with licensees and this will remain the case if Mood Media and Stingray Group negotiate together. As such, it is very unlikely the arrangements will enable Mood Media and Stingray Group to artificially depress licence fees below the competitive level.
- Mood Media and Stingray Group will continue to compete for customers and the arrangements are not likely to diminish this competition.
- The arrangements are voluntary for Mood Media and Stingray Group, as well as
for APRA AMCOS. Mood Media and Stingray Group will still be free to negotiate individually with APRA AMCOS.

Mood Media and Stingray Group sought to collectively bargain with APRA AMCOS for up to 10 years. The ACCC decided that it was appropriate for the notification to remain in force until 10 February 2029, because the likely benefits of the arrangements are expected to continue, and therefore total benefits are likely to be greater with the extended notification period. The ACCC is also able to revoke the notification at any time if the public benefits no longer outweigh the public detriments.

Resale price maintenance notifications

1.44. 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 5: Resale price maintenance notifications

<table>
<thead>
<tr>
<th>Resale Price Maintenance Notifications</th>
<th>Number of notifications</th>
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<tr>
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</tr>
<tr>
<td>Matters allowed to stand</td>
<td>0</td>
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</table>

Certification trademarks

1.45. 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.

1.46. 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 6: Certification trademarks

<table>
<thead>
<tr>
<th>Certification trademarks (CTMs)</th>
<th>Number of related applications (number of CTMs*)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1 January – 31 March 2019</td>
</tr>
<tr>
<td>CTMs received</td>
<td>9(11)</td>
</tr>
<tr>
<td>Final assessments issued</td>
<td>2(2)</td>
</tr>
</tbody>
</table>

*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 include:
   - 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, and
   - 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 have 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 general
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 $180.70 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 March 2019, this figure encompasses 42 ACCC cases where penalties awarded by the Court have been at or above $1 million.

2.8. In the March quarter, the ACCC was involved in 28 legal proceedings relating to consumer protection. Of these:

- 27 cases were carried over from the previous quarter
- 1 case was commenced
- 4 cases were concluded
- 24 cases remain ongoing at the end of the quarter.

Proceedings commenced

STA TRAVEL PTY LTD

In March 2019 the ACCC instituted proceedings against STA Travel Pty Ltd (STA Travel) for allegedly making false or misleading claims in relation to its MultiFLEX product.

STA’s MultiFLEX Pass is marketed as an airfare add-on that, if purchased, purportedly allows the consumer to change the dates of their flights without paying certain, or any, fees or charges.

The ACCC alleges that, since September 2011, STA Travel has misled consumers by representing in advertisements that a customer who changed the date of their flight after purchasing a MultiFLEX Pass would not pay any fees or charges, or would only be charged the difference in the cost of the airfare and any applicable taxes.

It is alleged STA Travel charged many consumers hidden commissions and other fees on top of the difference in airfare and taxes, and in some case charged customers even when there was no difference in airfare and taxes.

The ACCC is seeking penalties, injunctions, costs and other orders against STA Travel.

Proceedings appealed

Nil.

Proceedings concluded

AMAYSIM ENERGY PTY LTD (T/A CLICK ENERGY)

In March 2019 the Federal Court ordered penalties of $900,000 against Amaysim Energy.

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2 This includes consumer matters pursued by the ACCC under ASIC Act delegation.
Pty Ltd (t/a Click Energy) for making false or misleading marketing claims about potential discounts and savings available to Victorian and Queensland consumers.

Between October 2017 and March 2018, Click Energy told consumers in Victoria and South East Queensland they could get discounts of between 7 and 29 per cent under its market energy offers if they paid their bills on time. These claims were misleading because the discounts were calculated on Click Energy’s market offer rates, which were higher than Click Energy’s standing offer rates available to all consumers. This meant that the effective discounts were smaller than claimed and, in some cases, consumers effectively received no discount at all.

Click Energy was also ordered by the Court to send each affected customer a notice correcting the misleading claims, implement a consumer law compliance program and pay an agreed amount towards the ACCC’s costs.

AUSTRALIAN PRIVATE NETWORKS (T/A ACTIV8ME)

In March 2019 the Federal Court ordered Australian Private Networks Pty Ltd (t/a Activ8me) pay penalties of $250,000 for making false or misleading representations and not displaying a single price when advertising its internet services.

Activ8me admitted that between June and November 2018, it made false or misleading claims in three direct mail advertisements and five online banner advertisements marketing its Opticomm fibre-to-the-premises packages, in breach of the ACL. Activ8me told consumers they could access speeds of up to 100Mbps for $59.95 a month with no setup fee. In fact, the $59.95 plan only offered speeds of 12/1Mbps and a setup fee of $99.95 applied if the consumer did not sign up to a 12-month plan. The true cost of Activ8me’s $100Mbps plan was $89.95 per month.

Activ8me also made a number of other false or misleading claims about price, inclusion of ‘unlimited’ data, speed and total minimum costs.

The Court ordered Activ8me to offer to refund setup fees and allow affected customers to exit or switch plans without charge.

OPTUS

In February 2019 the Federal Court ordered Optus to pay a $10 million penalty for its treatment of customers who unknowingly purchased games, ringtones and other digital content through its third-party billing service.

Optus admitted that the company misled consumers and breached the ASIC Act when it billed customers for third party-produced content which they mistakenly bought or subscribed to through its ‘direct carrier billing’ service.

The $10 million penalty is one of the highest imposed by the Court after ACCC action on a consumer matter, and equals the penalty paid by Telstra last year after it admitted to similar conduct.

Optus has committed to contacting potentially impacted customers who complained about the services and have not already received a refund, as well as those customers who Optus identifies as having been incorrectly charged. Optus will also review any further complaints in light of this action and deal with those customers in good faith. About 240,000 customers have been refunded so far. The ACCC understands Optus has paid about $8 million in refunds and third party providers another $13 million.
ULTRA TUNE AUSTRALIA PTY LTD

In January 2019 the Federal Court ordered Ultra Tune Australia Pty Ltd (Ultra Tune) to pay a penalty of $2,604,000 for breaching both the Franchising Code of Conduct and the ACL.

Ultra Tune made false or misleading representations to a prospective franchisee about the price of the franchise, the ongoing rent of the premises and the age of the franchise. The prospective franchisee was also told that a $33,000 deposit was refundable when it was not.

The judgement noted Ultra Tune’s attempts to mislead the Court in its defence of the ACCC’s action by relying on documents purportedly sent to the prospective franchisee.

This represents the first proceedings that the ACCC has brought against a franchisor alleging a breach of the Franchising Code obligation to act in “good faith” in business dealings with franchisees.

The Court ordered Ultra Tune to refund the prospective franchisee’s $33,000 deposit, with interest.

Judgments

GEOWASH

In February 2019 the Federal Court found that former car hand wash and detailing franchisor Geowash had acted unconscionably, made false or misleading representations and failed to act in good faith in breach of the Franchising Code of Conduct in relation to the sale and marketing of its franchises.

The Court found that Geowash made false or misleading representations about the average monthly revenue and gross average profit a prospective franchisee could make, when it had no basis for the claim, and represented that it had a commercial relationship or affiliation with major corporate entities, when it did not.

The Court also found that Geowash acted unconscionably towards franchisees through its charging practices for the establishment and fit-out of franchise sites. The amounts Geowash charged its franchisees did not reflect the likely costs of establishing those sites.

Geowash’s Director, Sanam Ali, was found to be knowingly involved in all of Geowash’s conduct. Geowash’s Franchising Manager, Charles Cameron, was found to be knowingly involved in Geowash’s unconscionable conduct and failures to act in good faith.

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 March quarter, the ACCC received payment for five infringement notices from two traders.
BABY BUNTING PTY LTD

TARGET AUSTRALIA PTY LTD

In February 2019 Baby Bunting Pty Ltd (Baby Bunting) paid $25,200 in penalties after the ACCC issued two infringement notices for allegedly selling and marketing unsafe convertible strollers.

Target Australia Pty Ltd (Target) paid $37,800 in penalties after the ACCC issued three infringement notices for the same conduct.

Between at least May 2015 and June 2018, Baby Bunting and Target sold a range of convertible strollers. The convertible strollers were marketed as safe to be used as strollers for transporting babies and young children, but did not comply with the mandatory safety standards for prams and strollers.

Baby Bunting and Target also provided court-enforceable undertakings to the ACCC that they will not supply or offer to supply convertible tricycles which are strollers unless they comply with the Mandatory Standard and they have obtained written evidence confirming the convertible tricycles comply with the Mandatory Standard. Both retailers have also undertaken to implement an updated consumer law compliance program.

Undertakings accepted

2.11. The ACCC also resolves alleged contraventions of the CCA by accepting court-enforceable undertakings under section 87B of the CCA. In the March quarter there were three section 87B undertakings accepted relating to consumer protection. This includes the undertakings provided by Baby Bunting and Target, outlined above.

PANDORA

In March 2019 the ACCC accepted a court-enforceable undertaking from jewellery business Pandora to review its consumer rights policies and staff training after Pandora acknowledged it is likely to have contravened the ACL by making misleading representations to consumers about their consumer guarantee rights.

Pandora has undertaken to arrange for an external review of its policies and procedures relating to exchanges, repairs and refunds and to ensure customer claims for refunds and other remedies are dealt with appropriately and in accordance with the ACL. Pandora will also conduct a review of its ACL compliance program and improve its staff training and complaints handling systems.

Administrative resolutions and other compliance and enforcement tools

2.12. 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.

2.13. One administrative resolution was reached in the March quarter.

TOMTOM ANZ PTY LTD

MITAC AUSTRALIA PTY LTD (T/A NAVMAN)
In January 2019 three manufacturers of consumer GPS navigation products agreed to stop using 'lifetime' claims in their advertising of navigation services after the ACCC raised concerns these statements were potentially false, misleading or deceptive.

