



Australian
Competition &
Consumer
Commission

ACCCount

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

1 April to 30 June 2016

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Overview

1. The Australian Competition and Consumer Commission (ACCC) works to enhance the welfare of Australians by promoting competition, fair trading and regulating national infrastructure. This was achieved by engaging in a broad range of activities across the economy in the April to June 2016 quarter, including:
 - enforcing competition laws in relation to cartel conduct, anti-competitive agreements, misuse of market power, and mergers which 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.
2. On 28 April 2016, the Federal Court ordered by consent that Colgate-Palmolive Pty Ltd pay total penalties of \$18 million for entering understandings with PZ Cussons Australia Pty Ltd and Unilever Australia Ltd which limited the supply, and controlled the price, of laundry detergents. In June 2016, the Federal Court also ordered Woolworths Ltd to pay penalties totalling \$9 million for its involvement in the conduct.
3. On 29 April 2016, the Federal Court ordered Mr Zelko Lendich, a former director of Australian Egg Corporation Ltd (AECL) and the former managing director of Farm Pride Foods Ltd, to pay a penalty of \$120 000 for an attempt to induce a cartel arrangement between competing egg producers.
4. On 5 May 2016, the ACCC announced its decision not to oppose Anheuser-Busch InBev SA/NV's (AB InBev) acquisition of SABMiller plc. The ACCC concluded that the proposed acquisition would not significantly change the current market structure.
5. The ACCC received payment for seven infringement notices totalling \$127 800 in the June quarter, including five infringement notices issued to Momentum Energy Pty Ltd. The ACCC had reasonable grounds to believe that Momentum had contravened the ACL by engaging in conduct liable to mislead the public as to the nature, manufacturing process and/or characteristics of its electricity products.
6. A mandatory safety standard to ensure the safety of self-balancing scooters (or 'hoverboards') was introduced on 14 July 2016 by the then Minister for Small Business and Assistant Treasurer, the Hon. Kelly O'Dwyer MP, following the recommendations of the ACCC.
7. On 11 April 2016, the ACCC issued a media release that raised concerns around the competition implications of Telstra Corporation Limited's (Telstra) involvement in the rollout of the National Broadband Network (NBN), including the "HFC Delivery Agreement" announced in April 2016. The ACCC has subsequently had extensive and productive discussions with NBN Co Limited (NBN Co) and Telstra.
8. The ACCC's Agriculture Unit engaged in a range of activities in the June 2016 quarter to enhance the ACCC's engagement with agriculture markets. This included continuing a market study examining the cattle and beef industry, hosting regional workshops in Shepparton, Toowoomba and Bunbury focusing on issues in the horticulture and viticulture industries, and visiting farms, processing facilities, saleyards and other meetings in all states and territories.

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 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. Competition priorities continue to include cartel conduct, anti-competitive agreements and practices, and the misuse of market power. In 2016, competition priorities include:
 - competition issues in the agriculture sector
 - competition issues in the health and medical sectors, including issues arising from the ACCC's 2015 report to the Senate on the private health insurance industry, and
 - cartel conduct impacting on government procurement.
- 1.5. Outcomes are achieved through a variety of means. These include litigated proceedings, accepting court-enforceable undertakings¹, and completing market studies.

Proceedings

- 1.6. In the June 2016 quarter the ACCC was involved in 14 proceedings relating to competition enforcement in a range of industries including pharmaceuticals, construction, travel, and financial services. A complete list of these proceedings is included in the Appendix.
- 1.7. Of the 14 competition enforcement proceedings:
 - 12 cases were carried over from the previous quarter (this includes two air cargo matters that were appealed in the quarter)
 - 1 new case was commenced in the quarter
 - 3 appeals were commenced in the quarter
 - 1 case was finalised, and
 - 13 cases remained ongoing at the end of the quarter.

¹ Court-enforceable undertakings accepted under section 87B of the CCA.

Proceedings commenced

OAKMOORE PTY LTD & ORS

In June 2016 the ACCC instituted proceedings in the Federal Court against four companies and three individuals for alleged cartel conduct in relation to the supply of polycarbonate roof sheeting (polycarb) to retailers in Australia. Polycarb is commonly used in commercial and home building projects such as pergolas and verandas.

Proceedings have been instituted against:

- Oakmoore Pty Ltd trading as EGR
- Rod Horwill, a director of EGR
- Palram Australia Pty Ltd and its Israeli parent company, Palram Industries (1990) Ltd
- Talila Horesh, director of Palram Australia and a senior manager of Palram Industries
- Ampelite Australia Pty Ltd, and
- Hendrikus Verhagen, a director of Ampelite.