TomTom ANZ Pty Ltd, MiTac Australia Pty Ltd (t/a Navman) and Garmin Australasia Pty Ltd each made lifetime claims in marketing on their websites, on packaging and point-of-sale marketing, and in retailers’ catalogues and websites. Despite these statements, the manufacturers each retained the discretion to stop providing these services before the end of the lifetime of the devices in certain circumstances. The ACCC considered these limitations were not communicated to consumers in a prominent way.

**Public warning notices**

2.14. 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.

2.15. No public warning notices were issued by the ACCC in the March quarter.

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

2.16. The ACL provides consumer protection regulators a single set of provisions to respond to consumer protection issues. It also allows regulators to collectively work on broader issues, and take proactive and timely compliance and enforcement action.

2.17. 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.

2.18. The ACCC also works with businesses, industry associations and consumer groups to promote awareness of the CCA and ACL.

**2019 Ruby Hutchinson Memorial Lecture and National Consumer Congress**

2.19. The ACCC held the 2019 National Consumer Congress and Ruby Hutchison Memorial Lecture in March. The Congress is an annual event hosted by the ACCC that brings together people from the public, private and community sectors. Around 200 people attended both events.

2.20. This year Edward Santow, the Australian Human Rights Commissioner, delivered the 2019 Ruby Hutchison Memorial Lecture. He discussed Artificial Intelligence and new technologies, including the impact on privacy and how our personal information is likely to be used against us.

2.21. Following the Ruby Lecture, the 2019 National Consumer Congress featured topical sessions on the Financial Services Royal Commission, product safety and challenges around data and artificial intelligence.
**Consumer Consultative Committee**

2.22. The Consumer Consultative Committee (CCC) provides a forum through which consumer protection issues can be addressed collaboratively between the ACCC and consumer representatives.

2.23. The ACCC held a meeting with the CCC on 13 March 2019. Topics discussed included an ACCC enforcement update, a discussion on the Financial Inclusion Action Program and a discussion on an upcoming review of the CCC membership.

2.24. The CCC also held its annual joint meeting with ASIC's Consumer Advisory Panel (CAP). Current issues of interest for both regulators were discussed, including a discussion on consumer complaints in the financial and telecommunications industries (Internal and External Dispute Resolution) and the ACCC’s digital platforms inquiry with a focus on the preliminary report that was released in December 2018.

**Scams Awareness Network**

2.25. The Scams Awareness Network (SAN) held its first working group meeting in preparation for Scams Awareness Week 2019, locking in the campaign for 12–16 August.

2.26. The ACCC continues to disseminate scam information on a monthly basis to SAN partners. Activities have included Scamwatch report sharing with 13 partners in the Scams Awareness Network, including law enforcement agencies.

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

2.27. 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.

2.28. During this quarter ACCC online consumer education resources were accessed 1,068,383 times. The top three most accessed pages were:

- Petrol price cycles
- Repair, replace, refund
- Make a consumer complaint

2.29. The top three publications viewed were:

- The little black book of scams
- Consumer guarantees – a guide for consumers
- Door to door - do not knock sign

**Scams**

2.30. The ACCC’s Scamwatch website provides consumers and small businesses with information about scams. This quarter the Scamwatch website attracted 1,827,918 page views from 873,937 sessions visits.

2.31. The ACCC’s simple guide on scams, *The little black book of scams*, was downloaded 10,747 times via the Scamwatch website and 28,006 physical copies were distributed around Australia.
This quarter the ACCC issued three media releases about prevalent or emerging scams. The topics covered a newly emerging ‘emergency’ text message, dating and romance scams and payments via gift cards. These three media releases were also sent as radar alerts to our 83,365 Scamwatch radar subscribers.

The ACCC also operates a Scamwatch Twitter account, @Scamwatch_gov, which alerts the public to scams targeting consumers and businesses and advises Australians how to recognise, avoid and report them. The Scamwatch Twitter account continued to expand its reach with 19,861 followers as at 31 March 2019, which was an increase of 608 followers during the quarter. About 104 tweets or retweets were posted during the period.

**Consumer directed care**

On 16 July 2018 the ACCC published three educational resources and launched a campaign to educate consumers and providers of home care services about their rights and responsibilities under the CCA. The slogan for the campaign was ‘Choose your care. Use your rights.’

As at 31 March 2019 the ACCC (through partnered stakeholders) had distributed 70,186 printed consumer brochures and 8,069 industry guides. Online resources have been viewed or downloaded as follows:

- **Home care - know your consumer rights**: 1,832 page views / 1,291 downloads
- **Home care services - your business rights & obligations**: 1,599 page views / 1,461 downloads.

In February the ACCC met with staff from the Royal Commission into Aged Care Quality and Safety to discuss complaints the ACCC has received about aged care. We also provided information about the Consumer Directed Aged Care project.

**Proposed regulatory interventions in the automotive industry**

The Australian Government is proposing regulatory interventions regarding two issues examined by the ACCC’s new car retailing market study, which published its findings and recommendations in December 2017.

The study recommended the introduction of a mandatory scheme for car manufacturers to share motor vehicle service and repair information with independent repairers, which would support a competitive car repair and service industry for the benefit of small businesses and consumers. In March 2019 Treasury commenced consultation on a proposed mandatory code. The ACCC has provided a submission in response to the consultation paper.

The ACCC’s new car retailing market study recommended that certain issues raised by dealers in relation to the imbalance of power in their commercial arrangements with manufacturers may require further examination. In December 2018 the Department of Industry, Innovation and Science released a Regulation Impact Statement (RIS) regarding franchise relationships between manufacturers and new car dealers. The ACCC has provided a submission in response to the RIS.

**Supporting a vibrant small business sector**

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.
2.41. The ACCC continues to focus on education and awareness within the small business sector, including franchising.

2.42. During this quarter the ACCC’s online business education resources were accessed 365,855 times and we continued to promote our three free online education programs:

- a program for small businesses covering major aspects of the CCA and ACL—over 42,000 users have accessed this program since its launch in April 2013, including over 1600 this quarter
- a program for tertiary students studying subjects that touch on the CCA and the ACL—over 47,000 users have accessed this program since its launch in November 2013, including around 700 this quarter
- a franchising pre-entry education program delivered by FranchiseED—around 17,460 people have enrolled in this program since July 2010, including 204 this quarter.

2.43. During this quarter the ACCC sent 11 email updates to small business, franchising and oil code information networks. The updates provided subscribers with information about:

- the ACCC’s 2019 compliance and enforcement priorities
- the release of the ACCC’s half-yearly report on small business
- the Federal Court’s rulings on Ultra Tune and Geowash
- the ACCC recommendations relating to electricity prices, and
- the final report of the inquiry into franchising in Australia.

2.44. The ACCC also commenced a number of additional and targeted compliance checks as part of our Franchising Project to enhance compliance with the Franchising Code and the CCA more broadly. As part of this initiative, the ACCC is assessing important documents that certain franchisors provide to potential franchisees in the café, restaurant and take away food services industries to check whether they clearly and accurately disclose information that is important for potential franchisees to consider before they sign agreements or pay non-refundable money.

**Country of origin food labelling**

2.45. The ACCC has been providing guidance for businesses over the past two years about the requirements of the Country of Origin Food Labelling Information Standard.

2.46. The ACCC is now conducting compliance checks and requesting certain food sellers to substantiate country of original claims on selected food products.

2.47. The ACCC is continuing to conduct market surveillance with the National Measurement Institute to identify businesses that may not be complying with the food labelling laws. Market surveillance is being conducted on 10,000 food products with a focus on priority foods sold in supermarkets.

2.48. In December 2018 the Government established a Complementary Medicines Taskforce to review the impact of recent consumer law changes on the complementary healthcare sector.

2.49. The Terms of Reference established that the Taskforce would assess how the current country of origin labelling policy framework, including ACCC guidance regarding the substantial transformation test, interacts with the complementary healthcare sector.
2.50. The Taskforce was led by the Department of Industry, Innovation and Science and comprised Government officials from Treasury, Prime Minister and Cabinet, Department of Agriculture, Austrade, the ACCC, Department of Foreign Affairs and Trade, Department of Health and the Therapeutic Goods Administration.

2.51. The Taskforce reported to Government in February 2019 with its findings and options for consideration, ranging from no change to examining alternative mechanisms, and brands to help industry develop its export capability, through to a range of regulatory solutions which would improve access to the Australian Made logo while mitigating negative consequences for its value.

2.52. On 5 April 2019 the Government announced that it will support continued access to the Australian Made logo for the Australian complementary healthcare industry. The Government has announced that complementary medicines manufactured in Australia in production facilities regulated by the Therapeutic Goods Administration would be able to make the claim ‘Australian Made’ and use the Australian Made logo.

**Small Business and Franchising Consultative Committee**

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

2.54. On 22 February a meeting of the Small Business and Franchising Consultative Committee was held to discuss key issues of interest in relation to small business identified in the ACCC’s Digital Platforms Inquiry. Discussion at the meeting included:

- the experience of small businesses with digital platforms’ advertising services
- the experience of small businesses with digital platforms’ complaints and dispute resolution process
- the proposal for a specific ombudsman for digital platforms.

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

2.55. 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 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.

2.56. More information on how the ACCC identifies, prioritises and addresses product safety risks is available at ACCC Product Safety Priorities.