The ACCC alleges that over a five year period from 2008 until 2013, these companies made and gave effect to a number of cartel arrangements which had the purpose of preventing or restricting the supply of polycarbonate products including roofing to retailers. The ACCC also alleges that these agreements had the purpose and likely effect of substantially lessening competition.

The ACCC is seeking declarations, pecuniary penalties against the companies and individuals, orders disqualifying the individuals from managing corporations, orders for compliance programs, and costs.

Proceedings ongoing

COLGATE-PALMOLIVE PTY LTD & ORS

In December 2013, the ACCC instituted proceedings in the Federal Court against Colgate-Palmolive Pty Ltd (Colgate), PZ Cussons Australia Pty Ltd (Cussons), Unilever Australia Ltd (Unilever), Woolworths Ltd (Woolworths) and Mr Paul Ansell, a former Colgate sales director, alleging that Colgate, Cussons and Unilever made and gave effect to cartel and other anti-competitive arrangements in respect of laundry detergent products. The ACCC alleged that Mr Ansell and Woolworths were knowingly concerned in the conduct.

In April 2016, the Federal Court ordered, by consent, Colgate pay total penalties of \$18 million for its role in the conduct. Colgate admitted to entering understandings which limited the supply, and controlled the price, of laundry detergents. Specifically, Colgate admitted that it made and gave effect to, an understanding with Unilever and Cussons whereby they agree to cease supplying standard concentrate laundry detergents in early 2009 and supply only ultra concentrates. Colgate also admitted that it and Unilever shared sensitive market information, including information about when they would increase the price of their laundry detergents through telephone contact between Mr Ansell and senior

Unilever executives. The Court also ordered, by consent, that Colgate update its trade practices compliance program and maintain that program for three years, and pay a contribution of \$450 000 towards the ACCC's costs.

The ACCC also, by consent, resolved its proceedings against Mr Ansell, who admitted to being knowingly concerned in the same conduct. By consent, the Court also ordered Mr Ansell be disqualified from managing corporations for 7 years and pay a contribution of \$75 000 towards the ACCC's costs.

In June 2016, the Federal Court ordered, by consent, Woolworths to pay penalties totalling \$9 million for its role in the conduct. Woolworths admitted to being knowingly concerned in the making of, and giving effect to, an understanding between Colgate, Cussons and Unilever that they would each cease supplying standard concentrate laundry detergents to Woolworths in early 2009 and supply only ultra concentrates to Woolworths from that time. The Court also made orders by consent that Woolworths update its trade practices compliance program and pay a contribution of \$250 000 towards the ACCC's costs in the proceedings.

The proceedings against Cussons continue.

Proceedings appealed

CEMENT AUSTRALIA PTY LTD (Cement Australia)

In June 2016, the ACCC filed a Notice of Appeal from the Federal Court's penalty decision against Cement Australia and related companies.

In a judgment handed down on 10 September 2013 by Justice Greenwood, the Federal Court found Cement Australia had engaged in numerous contraventions of section 45 of the Act, which prohibits entering into, and giving effect to, contracts and arrangements that have the purpose or effect of substantially lessening competition.

On 29 April 2016, the Federal Court delivered its penalty judgment in the matter (available to the parties only, due to confidentiality orders). On 16 May 2016, the Court published orders that imposed penalties totalling \$18.6 million on Cement Australia. The Court has since set aside, by consent, one order imposing a penalty of \$1.5 million, thereby reducing the total penalties imposed to \$17.1 million.

The ACCC had submitted to the Court that penalties of over \$90 million were appropriate for the purpose of specific and general deterrence, taking into account the serious nature and extent of the conduct, the apparent benefit derived by Cement Australia from the contraventions, and the market harm caused.

AIR CARGO

In April 2016, Air New Zealand Ltd (Air New Zealand) and PT Garuda Indonesia Ltd (Garuda) filed High Court Applications for Special Leave to appeal the majority Full Court decision of 21 March 2016 in the Air Cargo matters.

On 21 March 2016 the Full Court upheld by majority an appeal by the ACCC in relation to air cargo cartel allegations. The Full Court found that price fixing conduct engaged in by Garuda and Air New Zealand relating to the imposition of agreed surcharges on the carriage of air cargo from ports outside Australia to destinations within Australia took place in a "market in Australia", and consequently breached Australia's price fixing laws.

The Applications are to be heard on a date to be fixed.