2.57. A key economy-wide strategic issue for the ACCC is working towards the introduction of a General Safety Provision. A General Safety Provision would place a legal obligation on traders to ensure the reasonable safety of goods placed on the market. The ACL does not presently impose this express obligation on suppliers.
Takata airbag recall

2.58. As at 28 February 2019, around 2.97 million defective Takata airbags have been replaced in about two million vehicles, leaving around 897 000 inflators in about 804 000 vehicles remaining for replacement (excluding 216 000 inflators in 225 000 vehicles listed as unrepairable by vehicle manufacturers).

2.59. The ACCC is particularly concerned with around 12 400 outstanding critical vehicles, which includes 9250 alpha vehicles and around 3136 critical (non-alpha) vehicles that have been identified by vehicle manufacturers as requiring urgent repair. A vehicle is 'critical' when it is identified by the vehicle manufacturer 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. 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. In January 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 updated data on the Product Safety Australia website on a quarterly basis, with the next publication to occur in April 2019.

2.61. In February 2019 we published Communication Ideas: reaching consumers affected by the compulsory Takata recall to assist suppliers in increasing their consumer reach to maximise effectiveness of the compulsory recall. We also published FAQs on the Product Safety Australia website to provide further guidance around the application of special circumstances and to encourage suppliers to bring forward replacements where parts become available earlier than scheduled.

2.62. The ACCC continues to engage closely with the Federal Chamber of Automotive Industries (FCAI) to ensure the efficacy of the national consumer awareness raising campaign that it is leading on behalf of many vehicle manufacturers. The message ‘Faulty airbags? Don’t die wondering’ calls on consumers to use a vehicle look-up tool to check if their vehicle is affected by going to www.IsMyAirbagSafe.com.au or by texting 0487 AIRBAG. As at 1 March 2019 this tool had been accessed approximately 7.5 million times, with over one million affected vehicles identified.

2.63. The ACCC continues to engage 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. A key initiative is registration sanctions for vehicles fitted with high risk defective alpha inflators. The ACCC has welcomed announcements from jurisdictions that have adopted these sanctions and we continue to work closely with authorities around the country.

2.65. Another initiative of the Takata Interagency Group is the Australian Financial Security Authority’s (AFSA) publication of information on the Takata recall in search certificates on the Personal Property Securities Register (PPSR). This initiative is proving to be a valuable contribution to the recall effort. Between 1 January 2019 and 31 March 2019, 1.23 million searches were recorded and 68 572 affected vehicles were identified—equating to around 762 affected vehicles identified per day.
2.66. The ACCC is assessing reports and plans required under the Recall Notice, including Recall Initiation Schedules for grey importers and Registered Automotive Workshop Scheme (RAWS) participants, independent auditor nominations and independent auditor reports, applications for assessment of compliance, quarterly reports and VIN Status Reports.

Quad bike safety

2.67. Quad bikes, also known as all-terrain vehicles (ATVs), have caused at least 130 fatalities in Australia since 2011, including 15 fatalities involving children. In October 2017 the ACCC commenced an investigation into the safety of quad bikes for the purposes of advising the Assistant Treasurer whether a mandatory safety standard under the ACL is necessary to prevent or reduce the risk of injury.

2.68. During the March quarter the ACCC concluded the formal part of its investigation and provided the Assistant Treasurer with its final recommendation for a mandatory safety standard. The ACCC self-certified that the final recommendation followed a RIS-like process.

2.69. The recommended safety standard requires:

- Within 12 months, all new quad bikes must meet certain requirements of the US or European Standards, have a warning label affixed and have information in the operators manual alerting the rider to the risk of rollover and have a hang tag that displays the angle at which the quad bike tips on to two wheels when tested for lateral static stability.
- Within 24 months, new general-use model quad bikes must have an operator protection device fitted or integrated into its design and must meet minimum stability requirements.

2.70. On 6 April 2019 the Assistant Treasurer announced the Australian Government is seeking comment on the ACCC draft mandatory quad bike safety standard. The ACCC will manage the process through the online consultation hub. At the conclusion of the consultation period the ACCC will provide the Australian Government with all feedback received. Respondents have until 10 June 2019 to make submissions.

Product safety recalls

Table 7: Recalls assessed and published—1 January to 31 March 2019

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<tr>
<th>Category</th>
<th>Regulator</th>
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<td>79</td>
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<td>regulators including the ACCC</td>
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<tr>
<td>Motor vehicles – Department of</td>
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<tr>
<td>Infrastructure</td>
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<tr>
<td>Food – FSANZ</td>
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<td>16</td>
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<tr>
<td>Therapeutic goods – TGA</td>
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<td>7</td>
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<td>TOTAL</td>
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<td>161</td>
</tr>
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</table>

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

Samsung top-loading washing machines recall

2.71. 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.

2.72. 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 December the recall reached 90.05 per cent completion.

2.73. Samsung is continuing to receive assistance from state and territory agencies to identify the addresses of consumers who have changed address since purchasing their washing machine.

Recall monitoring

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

2.75. There are currently 622 open recalls monitored by the ACCC. This quarter the ACCC assessed 734 recall progress reports submitted by suppliers. There were five recalls escalated for further assessment which resulted in no further action.

2.76. During this quarter the ACCC received 13 reports and enquiries that required assessment and response.

2.77. Thirteen mandatory injury reports relating to recalled products were received and assessed.

Mandatory injury reports, complaints and enquiries

2.78. 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 929. Of these, 424 were out of jurisdiction or were referred to another agency for assessment, four were progressed for further assessment, 28 were assessed as relevant to an existing investigation, and 473 were closed after review of risk and the factors in the ACCC’s annual Product Safety Priorities for allocating our finite resources.

2.79. During this quarter the ACCC received 256 reports of unsafe products and related enquiries that were escalated for hazard analysis and assessment.

2.80. The number of consumer enquiries received regarding the Takata compulsory recall decreased from 693 in the previous quarter to 284 this quarter. This decrease is likely to be the result of consumers having a better understanding of the recall and the steps they should take to get defective airbags replaced.

Consumer product safety strategies

2.81. 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.

2.82. Online compliance: The ACCC continued to work proactively with online platforms such as eBay, AliExpress, Gumtree, Etsy and Catch.com.au to improve product safety in the online marketplace. In March the ACCC met with ACL regulators to share insights on product safety compliance in the online marketplace.

2.83. Button batteries: The ACCC continued the evaluation stage of the National Strategy for Button Battery Safety in this quarter. The ACCC is working with other ACL regulators to finalise the assessment of the effectiveness of voluntary safety improvements made by suppliers of button batteries and products containing button batteries. The ACCC is currently considering the need for further regulatory
intervention, such as the development of a mandatory standard, to improve the safety associated with the supply of button batteries.

- On 30 March 2019 the Assistant Treasurer issued a Safety Warning Notice to alert consumers and suppliers of the possible risks associated with the use of button batteries.
- The ACCC continues to assist the Industry Working Group with revision of the voluntary Industry Code for Button Battery Safety. The second edition is expected to be released by Industry next quarter.

2.84. **DIY vehicle maintenance:** The ACCC has commenced work to develop a renewed safety campaign on DIY vehicle safety. The campaign includes the development of two videos for use in raising awareness of the safety risks involved with DIY vehicle maintenance.

**Mandatory safety standards reviews**

2.85. The ACCC is responsible for administering and enforcing mandatory 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, to prevent the risk of death or serious injury to consumers.

2.86. In 2015–16 the ACCC established a program to review all 43 mandatory standards.

2.87. The ACCC reviews mandatory standards in line with the principles set out in the **ACCC’s 2018 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 (voluntary standards), innovations in product design and the relative risk of death and serious injury.

2.88. As part of these reviews, the ACCC regularly publishes consultation papers seeking stakeholder submissions. Interested stakeholders can subscribe to our mailing list and receive email alerts about future consultation processes by visiting the ACCC website.

2.89. In this quarter, following recommendations by the ACCC, the Minister made a new mandatory standard for disposable cigarette lighters and amended the existing standards for children’s nightwear and prams and strollers.

2.90. As at 31 March 2019 the ACCC has completed 17 mandatory standards reviews.

2.91. As at 31 March 2019 the ACCC has publicly consulted on a further 11 mandatory standards reviews, which we are progressing. The ACCC has also consulted on the permanent ban on miniature motorbikes (monkey bikes) with unsafe design features.

**Consumer product safety compliance**

2.92. 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 market place 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
• performance testing by independent laboratories to check performance requirements mandated by the regulations.

2.93. The ACCC also conducts inspections to gauge the effectiveness of particular safety regulations. During this quarter we undertook surveillance for the following regulated and non-regulated products: baby dummies and dummy chains, cots (portable), exercise cycles, nightwear for children, treadmills, teethers, gas masks containing asbestos, and button batteries.

2.94. As a result of this proactive surveillance program, ten products across the following product categories were recalled by their respective suppliers due to non-compliance: baby dummies, combustible candle holders, trolley jacks, vehicle jacks, support stands for vehicles and portable ramps for vehicles.

Table 8: Quarterly surveillance snapshot

| Total number of retailers/sites surveyed | 626 |
| Total number of product lines inspected  | 2069 |
| Total number of products requiring further assessment | 111 |
3. Infrastructure regulation

3.1. The ACCC’s infrastructure regulation role encompasses key infrastructure sectors of the economy, including airports, telecommunications, petroleum, rail, wheat exports, ports and water 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 and use of, and investment in, Australia’s key infrastructure, thereby promoting the long-term interests of end users.

- Providing industry monitoring reports to government in relation to 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 and related services.

- Enforcing industry-specific competition and market rules in some infrastructure sectors to improve the efficient operation of markets.

Airports

Submission to the Productivity Commission inquiry

3.2. On 25 March 2019 the ACCC provided a supplementary submission to the Productivity Commission’s inquiry into the economic regulation of airports, in response to the draft report. The submission’s key points are:

- Airports are natural monopolies that are likely to exercise their market power unless it is constrained.