Proceedings concluded

CEMENT AUSTRALIA PTY LTD (Cement Australia)

In April 2016, the Federal Court ordered penalties totalling \$18.6 million against Cement Australia and related companies for entering into, and giving effect to, contracts and arrangements that have the purpose or effect of substantially lessening competition.

The ACCC has filed a Notice of Appeal in respect of the judgment, as referenced above.

AUSTRALIAN EGG CORPORATION LTD & ORS

In May 2016, the Federal Court ordered Mr Zelko Lendich, a former director of AECL and the former managing director of Farm Pride Foods Ltd, to pay a penalty of \$120 000 for an attempt to induce a cartel arrangement between competing egg producers. The orders were made on the basis of an admission by Mr Lendich that he attempted to induce the egg producers to make a cartel arrangement in contravention of the CCA.

The Court declared that between 19 January and 8 February 2012, Mr Lendich attempted to encourage certain egg producers in Australia to enter into an arrangement or arrive at an understanding that would limit the production and supply of eggs in Australia.

In addition to imposing a penalty, the Court also made orders that Mr Lendich attend and undertake a compliance program, and pay an agreed amount towards the ACCC's costs of the proceedings.

The Court's consideration of Mr Lendich's admission followed its decision on 10 February 2016 dismissing the ACCC's allegations of an attempt to induce a cartel arrangement involving AECL and others because the ACCC had not established that these respondents intended egg producers to enter into an arrangement or understanding involving reciprocal obligations by competing producers.

The ACCC has lodged an appeal from that decision. A hearing date is yet to be scheduled.

Undertakings accepted and administrative resolutions

- 1.8. The ACCC also resolves alleged contraventions of the CCA by accepting enforceable undertakings under section 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 June quarter, no undertakings or administrative resolutions in respect of competition enforcement were accepted.

Agriculture Unit

1.10. The ACCC's Agriculture Unit engaged in a range of activities in the June 2016 quarter to substantially enhance the ACCC's engagement with agriculture markets. This included:

- continuing a market study into the cattle and beef industry, which is examining competition, efficiency, transparency and trading issues. The market study process involves broad consultation, with the ACCC receiving over 50 submissions in response to the issues paper released. Public forums were also held in Wodonga, Toowoomba, Mt Gambier, Dubbo, and Bunbury. A final report from the market study will be released in late 2016
- holding the first meeting of the ACCC's Agriculture Consultative Committee. This Committee provides a forum for representatives on a range of industries to raise issues with the ACCC
- hosting regional workshops in Shepparton, Toowoomba and Bunbury focusing on competition and fair trading issues in the horticulture and viticulture industries. Further workshops will take place in Griffith, Murray Bridge and Devonport and the ACCC will release a report on the issues raised in October 2016
- enhancing the ACCC's presence in regional Australia, including through visits to farms, processing facilities, saleyards and other meetings in all states and territories
- speaking at events convened for grain and horticulture growers, to explain the ACCC's roles and functions with a particular focus on the upcoming business-to-business unfair contract terms law
- development of a publication providing farmers, agriculture businesses and industry representatives with information about the ACCC's roles and functions that affect agriculture.

1.11. The ACCC has a number of investigations on foot involving competition and fair trading issues in agriculture markets. This includes matters in grains, dairy, cattle and beef, and horticulture. The information obtained through the ACCC's engagement work has initiated many of these matters and continues to inform their progress.

Assess mergers to prevent structural changes that substantially lessen competition

Merger assessments and reviews

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

1.13. The ACCC does this by providing the merger parties with its view on whether a particular proposal is likely to breach section 50 of the CCA. This process is generally known as the 'informal clearance' process. Businesses may also apply to the ACCC for formal clearance of mergers.

1.14. The ACCC deals with matters expeditiously when it determines that they do not require a detailed review because of the low risk that competition concerns will be raised. As indicated in Table 1 below, a significant proportion of the mergers considered by the ACCC are 'pre-assessed', enabling the ACCC to respond quickly when there are no significant concerns.

Table 1.1: Matters pre-assessed and reviews undertaken – April to June 2016

	Confidential	Public	Total
Pre-assessed 1 April–30 June 2016	62	0	62
Total reviews undertaken 1 April–30 June 2016	1	7	8
Total matters assessed and reviews undertaken	63	7	70
Total reviews by category:			
Not opposed	0	4	4
Finished–no decision (including withdrawn)	0	2	2
Opposed outright	0	0	0
Confidential review–ACCC concerns expressed	1	0	1
Resolved through undertakings	0	1	1
Variation to undertaking accepted	0	0	0
Variation to undertaking rejected	0	0	0

Table 1.2: Matters assessed and reviews undertaken, financial year comparisons

	10–11	11–12	12–13	13–14	14–15	15–16
Total matters assessed and reviews undertaken	377	340	289	297	322	319
Matters assessed–no review required	236	250	213	242	278	287
Reviews undertaken	141	90	76	55	44	32
Total reviews can be broken down into the following categories:						
Not opposed	110	60	55	36	35	17
Finished–no decision (incl. withdrawn)	14	17	4	2	1	6
Publicly Opposed outright	3	1	6	4	0	2
Confidential review–opposed or ACCC concerns expressed	4	6	5	2	0	1
Resolved through undertakings	7	3	2	10	7	5
Variation to undertaking accepted	3	3	4	1	1	1
Variation to undertaking rejected	0	0	0	0	0	0

**The year end table includes statistical corrections arising from year end reconciliation processes.*

Merger review consultation

- 1.15. The ACCC may reach a preliminary view that a proposed merger raises competition concerns which 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 issues with varying degrees of competition concerns, 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.
- 1.16. In the June quarter the ACCC issued a Statement of Issues for the following two reviews:
- [Consortium comprising Brookfield, Qube & others—proposed acquisition of Asciano Limited](#)
 - [DYWIDAG-Systems International Group—proposed acquisition of Jenmar Australia](#)

Significant merger decisions

[ANHEUSER-BUSCH INBEV SA/NV's \(AB InBev\) PROPOSED ACQUISITION OF SABMILLER](#)

On 5 May 2016 the ACCC announced its decision not to oppose Anheuser-Busch InBev SA/NV's (AB InBev) acquisition of SABMiller.

AB InBev is the world's largest brewer but does not operate any breweries in Australia and uses Lion to distribute its products in Australia. AB InBev's single largest selling brand in Australia is Corona, which is Australia's fourth largest selling beer. AB InBev's other brands include Stella Artois, Beck's and Budweiser.

SABMiller is a multinational brewing and beverage company. SABMiller, through its local subsidiary Carlton & United Breweries (CUB), is currently the second largest supplier of beer in Australia, behind Lion. Its brands include Victoria Bitter, Carlton and Crown Lager.

The ACCC's review focused on two main issues. These were the impact of the proposed acquisition on the future structure of the market and the increased likelihood of co-ordination between the major brewers.

The two largest suppliers of beer in Australia are Lion and CUB (owned by SABMiller). At the time of the proposed acquisition AB InBev products were distributed by Lion, however previously they had been distributed by CUB.

The ACCC concluded that the proposed acquisition would not significantly change the current market structure. AB InBev has only a limited direct company presence in Australia and does not brew beer. Importantly, AB InBev has served notices to terminate agreements with Lion for the distribution of Corona and other AB InBev brands in Australia. The ACCC had been concerned that, if these distribution agreements continued, the proposed acquisition may have increased the ability and incentive for coordination between Lion and CUB. After the termination of these distribution agreements, the relevant beer brands will in future be distributed in Australia by CUB (which will be owned by the combined

AB InBev/SABMiller).

The ACCC considered that the termination of the agreements resolved these competition concerns.

PRIMARY HEALTH CARE LIMITED–COMPLETED ACQUISITION OF HEALTHSCOPE'S PATHOLOGY ASSETS IN QUEENSLAND

On 16 June 2016 the ACCC announced its decision to accept section 87B divestiture undertakings from Primary Health Care Limited and Healthscope Limited, following an extensive investigation into Primary's completed acquisition of Healthscope's pathology assets in Queensland.

Primary is an ASX-listed Australian healthcare company. It operates medical centres as well as providing pathology services, diagnostic imaging services, health technology solutions and private health insurance throughout Australia.

Healthscope is an ASX-listed Australian private health care operator. It operates private hospitals and medical centres in Australia, as well as pathology businesses in New Zealand, Singapore, Vietnam and Malaysia. Healthscope sold its remaining Australian pathology operations to Crescent Capital Partners in July 2015.

Neither Primary nor Healthscope informed the ACCC about the acquisition, despite being on notice that the ACCC would have serious competition concerns as a result of the ACCC opposing Sonic Healthcare's proposed acquisition of Healthscope's Queensland pathology business in 2012. A third party notified the ACCC of the completed transaction, and soon after the ACCC started a public review. The review included compelling Primary/Healthscope to provide information to the ACCC and the compulsory examination under oath of executives from both companies.

The ACCC's review raised concerns that the acquisition removed a significant third player in Queensland, leaving just two major full-service pathology providers. The ACCC was concerned that the acquisition would result in increased prices and reduced service levels for patients using pathology services in Queensland.