- The current monitoring framework, which comprises ACCC monitoring, periodic review by the Productivity Commission and possible declaration under Part IIIA, is ineffective in constraining airports’ market power for a number of reasons.

3.3. As set out in our submission, providing airlines with access to commercial arbitration would provide a constraint on the airports’ market power. A commercial arbitration regime would be a pragmatic and flexible solution under which both airlines and airports can seek arbitration if negotiation between the two parties break down.

Airport monitoring report 2017-18

3.4. The ACCC released its Airport Monitoring Report for 2017-18 on 25 February 2019. The report found that profits at three of Australia’s four biggest airports continued to grow during 2017-18, while the quality of service rose. The key findings include:

- Combined operating profit from aeronautical activities at Sydney, Melbourne, Brisbane and Perth airports was $820.1 million for the year, up 6.2 per cent. Brisbane Airport recorded the biggest jump in profit of 24.8 per cent, while Perth’s profit grew by 14.9 per cent due to lower costs. Sydney Airport’s annual profit of $382.6 million, up 4 per cent on strong passenger growth, accounted for nearly half of the total profits generated by the four airports.

- Aeronautical revenue per passenger rose at three of the four airports, most rapidly at Brisbane Airport, up by 15.4 per cent. Melbourne recorded a 4.3 per cent drop while recording the highest growth in passenger numbers.
• The four airports together earned $278.5 million in operating profit from car parking. Perth, Melbourne and Sydney airports all earned lower profits from car parking, but profit margins remained strong at between 52.7 per cent at Perth and 69.9 per cent at Sydney Airport.

• For the first time in a decade, all four monitored airports were rated as ‘good’ for their overall quality of service to passengers and airlines, with Sydney and Melbourne airports improving on last year’s ‘satisfactory’ rating. Perth Airport received the highest overall quality of service rating and was also the only airport also rated ‘good’ by airlines.

3.5. The ACCC has a monitoring role in relation to airports in order to ensure oversight of the exercise of market power that airports have in their dealings with airlines and other customers. The ACCC will monitor the performance of the four largest airports until 2020 under the government direction.

Telecommunications

Communications market report 2017-18

3.6. On 28 February 2019 the ACCC’s annual Communications market report 2017-18 was tabled in Parliament and published on the ACCC’s website. The ACCC produces this report annually as required by the CCA to monitor consumer outcomes of competition in the communications sector. The key findings of the report include:

• the NBN eclipsed the legacy copper network as the largest fixed line access network in Australia during the year
• data downloads over the year jumped 45 per cent on mobiles and 27 per cent for fixed line services
• prices for mobile phone services dropped by 8.3 per cent in real terms, while fixed broadband prices fell by 1.5 per cent
• consumers have increasingly taken up higher speed products, with the proportion of 50 Mbps services on the NBN soaring from 4 to 35 per cent over 2017-18
• minutes spent talking on fixed line calls continued to decline, and time spent on mobile calls was stable, in contrast to the growth of previous years. Consumers are increasingly using social media and over-the-top services like Messenger, WhatsApp and Viber to communicate with each other, and
• average network congestion on the NBN fell from almost 5.5 hours per week to 25 minutes per week over the year.

3.7. However, the ACCC has concerns that not all consumers have experienced improvements, or will continue to do so in the future. In order to address these issues the ACCC is continuing the review of NBN appointment, connection and repair commitments and closely following developments in NBN retail markets, where competition for entry-level plans in particular appears to be lessening as retailers adapt to NBN Co’s new wholesale pricing arrangements.

Measuring Broadband Australia

3.8. On 6 February 2019 the ACCC released its fourth Measuring Broadband Australia (MBA) report which found that although speeds remained high, some consumers fared better than others. The ACCC also released a consumer guide that explains how the MBA speed metrics are calculated.
3.9. The ACCC expanded the number of retail service providers (RSPs) to include Dodo, iPrimus and Exetel, enabling the report to cover a wider range of price points.

3.10. The report included, for the first time, a breakdown of speed results by NBN technology, reporting the performance of fibre-to-the-premise (FTTP), fibre-to-the-node (FTTN) and hybrid fibre coaxial (HFC) networks. The results show FTTP and HFC services deliver about 86 per cent to 87 per cent of maximum plan speeds on average during busy hours, compared to about 79 per cent for FTTN.

**Consumer safeguards review**

3.11. The ACCC made a public submission on 18 January 2019 to the Department of Communications and the Arts' consultation paper on Part B (Reliability of Services) of the Consumer Safeguards Review. The Department is currently reviewing Australia’s telecommunications consumer safeguards to prepare the framework for a post-2020 environment, i.e. following the completion of the NBN rollout, with the review occurring in three parts.

3.12. The ACCC’s submission supported a comprehensive review of the reliability safeguards to ensure they are fit for purpose, meet consumer needs, and consider the need for supply chain coordination between NBN Co and RSPs. The submission noted the similar matters being considered by the ACCC’s ongoing NBN wholesale service standards inquiry which is seeking to address issues at the wholesale level which are impacting on consumer experiences.

**NBN wholesale market indicators report – December quarter 2018**

3.13. On 12 February 2019 the ACCC released its wholesale market indicators report for the December quarter 2018. The report is a key monitoring tool for the ACCC to assess how competition is developing over the NBN.

3.14. Key findings of the report include:

- Almost 4.8 million Australians are now connected to the NBN, with more than half subscribed to higher speed plans of 50 Mbps or more.
- A large number of customers (1.2 million) remain on the basic 12Mbps service.
- RSPs’ wholesale market shares remained mostly stable, with smaller retailers slightly increasing their collective share from 6.3 per cent to 6.6 per cent—a rise of about 34 000 services.
- Connectivity Virtual Circuit, which is the NBN bandwidth acquired by RSPs to provide data to their customers, fell slightly on a per user basis over the quarter, from 1.71 Mbps to 1.65 Mbps. NBN Co’s introduction of new wholesale bundles and the end of the Focus on 50 promotion are likely to have contributed to this drop.

**Dark Fibre and NBN Wholesale Aggregation Record Keeping Rules**

3.15. The ACCC released a consultation paper on a proposed set of record-keeping rules (RKRs) for dark fibre and NBN wholesale aggregation services on 18 February 2019.

3.16. These services are key wholesale inputs to the supply of NBN retail services and are important in both facilitating the entry of service providers that do not have the scale to connect directly to the NBN, as well as managing the growth in consumer demand for data. This creates more choice for consumers through greater competition in the provision of NBN retail services.
3.17. The proposed RKRs would require eligible service providers to maintain records and report to the ACCC on the supply of these services, enabling the ACCC to determine whether these markets are functioning effectively or if there is any potential need for future regulation.

Fixed line telecommunications services review

3.18. On 29 March 2019 the ACCC released a consultation and position paper on new final access determinations (FADs) for the declared fixed line services and the wholesale ADSL service. The paper seeks views on the ACCC’s position to make new FADs, without updating the fixed line services model (FLSM), on the same terms of access as the existing FADs. This would mean existing fixed line price and non-price terms and conditions (NPTC) of access would be maintained for five years until 30 June 2024.

3.19. The fixed line services are supplied by Telstra over its legacy copper network to provide voice and broadband services to fixed telecommunications users. Telstra’s legacy copper network will eventually be shut-down in areas where consumers migrate to the NBN fixed line services. These conditions present a number of complex issues for the ACCC in setting access prices in the FAD.

3.20. The ACCC considers its proposed approach promotes the long-term interest of end users (LTIE) and will provide predictability and certainty to access seekers (e.g. Telstra’s wholesale customers who provide retail telecommunication services) at a time when the number of regulated services in operation are rapidly declining as the NBN rollout is finalised.

3.21. The consultation and position paper acknowledges that some stakeholders may prefer the ACCC undertake a comprehensive review of prices and terms and conditions. The paper invites submissions to comment on this alternate approach by 26 April 2019.

DTCS declaration decision

3.22. On 1 April 2019 the ACCC decided to extend the declaration of Australia’s Domestic Transmission Capacity Service (DTCS) for a further five years.

3.23. The ACCC regulates transmission services in areas where there is a lack of competition between providers, so that telephony and data services can be delivered to consumers at affordable prices. The ACCC considers that extending the declaration for a further five years will allow time for the rollout of the NBN to be completed at which point the impact of the NBN on DTCS service markets can be assessed. The ACCC noted that following completion, the NBN is likely to both complement and compete with existing DTCS services.

3.24. The decision deregulates 137 metropolitan and 27 regional exchange service areas, where the ACCC is satisfied there is now effective competition.

3.25. The ACCC has also updated the DTCS service description, which sets out which types of transmission services can be classified and regulated. The new service description provides for separate service categories for mobile backhaul transmission and common bandwidth capacities.

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3 The fixed line services are the unconditioned local loop service, line sharing service, wholesale line rental, local carriage service and fixed originating and terminating access services.
Digital radio access undertakings

3.26. On 18 March 2019 the ACCC released the final decision to accept three new access undertakings in relation to the commencement of Digital Radio services in Canberra, Darwin and Hobart.

3.27. 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.

3.28. Following the ACCC’s decision to accept the undertakings, the Australian Communications and Media Authority will consult with the licensees before declaring the start-up day for each area.

Fuel

Petrol monitoring report – December quarter 2018

3.29. The ACCC released its December quarter 2018 petrol monitoring report on 19 February 2019. The report found that:

- Petrol prices in Australia’s five largest cities (Sydney, Melbourne, Brisbane, Adelaide and Perth) fell sharply at the end of last year, hitting lows not seen since August 2017.
- Lower international crude oil and refined petrol prices were the main reason for the decrease in retail petrol prices.
- Average gross indicative retail differences (the difference between average retail prices and average wholesale prices) in the five largest cities increased to 13.9 cents per litre in the quarter.
- Petrol prices did not fall by as much in the smaller capital cities (Canberra, Hobart and Darwin) nor in many regional locations during the December quarter. However, prices continued to fall further in January 2019 in almost all regional locations monitored by the ACCC.

3.30. The ACCC will closely monitor prices in the smaller capital cities and regional locations and highlight where retail prices do not reflect the large fall in crude oil prices. Motorists are encouraged to use fuel price websites and apps to find better prices and times to purchase fuel.

3.31. The ACCC provides information and analysis to explain fuel markets and give consumers confidence that fuel markets are being monitored and prices are not influenced by anti-competitive behaviour. This is undertaken following a Ministerial Direction under Part VIIA of the CCA.

Rail

2018 Interstate Access Undertaking

3.32. Following on from the ACCC’s draft decision to not accept the Australian Rail Track Corporation’s (ARTC) proposed undertaking in December 2018, ARTC withdrew its proposed interstate access undertaking (IAU) on 25 January 2019.
3.33. On 28 February 2019 the ACCC agreed to extend the operation of the current 2008 IAU to provide coverage while we work with ARTC to develop a replacement undertaking that is consistent with the pricing principles, is transparent, supported by evidence and is submitted with sufficient time for consideration by stakeholders and the ACCC.

3.34. ARTC’s rail access undertakings are entirely voluntarily and the ACCC has become increasingly concerned with the appropriateness of this regulatory framework, in particular where ARTC submits applications shortly before the expiry of an existing undertaking.

2015 Annual Compliance Assessment of ARTC’s Hunter Valley Access Undertaking

3.35. The ACCC released its draft determination for the 2015 Annual Compliance of ARTC’s Hunter Valley Access Undertaking (HVAU) on 18 February 2019. A key aspect of the draft determination was the efficiency of ARTC’s operating expenditure. The ACCC engaged WIK-Consult and its rail-engineering specialists TÜV Rheinland to assist in assessing the efficiency of ARTC’s operating expenditure.

3.36. The Annual Compliance assessment process for the HVAU ensures 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.

3.37. Following consultation, the ACCC will be progressing to the final determination as soon as possible.

Wheat

Portland exemption assessment

3.38. On 7 February 2019 the ACCC released an issues paper seeking views from stakeholders on whether to exempt GrainCorp Operations Limited from certain parts of the Code at its port terminal facility at Portland. Submissions closed on 28 February 2019 and followed an earlier consultation on an exemption for Riordan Grain Services’ facility at Portland.

3.39. Port terminal service providers are required to comply with the mandatory Port Terminal (Bulk Wheat) Code of Conduct (the Code) on bulk grain port terminal access. The Code regulates the conduct of bulk wheat port terminal operators to ensure exporters of bulk wheat have fair and transparent access to port terminal services. The Code has two tiers of regulation whereby port operators may be exempted from some of the Code’s requirements.

3.40. In making the decision on whether to grant one or both of the exemptions, the ACCC will consider and balance a range of factors, including the effect on competition and investment, and consider the impact on stakeholders including exporters, port terminal service providers and growers.
4. Market studies and research

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

Electricity markets review

4.2. The Australian Government has directed the ACCC to monitor and report on the supply of retail and wholesale electricity in Queensland, NSW, Victoria, South Australia, Tasmania, and the ACT, until 2025. The ACCC will have a focus on monitoring prices, profits and margins, including the effect of policy changes in the National Electricity Market (NEM). The ACCC’s new role came following its recommendations made to the Government in its July 2018 report on restoring electricity affordability and Australia’s competitive advantage.

4.3. On 29 March 2019 the ACCC released its first report on its new electricity monitoring inquiry. The report provides an update on market and policy developments since the release of the ACCC’s Retail Electricity Pricing Inquiry and also sets out:

- the analytical framework for the ACCC’s ongoing role, including our expectations of market outcomes and participant behaviour
- the measures we will use to monitor and analyse prices, profits and behaviour
- how we will monitor the impact of policy developments, and
- the processes and timing for the collection of information, including what data will be required.

4.4. The electricity market is in a process of significant change and policy activity. Our role is important to determine whether the electricity market is working in the interests of electricity customers. We will also assess whether policy changes, including those flowing from the ACCC’s Retail Electricity Pricing Inquiry final report, are delivering benefits for customers. Our ultimate objective is to bring about a better functioning electricity market across all levels of the supply chain to enable the lowest possible electricity costs for Australian consumers.

4.5. The ACCC will continue to report at least every six months until 2025.

4.6. The ACCC has also made a number of submissions to various energy bodies, advocating on behalf of consumers on matters that we consider will bring down prices, including:

- to the Australian Energy Regulator on its Default Market Offer Position Paper and Draft Determination
- to the Energy Security Board on Recommendations 1 and 41 of the ACCC’s Retail Electricity Pricing Inquiry.

Monitoring of the removal of GST from menstrual products

4.7. On 28 November 2018 the Treasurer directed the ACCC to monitor the prices, costs and profits relating to the supply of menstrual products in the feminine hygiene products industry in Australia. The Government has previously agreed with the states
and territories that the Goods and Services Tax (GST) will be removed from menstrual products from 1 January 2019.

4.8. The ACCC provided the report to the Minister on 25 March 2019. Overall, the ACCC observed that nearly all businesses removed GST on menstrual products from 1 January 2019, with consumers generally seeing the expected 9.1 per cent reduction in retail prices.

Wine grape market study

4.9. The ACCC continued work on the wine grape industry market study this quarter. It is anticipated draft findings will now be released in May 2019 and a final report in August 2019.

Digital platforms inquiry

4.10. In December 2018 the ACCC provided to the Treasurer its preliminary report on the inquiry into the impact of digital search engines, social media platforms and digital content aggregation platforms on competition in the media and advertising markets. The Treasurer published the report on 10 December 2018.

4.11. The report identifies 11 preliminary recommendations and nine areas for further analysis to address these concerns. These preliminary recommendations and areas for further analysis are intended to be a basis for engagement and discussion about potential approaches to deal with the issues identified in the report.

4.12. Submissions to the preliminary report were due by 15 February 2019. The ACCC received over 120 submissions to the preliminary report in February and March and continues to receive submissions from interested parties.

4.13. On 22 February 2019 the ACCC held a meeting with a number of members of the Small Business and Franchising Consultative Committee. The purpose of the meeting was to explore key issues of interest in relation to small business identified in the ACCC’s Digital Platforms Inquiry.

4.14. On 1 March 2019 the ACCC held a privacy roundtable meeting in Sydney. The purpose of the roundtable was to provide key stakeholders and representatives with an interest in privacy and data protection issues with an opportunity to discuss their views regarding the data and privacy-related issues in the report. The meeting was co-chaired by ACCC Deputy Chair, Delia Rickard, and Australian Information Commissioner and Privacy Commissioner, Angelene Falk.

4.15. On 15 March 2019 the ACCC held a roundtable to explore future issues in journalism. The purpose was to provide relevant academics and media stakeholders with a further opportunity to discuss digital platforms' impact on journalism and how the concerns identified by the ACCC in the preliminary report may be addressed.

4.16. On 18 March 2019 the ACCC held a stakeholder forum with industry stakeholders. Over 80 stakeholders attended the forum. The purpose of this forum was to provide an opportunity to communicate with ACCC Commissioners about their key issues of interest and views on potential recommendations and areas for further analysis.

4.17. The ACCC has issued a number of notices to relevant stakeholders and will continue to consider the information obtained under these notices as well as the feedback obtained via the submissions and forums. The next quarter will involve further consultation with stakeholders and drafting of the final report, due to the Treasurer by 30 June 2019.
Customer loyalty schemes review

4.18. The ACCC has commenced a review of customer loyalty schemes, with a focus on the major customer loyalty schemes available in Australia. The objective of this review is for the ACCC to gain a better understanding of how customer loyalty schemes operate, the collection, use and disclosure of consumer data, and the terms and conditions of these schemes.

4.19. The ACCC will consider competition and consumer issues associated with participation in loyalty schemes, including:
- whether consumers are properly informed of the use and trading of their personal information
- whether consumers receive the benefits touted by many of these programs and the extent of restrictions associated with redeeming rewards
- the impact of consumer loyalty on competing firms, and in particular, new entrants, and
- new and emerging practices relating to customer loyalty schemes.

4.20. The ACCC expects to release a report in mid-2019, following targeted engagement with the operators of major customer loyalty schemes and the analysis of publicly available materials and materials obtained by the ACCC through other processes.
5. Advocacy, legislative and legal developments

Australian Consumer Law Review

5.1. During the March quarter the ACCC continued to work closely with the Commonwealth Treasury and state and territory ACL regulators to progress many of the recommendations from the ACL Review Final Report, including:

- participating in a number of Consumer Affairs Australia and New Zealand (CAANZ) sub-committees that advise CAANZ on how it should progress the remaining proposals and actions arising from the ACL Review Final Report
- attending the 28 March 2018 CAANZ meeting, in which a number of projects progressing the ACL review recommendations were discussed
- leading a public consultation on CAANZ guidance on the meaning of ‘unsafe’ and ‘reasonable durability’ within the consumer guarantees regime in the ACL, and
- providing input into the terms of reference for the Unfair Trading Practices research project being led by NSW, which opened for tender on 13 March 2019. The tender page is available here.

Product safety advocacy

ACL Review

5.2. On 28 March 2019 the ACCC participated in a CAANZ meeting to discuss and progress product safety-related reform proposals arising from the ACL Review. This included discussions on the need for clearer guidance on mandatory reporting obligations, expected to be published by the ACCC in mid-2019. The meeting also discussed the ACL Review proposal to introduce a general safety provision (GSP) and the need for a national product safety incidents database.