To address the ACCC's concerns, Primary undertook to divest the pathology assets it had acquired from Healthscope, which largely reversed the transaction. The package of divestiture assets, including more than 70 collection centres, would be sold to Medlab Pathology, to enable it to establish a competitive presence in Queensland. Medlab is an experienced pathology provider based in Sydney. Healthscope also provided an undertaking that it would give or obtain consent for pathology leases to be transferred to Medlab.

In light of the undertakings, the ACCC decided not to commence proceedings against both Primary and Healthscope to seek penalties and other remedies including divestiture.

Authorisation, notification and certification trademark applications

- 1.17. The ACCC assesses and makes decisions about applications for the authorisation and notification of certain types of anti-competitive conduct by evaluating if such arrangements or conduct is likely to result in a net public benefit and therefore warrant exemption from the CCA.

Authorisations

1.18. In assessing the likely public benefits and detriments of 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

Total authorisations received	Number of applications (number of forms ¹)	
	1 April - 30 June 2016	2015 - 2016 ²
New	5 (7)	19 (25)
Revocation	0 (0)	0 (0)
Revocation and substitution	1 (2)	10 (14)
Minor variations	0 (0)	3 (5)

Decisions issued	Number of applications (number of forms ¹)	
	1 April - 30 June 2016	2015 - 2016 ²
Draft determinations	7 (9)	35 (49)
Final determinations	9 (11)	37 (56)
Interim decisions (prior to draft)	1 (2)	5 (6)

1. The Competition & Consumer Act Regulations require applicants to submit specific separate forms for different types of conduct.

2. The full year totals include statistical corrections arising from year-end reconciliation processes.

Significant authorisations

[AUSTRALIA PACIFIC LNG PTY LTD & ORS – AUTHORISATIONS – A91516-7](#)

On 14 April 2016, the ACCC granted conditional authorisation to Australia Pacific LNG Pty Ltd, Gladstone LNG, and the Queensland Curtis LNG Project ('the LNG producers') to discuss their maintenance schedules, maintenance providers, and maintenance techniques. The ACCC granted conditional authorisation for five years.

The LNG producers' facilities convert natural gas into LNG for export. Each LNG facility connects to gas wells in the Surat and Bowen basins of Queensland. However, they also purchase gas in nearby wholesale markets.

The LNG producers applied for authorisation to coordinate their maintenance scheduling, and to share information about maintenance service providers they have engaged and maintenance techniques they have used at their facilities.

In its determination, the ACCC considered that the proposed conduct is likely to give rise to a number of public benefits, particularly in relation to increasing the efficiency of undertaking LNG maintenance and reducing the likelihood of major disruptions to domestic gas markets, which could occur if multiple maintenance events at the LNG producers' facilities overlap.

Interested parties in the LNG maintenance industry and domestic gas markets were generally supportive of coordinating maintenance scheduling. However, there were significant concerns about the potential for the conduct to create damaging information asymmetries in domestic gas markets.

When the LNG producers' facilities are offline, they may redirect their gas to wholesale markets for sale. The LNG facilities use very large quantities of gas and can have large effects upon the market price when their facilities are offline. Wholesale gas traders raised concerns that coordination between the LNG facilities would allow them to trade advantageously in gas markets, because each LNG facility will know when maintenance is going to occur.

To address this, the ACCC imposed a condition of authorisation requiring the LNG producers to make public the maintenance schedule information that they share with each other. The condition was formulated in consultation with the LNG producers and market participants. The LNG producers can create significant volatility in domestic gas markets when they go offline for maintenance. The condition allows all market participants to know when maintenance is going to occur and prevent exposure to unnecessary risk.

While the ACCC was considering the application, the Australian Energy Market Commission (AEMC) released a draft recommendation as part of its east coast gas markets review that the LNG producers be required to publish two-year forecasts of their facilities' capacity and gas demand, including any scheduled downtimes. Submissions on the ACCC's draft determination called for the ACCC to impose conditions on authorisation similar to the requirements in the AEMC draft recommendation. The ACCC decided this was not appropriate.

In this case, the ACCC decided to keep the scope of the condition focused on remedying information asymmetry issues about scheduled maintenance that arise from the proposed conduct. However, the LNG producers are required to update the published information if it changes.

While the ACCC considered that information is a crucial component for creating efficient, well-functioning markets, it considered that the AEMC's review is the appropriate forum to assess these broader information transparency issues.

Authorisation was granted for five years, rather than the longer periods sought by the LNG producers. The evolving nature of the east coast gas markets gives rise to significant uncertainty about the impact of the proposed conduct on related markets. In these circumstances, it will be appropriate for the ACCC to conduct a review in the near future to ensure the ACCC's assessment of benefits and detriments remains accurate, and in order to assess the effectiveness of the condition of authorisation.

Subject to the condition, the ACCC was satisfied that the conduct was likely to result in public benefits that would outweigh the likely public detriments.

The LNG producers have published information about maintenance on the Australian Energy Market Operator's Natural Gas Services Bulletin Board in line with the ACCC's condition of authorisation.

[PLUMBING PLUS—AUTHORISATION—A91523 & A91524](#)

On 12 May 2016, the ACCC granted authorisation for ten years to Plumbing Plus Bathroom Kitchen Laundry Pty Ltd for collective bargaining, a catalogue program and exclusive dealing arrangements.

Plumbing Plus is a banner brand and buying group for plumbing and hardware merchants. Plumbing Plus members own around 160 independent plumbing and hardware stores across Australia.

In January 2016, Plumbing Plus sought authorisation on behalf of itself and current and future members to:

- collectively bargain and negotiate trading terms and supply arrangements with domestic and offshore suppliers, wholesalers and importers in relation to the supply of plumbing and hardware materials to its members
- participate in a catalogue program, whereby members may elect to take part in joint promotions involving recommended (maximum) prices
- enter into arrangements for the exclusive supply of plumbing products not already supplied in Australia.

In its determination, the ACCC considered that the proposed conduct is likely to result in public benefits including transaction cost savings, improved input into contracts and increased retail competition and lower prices for consumers.

The ACCC also considered that the proposed conduct is likely to result in limited public detriment since:

- the ability of members to influence the outcome of individual negotiations with suppliers is likely to be low in the absence of the proposed conduct
- participation in the arrangements is voluntary for suppliers and members
- Plumbing Plus members appear to account for a small proportion of the wholesale acquisition and retail supply of plumbing and hardware products, and members face significant competition at the wholesale and retail levels for most products
- the composition of the bargaining group is likely to remain a relatively small

proportion of the total number of buyers and retailers of hardware and plumbing products in Australia

- joint promotions involving recommended prices are likely to only have a small effect on price competition between members.

Overall the ACCC was satisfied that the proposed conduct was likely to result in public benefits that would outweigh the likely public detriments.

Notifications

- 1.19. Notification is an alternative process to authorisation as a means for businesses to obtain protection from legal action for exclusive dealing and collective bargaining.

Exclusive dealing notifications

- 1.20. Exclusive dealing is where a business trading with another imposes 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. Third line forcing is a type of exclusive dealing conduct which involves the supply of goods or services subject to a condition that the buyer must also acquire certain goods or services from a third party. Third line forcing conduct is prohibited outright while other forms of exclusive dealing are only a breach of the CCA if they substantially lessen competition.
- 1.21. Lodging a notification with the ACCC provides automatic protection from legal action from the lodgement date, or soon after, in the case of third line forcing conduct which remains in force unless revoked by the ACCC. Notifications can be reviewed by the ACCC at any time to assess whether the conduct results in a net public benefit.

Table 3: Exclusive dealing notifications

Exclusive Dealing Notifications	Number of notifications (number of forms ¹)	
	1 April - 30 June 2016	2015 - 2016 ²
Matters lodged in the quarter	124 (167)	500 (771)
Matters requiring a draft notice	0 (0)	0 (0)
Matters allowed to stand	130 (181)	495 (766)
Matters revoked	0 (0)	0 (0)
Matters withdrawn	0 (0)	1 (1)

1. The Competition & Consumer Act Regulations require notifiers to submit specific separate forms for different types of conduct.

2. The full year totals include statistical corrections arising from year-end reconciliation processes.

Collective bargaining notifications

- 1.22. 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 unless the ACCC objects to it. Notifications can be reviewed at any time.
- 1.23. 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

Collective Bargaining Notifications	Number of notifications (number of forms ¹)	
	1 April - 30 June 2016	2015 - 2016
Matters lodged in the quarter	0 (0)	5 (40)
Matters allowed to stand	1 (2)	5 (40)

1. The Competition & Consumer Act Regulations require specific separate forms to be submitted for different types of conduct

Significant notifications

MANNING VALLEY DAIRY FARMERS COLLECTIVE BARGAINING NOTIFICATION

On 19 April 2016 the ACCC decided to allow a group of seven Manning Valley dairy farmers (Manning Valley collective bargaining group) to collectively negotiate terms and conditions of raw milk supply agreements with Woolworths or its agent, Milk2Market. The group may also collectively negotiate the terms and conditions of the supply of raw milk with Milk2Market.