5.3. CAANZ members agreed to publish the 2019 ACL: A Year in Review report, an annual report updating on the work of the Commonwealth and the states and territories in implementing, strengthening and improving the ACL, including the feature article on the Takara airbag recall and case studies on button batteries and toppling furniture.

Alkyl nitrites

5.4. On 31 January 2019 the Therapeutic Goods Administration (TGA) held public meetings to discuss alkyl nitrites, which the ACCC attended as an observer.

5.5. Alkyl nitrite-containing products, colloquially known as ‘poppers’, are commonly available for sale in adult shops and online, and are used for therapeutic and recreational purposes. The TGA is considering possible regulatory options for access and safety controls for these products, including potentially under the ACL.

5.6. While the ACCC supports the TGA’s consideration of the most appropriate safety regulation of alkyl nitrites, it is of the view that these products should not be regulated under the ACL because the TGA already has the necessary expertise and legislation to administer any potential regulation of alkyl nitrite-containing products.
Agriculture and veterinary chemicals

5.7. The Agricultural and Veterinary Chemicals Legislation Amendment (Streamlining Regulation) Bill 2018 was referred to the Senate Rural and Regional Affairs and Transport Legislation Committee, which endorsed the Bill on 11 February 2019.

5.8. Among other things, the Bill seeks to require that suppliers give the Australian Pesticides and Veterinary Medicines Authority notice when conducting a voluntary recall of an agricultural or veterinary chemical.

5.9. The ACCC previously made a submission to the Department of Agriculture and Water Resources in response to the draft exposure of the Bill, which noted that suppliers must already notify the ACCC of a voluntary recall for consumer goods. It also noted that the Bill may require suppliers to duplicate their notification requirements if an agricultural or veterinary product is considered a consumer good.

5.10. On 20 February 2019 the ACCC made a separate submission to the Department of Agriculture and Water Resources on the proposals contained in the Exposure Draft of the Agricultural and Veterinary Chemicals Legislation Amendment (Timeshift Applications and Other Measures) Regulations 2018 and the consultation paper on ‘Proposed changes to timeshift applications and other measures, and to support operational efficiency’.

5.11. The submission noted the ACCC’s concerns regarding the proposed removal of certain products from regulation under the Agricultural and Veterinary Chemicals Code Act 1994 and the Australian Pesticides and Veterinary Medicines Authority’s jurisdiction, on the grounds that deregulating these products may create a regulatory gap and reduce the regulatory oversight of these products.

Review of tobacco control legislation

5.12. The Department of Health is conducting a review of tobacco control legislation prior to the sun-setting of plain packaging, advertising and trade mark controls for tobacco.

5.13. The ACCC is responsible for administering the Competition and Consumer (Tobacco) Information Standard, which sets requirements for information and labelling of tobacco products. The ACCC is also responsible for a range of permanent bans and mandatory standards concerning some forms of tobacco and tobacco-related products.

5.14. The ACCC has made a submission to the Department of Health, which affirms that policy and administrative responsibility for all tobacco control should instead sit with the Department of Health.

Review of the Asbestos Eradication and Safety Agency

5.15. On 20 February 2019 the ACCC made a submission to the Department of Jobs and Small Business on the review of the role and functions of the Asbestos Safety and Eradication Agency (ASEA).

5.16. The ACCC submission details the current system for managing asbestos issues, including the Rapid Response Protocol, as being of significant value in coordinating action, responding to asbestos issues, and in facilitating access to information and technical expertise.

5.17. The submission also requests that ASEA’s efforts continue and that the review keeps in mind the multifaceted nature of the issues associated with asbestos control, the
need to balance and prioritise action, and the need to continue to consider the problem of asbestos in consumer goods.

Product safety priorities

5.18. On 14 March 2019 the ACCC announced the 2019 Product Safety Priorities at the National Consumer Congress. The priorities were also endorsed by state and territory ACL regulators as national product safety priorities. Priorities for 2019 include the Takata airbag recall, quad bikes, button batteries and the General Safety Provision. The ACCC will work with ACL regulators to implement the priorities throughout the year.

5.19. Also at the National Consumer Congress, the ACCC announced the outcomes of an economic analysis to quantify the economic cost of harm from unsafe products. The ACCC has estimated that:

- the cost of injury and death from unsafe consumer products in Australia is at least, and likely much more than, $5 billion each year, and
- each day there are around two deaths and 145 injuries from unsafe consumer products.

Unit Pricing Code of Conduct Review

5.20. On 28 February 2019 the ACCC made its submission to the Government Review of the Retail Grocery Industry (Unit Pricing) Code of Conduct. The Code is due to lapse on 1 October 2019. The ACCC’s submission supported remaking the Code as it increases price transparency by allowing consumers to compare the costs of similar products of different sizes.

5.21. The submission also contained recommendations for further improving the Code’s effectiveness. This included the Code having more prescriptive requirements to improve the legibility of unit prices, ensuring more consistent display requirements for retailers which have an online presence, and to consider extending the Code to retailers which are currently excluded.

Proposed Motor Vehicle Code

5.22. In March 2019 the ACCC made a submission on the Treasury’s consultation paper for a proposed mandatory scheme for the sharing of motor vehicle service and repair information. The submission stated that the ACCC supported the proposed motor vehicle code of conduct, provided it included clearly defined obligations for market participants upon commencement and allowed the courts to impose financial penalties for any contravention.

5.23. A mandatory scheme for car manufacturers to share technical information with independent repairers was a recommendation of the ACCC’s final report for its market study into the new car retailing industry, released in December 2017. That report can be found here.

New Zealand Ministry of Business, Innovation and Employment discussion paper into unfair commercial practices

5.24. On 12 March 2019 the ACCC made a submission on the New Zealand Ministry of Business, Innovation and Employment on its discussion paper into unfair commercial practices. The submission outlined the ACCC’s experience enforcing the
unconscionable conduct and business to business unfair contract term provisions of the ACL, and the potential adoption of unfair trading practices in Australia.

5.25. The Ministry of Business, Innovation and Employment intend to report to the New Zealand Cabinet with any proposals for legislative change by 31 July 2019.

Repeal of section 51(3) of the CCA


5.27. The Bill repealed section 51(3) of the CCA, which exempted licensing or assignment of intellectual property rights from certain competition provisions in Part IV of the CCA. These changes will come into effect on 12 September 2019.

5.28. The ACCC is currently drafting guidelines on the application of Part IV of the CCA to intellectual property. These guidelines will outline how the ACCC proposes to investigate and enforce Part IV in relation to conduct involving intellectual property rights. They will also provide hypothetical examples to illustrate conduct that the ACCC considers is likely or unlikely to contravene Part IV.

5.29. The ACCC will release draft guidelines for public comment in mid-2019, and will publish a final version before 13 September 2019

Franchising Code of Conduct and Oil Code of Conduct review

5.30. On 14 March the Parliamentary Joint Committee on Corporations and Financial Services released the Fairness in Franchising report following its inquiry into the effectiveness of the Franchising and Oil Codes.

5.31. A number of recommendations in the report align with the recommendations the ACCC made in our submission to the inquiry, for example, our call for civil penalties to be applied for all breaches of the Franchising Code, which the Parliamentary Committee has recommended an inter-agency taskforce look at.

Food and Grocery Code of Conduct review


Review of National Arrangements for the Protection and Management of Identity Information

5.33. On 21 February the ACCC met with Mr Roger Wilkins AO and the Home Affairs team working on the Review of National Arrangements for the Protection and Management of Identity Information. The ACCC provided additional feedback to the review which included analysis of Scamwatch reports and the ACCC’s role in relation to scams and recommendations for actions which may mitigate the risks of the loss and misuse of personal identity information.

Electronic conveyancing

5.34. The ACCC continues to engage with industry and regulators, including the Australian Registrars National Electronic Conveyancing Council (ARNECC) and the NSW Office of the Registrar General (ORG), on the regulatory settings for electronic conveyancing of land transactions.
5.35. On 26 March 2019 we made a submission to the recent ARNECC issues paper on the electronic conveyancing Intergovernmental Agreement. We have also been engaging with the ORG and NSW Minister in relation to interoperability mechanisms for the electronic lodgement network operator market, including participating in forums on this topic conducted by the NSW Minister.

5.36. While the ACCC does not have a direct regulatory role in electronic conveyancing, the ACCC is providing its expertise to assist industry and regulators in developing rules and regulation that leads to appropriate competition outcomes in this industry.
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 relationship and capacity building 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 March quarter the ACCC engaged with counterparts on a range of product safety, consumer, competition and regulatory matters including:

- receiving and responding to requests for information from international agencies, including Colombia, Israel, Kenya, Peru, the UK and the USA
- requesting information from international agencies including Denmark, Sweden and the UK
- engaging with international counterparts on developing best practices across a variety of areas including consumer protection, competition enforcement, economic regulation and investigative practices
- continuing a one year secondment to the UK Office of Gas and Electricity Markets
- continuing a 13 month secondment to the OECD working on a product recalls effectiveness project
- working with the OECD to prepare a draft summary report for the 2018 Global Awareness Campaign on the safety of products sold online
- engaging with the OECD and the European Commission to provide input on the 2019 Global Awareness Campaign proposal on product recalls
- participating in regular bilateral product safety teleconferences with New Zealand Trading Standards and Commerce Commission officials
- commencing a twelve month secondment to the New Zealand Commerce Commission (NZCC)
- participating in regular bilateral enforcement teleconferences with NZCC officials, and
- participating in regular bilateral product safety teleconferences with New Zealand Trading Standards and Commerce Commission officials.
Participation in international forums

6.5. Participation in international forums supports the ACCC’s capability by strengthening cooperative relationships and informing staff on international practices to assist them in their daily 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 March quarter the ACCC attended several important international events including:

- APEC sponsored event on Economic Analysis in Horizontal and Non-Horizontal Mergers in Santiago, Chile
- Global Competition Review Live Singapore 8th Annual Asia Pacific Law Leaders Forum in Singapore
- International Competition Network Advocacy Workshop in Kiev, Ukraine
- World Bank Ukrainian National Competition Policy event in Kiev, Ukraine
- American Bar Association Spring Meeting, and

6.7. In the March quarter the ACCC delivered a number of capacity building activities under the ASEAN-Australia New Zealand Free Trade Area Competition Law Implementation Program (CLIP), including:

- Placing an ACCC expert at Thailand’s Office of Trade Competition Commission (OTCC) for six weeks. The key focus was assisting new OTCC staff build their understanding of the basics of competition law, including market definition, market power, horizontal and vertical agreements, digital evidence and penalties/remedies. The ACCC expert also helped deliver a workshop on cartel investigations.