In the past, the ACCC allowed similar collective bargaining arrangements by the group in 2013, which expired in March 2016.

The ACCC considered that this collective bargaining arrangement was likely to result in public benefits in the form of transaction cost savings, and greater input by dairy farmers into contracts, which was likely to result in more efficient contracts. The collective bargaining arrangements were also likely to lead to public benefits arising from the maintenance of a competitor for the acquisition of raw milk and providing more consumer choice by maintaining a premium milk product, which may also result in more efficient pricing that better reflects the quality or value of the differentiated milk product.

The ACCC also considered that the potential for anti-competitive detriment was limited, in particular by the size of the collective bargaining group and the relatively small volume of raw milk involved, and the voluntary nature of the arrangement for both Woolworths and participants of the group. The ACCC noted that Woolworths had not objected to the notification or conduct.

Certification trademarks

1.24. Under the *Trade Marks Act 1995* the ACCC has responsibilities for assessing the certification of trade marks. A certification trade mark is used by businesses to indicate to consumers that a product or service meets a particular standard.

1.25. 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 5: Certification Trademarks

Certification Trademarks (CTMs)	Number of related applications (number of CTMs ¹)	
	1 April–30 June 2016	2015–2016
CTMs received	20 (24)	37 (41)
Final assessments issued	20 (23)	44 (76)

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

Australian Competition Tribunal assistance

- 1.26. Merger parties may seek legal protection from court action under section 50 of the CCA by applying to the Australian Competition Tribunal (the Tribunal) for authorisation of the merger proposal. In merger authorisation determinations, the Tribunal must apply a public benefits test. This differs from reviews under section 50 where a substantial lessening of competition test is applied.
- 1.27. The role of the ACCC in the Tribunal process is to assist the decision-making of the Tribunal. This includes making inquiries, calling and examining witnesses and preparing a report.

SEA SWIFT PTY LIMITED

On 4 April 2016, Sea Swift Pty Limited (Sea Swift) applied to the Tribunal for authorisation of its proposed acquisition of Toll Marine Logistics Australia (Toll Marine) following the ACCC's earlier decision to oppose the acquisition.

On 9 July 2015, the ACCC opposed the proposed acquisition by Sea Swift of the Northern Territory (NT) and far north Queensland (FNQ) marine freight business of Toll Marine. Toll Marine is a division of Toll Holdings Limited, whose ultimate owner is Japan Post. The ACCC was concerned that the proposed acquisition was likely to lead to a substantial lessening of competition in markets for the supply of scheduled marine freight services in the NT and FNQ.

Sea Swift and Toll Marine were the two largest suppliers of marine freight services in the NT and FNQ and, on many routes, were the only two suppliers of scheduled marine freight services.

Prior to the acquisition, Sea Swift and Toll Marine had been engaged in a price war with each other. During this price war, Toll agreed to sell the Toll Marine business to Sea Swift for a substantial amount of money, including a significant shareholding in Sea Swift. Toll Marine claimed that it would exit the market if the merger did not occur.

The ACCC considered that the merger would result in a near monopoly position for Sea Swift in the supply of scheduled marine freight services in both the NT and FNQ and increase the barriers to entry or expansion for other freight providers.

On 1 July 2016, following a nine day hearing, the Tribunal granted conditional authorisation to Sea Swift after concluding that the proposed acquisition would result in such public benefit that it should be allowed to occur.

The Tribunal imposed conditions on its authorisation. The conditions place an

obligation on Sea Swift to cap its maximum prices for certain categories of freight and maintain services to all of the communities currently serviced by either Toll or Sea Swift for five years. Sea Swift must not enforce any exclusivity, first right of refusal or minimum volume requirements in any customer contract that is transferred from Toll Marine to Sea Swift. Sea Swift must also provide access to other freight providers to the roll-on roll-off ramp at the port of Nhulunbuy (Gove) on the terms set out in an undertaking to be provided to the ACCC.

- 1.28. There were no applications for merger authorisation under consideration by the Tribunal during the quarter.