- A workshop in Thailand in February on Cartel Investigations, focusing on how to detect cartel behaviours, the process of conducting and managing cartel investigations and reporting on/concluding an investigation. The workshop was delivered in partnership with the Japan Fair Trading Commission.

- A workshop in Myanmar in February on drafting guidelines and regulations, delivered to staff from Myanmar, Cambodia, Laos and Vietnam. The key focus was for participants to consider their approaches, experiences and challenges in drafting regulations and guidelines associated with the implementation of their own national competition laws, in the context of their respective stages of development.

- Placing an ACCC expert at Myanmar’s Ministry of Commerce Competition Division for two weeks, the first part of a two part placement, with another four week placement by the same expert to commence in April. The ACCC expert provided support with the development of investigation review process and internal procedure; and consideration of capacity building activities for newly appointed Commissioners of the Myanmar Competition Commission.

- The launch of an eLearning module on investigation planning for use by competition officials within ASEAN member states.
Appendices

A Reports and enquiries

Table 1: ACCC reports about trader conduct, investigations and litigation funnel

<table>
<thead>
<tr>
<th>Category</th>
<th>March 2019 quarter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Infocentre contacts received (phone, email and letters)</td>
<td>81 984</td>
</tr>
<tr>
<td>Contacts recorded in the database</td>
<td>76 476</td>
</tr>
<tr>
<td>Under assessments commenced</td>
<td>76</td>
</tr>
<tr>
<td>Initial investigations commenced</td>
<td>57</td>
</tr>
<tr>
<td>In-depth investigations commenced</td>
<td>16</td>
</tr>
<tr>
<td>First instance litigation commenced</td>
<td>1</td>
</tr>
</tbody>
</table>

Table 2: Geographic location of enquirers and complainants recorded in the national database

<table>
<thead>
<tr>
<th>State</th>
<th>ACL</th>
<th>Scams</th>
<th>(ACL + Scams)</th>
<th>Anti-competitive Practices</th>
<th>Industry Codes</th>
<th>Other</th>
<th>Total*</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>5 832</td>
<td>13 680</td>
<td>19 512</td>
<td>76</td>
<td>32</td>
<td>1 438</td>
<td>20 934</td>
</tr>
<tr>
<td>QLD</td>
<td>4 556</td>
<td>10 081</td>
<td>14 637</td>
<td>53</td>
<td>35</td>
<td>1 057</td>
<td>15 682</td>
</tr>
<tr>
<td>VIC</td>
<td>5 297</td>
<td>10 734</td>
<td>16 031</td>
<td>64</td>
<td>31</td>
<td>1 211</td>
<td>17 239</td>
</tr>
<tr>
<td>WA</td>
<td>2 123</td>
<td>5 321</td>
<td>7 444</td>
<td>22</td>
<td>15</td>
<td>490</td>
<td>7 928</td>
</tr>
<tr>
<td>SA</td>
<td>1 477</td>
<td>3 837</td>
<td>5 314</td>
<td>13</td>
<td>4</td>
<td>323</td>
<td>5 628</td>
</tr>
<tr>
<td>ACT</td>
<td>575</td>
<td>1 451</td>
<td>2 026</td>
<td>6</td>
<td>1</td>
<td>136</td>
<td>2 164</td>
</tr>
<tr>
<td>TAS</td>
<td>452</td>
<td>974</td>
<td>1 426</td>
<td>5</td>
<td>1</td>
<td>104</td>
<td>1 528</td>
</tr>
<tr>
<td>NT</td>
<td>165</td>
<td>521</td>
<td>686</td>
<td>3</td>
<td>1</td>
<td>49</td>
<td>731</td>
</tr>
<tr>
<td>Overseas</td>
<td>188</td>
<td>1 562</td>
<td>1 750</td>
<td>1</td>
<td>0</td>
<td>81</td>
<td>1 819</td>
</tr>
<tr>
<td>Not specified</td>
<td>150</td>
<td>2 531</td>
<td>2 681</td>
<td>8</td>
<td>3</td>
<td>169</td>
<td>2 824</td>
</tr>
</tbody>
</table>

Note: The 'Total' column reflects the number of contacts made. A single contact may involve multiple issues.
### Table 3: Reports about trader conduct and enquiries – top ten by industry

<table>
<thead>
<tr>
<th>Industry</th>
<th>Contacts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electrical, electronic &amp; gas appliance retailing</td>
<td>2 104</td>
</tr>
<tr>
<td>Car retailing</td>
<td>2 020</td>
</tr>
<tr>
<td>Non-store retailing</td>
<td>1 968</td>
</tr>
<tr>
<td>Other personal services</td>
<td>1 862</td>
</tr>
<tr>
<td>Other administrative services</td>
<td>1 010</td>
</tr>
<tr>
<td>Travel agency and tour arrangement services</td>
<td>667</td>
</tr>
<tr>
<td>Furniture retailing</td>
<td>639</td>
</tr>
<tr>
<td>Clothing retailers</td>
<td>566</td>
</tr>
<tr>
<td>Air and space transport</td>
<td>539</td>
</tr>
<tr>
<td>Other electrical and electronic goods retailing</td>
<td>450</td>
</tr>
</tbody>
</table>

### Table 4: Top scam categories reported to the ACCC

<table>
<thead>
<tr>
<th>Scam category</th>
<th>Contacts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attempts to gain your personal information</td>
<td>14 324</td>
</tr>
<tr>
<td>Threats and extortion</td>
<td>9 073</td>
</tr>
<tr>
<td>Buying or selling</td>
<td>8 190</td>
</tr>
<tr>
<td>Unexpected winnings</td>
<td>2 421</td>
</tr>
<tr>
<td>Unexpected money</td>
<td>1 572</td>
</tr>
<tr>
<td>Investment scams</td>
<td>1 199</td>
</tr>
<tr>
<td>Dating and romance</td>
<td>872</td>
</tr>
<tr>
<td>Jobs and employment</td>
<td>292</td>
</tr>
</tbody>
</table>
## B  Enforcement outcomes and matters in court as at 31 March 2019

### Proceedings commenced

<table>
<thead>
<tr>
<th>Competition</th>
<th>Consumer protection</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nil commenced</td>
<td>Misleading or deceptive conduct</td>
</tr>
<tr>
<td>STA Travel Pty Ltd</td>
<td>STA Travel Pty Ltd</td>
</tr>
<tr>
<td>28 March 2019</td>
<td></td>
</tr>
<tr>
<td>Federal Court Melbourne</td>
<td></td>
</tr>
</tbody>
</table>

### Proceedings ongoing

<table>
<thead>
<tr>
<th>Competition</th>
<th>Consumer protection</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cartel</td>
<td>Australia and New Zealand Banking Group Ltd (ANZ) &amp; Ors</td>
</tr>
<tr>
<td>5 June 2018</td>
<td></td>
</tr>
<tr>
<td>Downing Centre Local Court Sydney</td>
<td></td>
</tr>
<tr>
<td>Cartel</td>
<td>Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) &amp; Anor</td>
</tr>
<tr>
<td>16 August 2018</td>
<td></td>
</tr>
<tr>
<td>ACT Magistrates Court</td>
<td></td>
</tr>
<tr>
<td>Cartel</td>
<td>Citigroup Global Markets Australia Pty Limited &amp; Ors</td>
</tr>
<tr>
<td>5 June 2018</td>
<td></td>
</tr>
<tr>
<td>Downing Centre Local Court Sydney</td>
<td></td>
</tr>
<tr>
<td>Cartel</td>
<td>Cascade Coal Pty Ltd &amp; Ors</td>
</tr>
<tr>
<td>25 May 2015</td>
<td></td>
</tr>
<tr>
<td>Federal Court Sydney</td>
<td></td>
</tr>
<tr>
<td>Cartel</td>
<td>Country Care Pty Ltd &amp; Ors</td>
</tr>
<tr>
<td>14 February 2018</td>
<td></td>
</tr>
<tr>
<td>Magistrate’s Court of Victoria</td>
<td></td>
</tr>
<tr>
<td>Cartel</td>
<td>Deutsche Bank Aktiengesellschaft (Deutsche Bank) &amp; Ors</td>
</tr>
<tr>
<td>5 June 2018</td>
<td></td>
</tr>
<tr>
<td>Downing Centre Local Court Sydney</td>
<td></td>
</tr>
<tr>
<td>Category</td>
<td>Company/Complainant</td>
</tr>
<tr>
<td>--------------------------------</td>
<td>----------------------------------------------------------</td>
</tr>
<tr>
<td>Cartel</td>
<td>Kawasaki Kisen Kaisha Ltd</td>
</tr>
<tr>
<td>Anti-competitive conduct</td>
<td>NSW Ports Operations Hold Co Pty Ltd &amp; Ors</td>
</tr>
<tr>
<td>Anti-competitive conduct</td>
<td>Pacific National Pty Limited &amp; Ors</td>
</tr>
<tr>
<td>Cartel</td>
<td>P.T. Garuda Indonesia Ltd</td>
</tr>
<tr>
<td>Cartel</td>
<td>PZ Cussons Australia Pty Ltd (appeal)</td>
</tr>
<tr>
<td>Health</td>
<td>Ramsay Health Care Australia Pty Limited</td>
</tr>
<tr>
<td>Consumer protection</td>
<td>Ashley &amp; Martin Pty Ltd</td>
</tr>
<tr>
<td>Unconscionable conduct</td>
<td>Australian Institute of Professional Education Pty Ltd</td>
</tr>
<tr>
<td>vulnerable consumers</td>
<td></td>
</tr>
<tr>
<td>Indigenous Australians</td>
<td>Birubi Art Pty Ltd</td>
</tr>
<tr>
<td>Unconscionable conduct</td>
<td>Cornerstone Investment Australia Pty Ltd (t/a Empower</td>
</tr>
<tr>
<td>vulnerable consumers</td>
<td>Institute)</td>
</tr>
<tr>
<td>Case Description</td>
<td>Plaintiff(s)</td>
</tr>
<tr>
<td>-------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Excess surcharging</td>
<td>CLA Trading Pty Ltd (t/a Europcar)</td>
</tr>
<tr>
<td>False or misleading representations – small business</td>
<td>Employsure Pty Ltd</td>
</tr>
<tr>
<td>Industry Codes Franchising</td>
<td>Geowash Pty Ltd</td>
</tr>
<tr>
<td>False or misleading representation - health</td>
<td>GlaxoSmithKline Consumer Healthcare Australia Pty Ltd &amp; Novartis Consumer Health Australasia Pty Ltd</td>
</tr>
<tr>
<td>Consumer guarantees</td>
<td>Jayco Corporation Pty Ltd</td>
</tr>
<tr>
<td>False or misleading representations</td>
<td>Jetstar Airways Pty Ltd</td>
</tr>
<tr>
<td>Truth in advertising</td>
<td>Kimberly-Clark Australia Pty Ltd</td>
</tr>
<tr>
<td>Consumer guarantees</td>
<td>LG Electronics Australia Pty Ltd (appeal)</td>
</tr>
<tr>
<td>Small business – unfair contract terms</td>
<td>Mitolo Group Pty Ltd &amp; Anor</td>
</tr>
<tr>
<td>Category</td>
<td>Details</td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td>-------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Vulnerable consumers - health</td>
<td><strong>NIB Health Funds Limited</strong></td>
</tr>
<tr>
<td></td>
<td>commenced 30 May 2017</td>
</tr>
<tr>
<td></td>
<td>jurisdiction Federal Court Melbourne</td>
</tr>
<tr>
<td>Unconscionable conduct - vulnerable consumers</td>
<td><strong>Phoenix Institute of Australia Pty Ltd &amp; Anor</strong></td>
</tr>
<tr>
<td></td>
<td>commenced 24 November 2015</td>
</tr>
<tr>
<td></td>
<td>jurisdiction Federal Court Sydney</td>
</tr>
<tr>
<td>Unconscionable conduct – vulnerable consumers</td>
<td><strong>Productivity Partners Pty Ltd (t/a Captain Cook College)</strong></td>
</tr>
<tr>
<td></td>
<td>commenced 9 November 2018</td>
</tr>
<tr>
<td></td>
<td>jurisdiction Federal Court Sydney</td>
</tr>
<tr>
<td>Misleading and deceptive conduct</td>
<td><strong>Service Seeking Pty Ltd</strong></td>
</tr>
<tr>
<td></td>
<td>commenced 14 December 2018</td>
</tr>
<tr>
<td></td>
<td>jurisdiction Federal Court Perth</td>
</tr>
<tr>
<td>Misleading and deceptive conduct</td>
<td><strong>TPG Internet Pty Ltd</strong></td>
</tr>
<tr>
<td></td>
<td>commenced 4 December 2018</td>
</tr>
<tr>
<td></td>
<td>jurisdiction Federal Court Melbourne</td>
</tr>
<tr>
<td>Misleading or deceptive conduct</td>
<td><strong>Trivago N.V.</strong></td>
</tr>
<tr>
<td></td>
<td>commenced 23 August 2018</td>
</tr>
<tr>
<td></td>
<td>jurisdiction Federal Court Melbourne</td>
</tr>
<tr>
<td>Unconscionable conduct - vulnerable consumers</td>
<td><strong>Unique International College Pty Ltd (appeal)</strong></td>
</tr>
<tr>
<td></td>
<td>commenced 13 December 2017</td>
</tr>
<tr>
<td></td>
<td>jurisdiction Federal Court Sydney</td>
</tr>
<tr>
<td>Consumer - Online</td>
<td><strong>Viagogo</strong></td>
</tr>
<tr>
<td></td>
<td>commenced 28 August 2017</td>
</tr>
<tr>
<td></td>
<td>jurisdiction Federal Court Sydney</td>
</tr>
<tr>
<td>False or misleading representations – car</td>
<td><strong>Volkswagen Aktiengesellschaft and Volkswagen Group Australia Pty Ltd</strong></td>
</tr>
<tr>
<td>retailing</td>
<td>commenced 31 August 2016</td>
</tr>
<tr>
<td></td>
<td>jurisdiction Federal Court Sydney</td>
</tr>
<tr>
<td>False or misleading representations</td>
<td><strong>Woolworths Limited</strong></td>
</tr>
<tr>
<td></td>
<td>commenced 2 March 2018</td>
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</table>
### Proceedings concluded

#### Competition

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Court Melbourne</td>
<td>Federal Court Melbourne</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>False or misleading representations</th>
<th><strong>Cryosite Limited</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>commenced</td>
<td>16 July 2018</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Federal Court Melbourne</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>False or misleading representations</th>
<th><strong>Australian Private Networks Pty Ltd (t/a Activ8me)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>commenced</td>
<td>16 July 2018</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Federal Court Melbourne</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Energy - Misleading or deceptive conduct</th>
<th><strong>Amaysim Energy Pty Ltd (t/a Click Energy)</strong></th>
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<tbody>
<tr>
<td>commenced</td>
<td>9 July 2018</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Federal Court Melbourne</td>
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</table>

<table>
<thead>
<tr>
<th>False or misleading representations</th>
<th><strong>Optus Mobile Pty Limited</strong></th>
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<tr>
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<td>17 October 2017</td>
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<table>
<thead>
<tr>
<th>Industry Codes Franchising</th>
<th><strong>Ultra Tune Australia Pty Ltd</strong></th>
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<tbody>
<tr>
<td>commenced</td>
<td>19 May 2017</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Federal Court Sydney</td>
</tr>
</tbody>
</table>

#### Section 87B undertakings

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Court Melbourne</td>
<td>Federal Court Sydney</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>False and misleading representations</th>
<th><strong>Baby Bunting Pty Ltd</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>commenced</td>
<td>27 February 2019</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>False and misleading representations</th>
<th><strong>Target Australia Pty Ltd</strong></th>
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<tr>
<td>commenced</td>
<td>27 February 2019</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Consumer guarantees</th>
<th><strong>Pandora Jewellery Pty Ltd</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>commenced</td>
<td>22 March 2019</td>
</tr>
</tbody>
</table>
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 March 2019 quarter the ACCC issued the following notices:

<table>
<thead>
<tr>
<th>Section of the CCA</th>
<th>Number of notices</th>
<th>Number of variations</th>
</tr>
</thead>
<tbody>
<tr>
<td>51ADD - information or documents kept, generated or published under an applicable industry code</td>
<td>9</td>
<td>2</td>
</tr>
<tr>
<td>60H - information or documents relating to prices or setting of prices before or after the carbon tax repeal or the carbon tax repeal transition period</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>95ZK - information or documents relevant to a price notification, inquiry or monitoring under Part VIIA of the CCA</td>
<td>95</td>
<td>29</td>
</tr>
<tr>
<td>133D - information, documents or evidence regarding consumer goods or product-related services that will or may cause injury</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>155(1)(a) - provision of information</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>155(1)(b) - provision of documents</td>
<td>16</td>
<td>6</td>
</tr>
<tr>
<td>155(1)(a) and (b) - provision of information and documents</td>
<td>49</td>
<td>95</td>
</tr>
<tr>
<td>155(1)(c) - giving of sworn evidence at a formal examination</td>
<td>19</td>
<td>0</td>
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<tr>
<td>155AAA - notices regarding the ACCC sharing information with other regulators</td>
<td>3</td>
<td>0</td>
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</tbody>
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D Major speeches

During the March 2019 quarter the ACCC took part in numerous speaking events and panel discussions, including:

**Announcement of Product Safety Priorities**
Chair Rod Sims
National Consumer Congress
14 March 2019

**Future of gas market regulation**
Chair Rod Sims
7th Australian Domestic Gas Outlook Conference
5 March 2019

**The future of global agriculture**
Commissioner Mick Keogh
International Farm Management Association Congress
4 March 2019

**Examining the impact of digital platforms on competition in media and advertising markets**
Chair Rod Sims
ThinkTV & ANAA Top 50 CMO Event
27 February 2019

**2019 Compliance and Enforcement Policy**
Chair Rod Sims
Committee for Economic Development Australia (CEDA)
26 February 2019

**Insights and impacts of the ACCC Digital Platforms Inquiry**
Chair Rod Sims
IIC Australian Chapter Half Day Seminar
11 February 2019