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 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. The ACCC consults with ACL regulators, consumer advocacy groups, external dispute resolution and ombudsman schemes and other government departments on current and emerging issues; and also analyses data from thousands of people who contact the ACCC Infocentre.
- 2.3. In 2016 the ACCC's Compliance and Enforcement priorities for consumer protection include:
 - consumer issues in the agriculture sector
 - consumer issues in the health and medical sectors, including consumer protection issues arising from health claims by large businesses and the ACCC's 2015 report to the Senate on the private health insurance industry
 - ensuring small business receives the protections of:
 - industry codes of conduct, including the Franchising Code, the Food and Grocery Code and the revised Horticulture Code, and
 - new legislative provisions extending unfair contract term protections to small businesses.
 - the effectiveness of action taken by suppliers to recall unsafe consumer products
 - consumer guarantees, with a focus on representations made by large retailers about express and extended warranties
 - consumer issues arising in relation to new car retailing, including responses by retailers and manufacturers to consumer guarantee claims
 - in conjunction with other agencies and partners, disruption of scams, particularly those that rely on building deceptive relationships and which cause severe and widespread consumer or small business detriment, and
 - consumer protection issues impacting on vulnerable and disadvantaged consumers with a particular focus on older consumers and consumers who are newly arrived in Australia.
- 2.4. In 2016 the ACCC has made Indigenous consumer protection an enduring priority. This change recognises that Indigenous consumers, particularly in remote areas, continue to face challenges in asserting their consumer rights. Indigenous consumer protection will always be a priority whilst these challenges remain.

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

Proceedings

- 2.5. Total penalties awarded by the Federal Court under the ACL pecuniary penalty regime is over \$72.4 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 30 June 2016 this figure encompasses 23 ACCC cases where penalties awarded by the Court have been at or above \$1 million.
- 2.6. In the June quarter the ACCC was involved in 33 proceedings relating to consumer protection. Of those:
- 28 cases were carried over from the previous quarter
 - 6 cases were commenced
 - 2 appeals were commenced
 - 7 cases were concluded, and
 - 27 cases remain ongoing at the end of the quarter.

Proceedings commenced

HARRISON COMPANIES & ANOR (Harrison Companies)

In April 2016 the ACCC instituted proceedings in the Federal Court against 11 corporations trading as SoleNet and Sure Telecom and their director James Harrison alleging unconscionable conduct in the supply of telecommunications services and undue harassment. The ACCC is seeking declarations, injunctions, consumer redress, penalties, corrective advertising, a disqualification order against Mr Harrison and costs.

ACM Group Ltd (ACM Group)

In June 2016 the ACCC instituted proceedings against debt collection firm ACM Group alleging that it engaged in misleading or deceptive conduct, harassment and coercion, and unconscionable conduct in dealings with two consumers in contravention of the ACL and the *Australian Securities and Investments Commissions Act 2001*. ACM Group purchases debts from companies, including telecommunications companies, utilities companies and banks, and then attempts to recover all or part of the debt. The ACCC is seeking pecuniary penalties, declarations, injunctions, orders for an ACL compliance program, publication orders and costs.

MEDIBANK PRIVATE LTD (Medibank)

In June 2016 the ACCC instituted proceedings in the Federal Court against Medibank alleging it had engaged in misleading conduct, made false or misleading representations and engaged in unconscionable conduct. The allegations are in relation to Medibank's failure to notify Medibank members and members of its subsidiary brand, ahm, regarding its decision to limit benefits paid to members for in-hospital pathology and radiology services. The ACCC alleges that Medibank did not provide members with any advance notice of the change despite previously representing that it would do so. The ACCC alleges that Medibank also adopted a strategy of keeping communications about this change

contained and reactive. The ACCC alleges that Medibank's conduct was misleading and, in all the circumstances, unconscionable. The ACCC is seeking declarations, injunctions, compensation orders, pecuniary penalties, findings of fact, implementation of a compliance program, corrective notices and costs.

ELUSION NEW ZEALAND LTD & ANOR (Elusion)

In June 2016 the ACCC instituted proceedings in the Federal Court against Elusion, an online e-cigarette retailer, alleging it made false or misleading representations and engaged in misleading conduct by making statements on its website that its e-cigarette products did not contain toxic chemicals. The ACCC alleges that based on independent testing, the e-cigarette products sold did in fact contain carcinogens and toxic chemicals found in conventional cigarettes, including formaldehyde, acetaldehyde and acrolein. The ACCC is seeking pecuniary penalties, declarations, injunctions, orders for a compliance program, publication orders and costs.

SOCIAL-LITES PTY LTD & ANOR (Social-Lites)

In June 2016 the ACCC instituted proceedings in the Federal Court against Social-Lites, an online e-cigarette retailer, alleging it made false or misleading representations and engaged in misleading conduct by making statements on its website that its e-cigarette products did not contain toxic chemicals. The ACCC alleges, based on independent testing it commissioned, that the e-cigarette products sold did in fact contain carcinogens and toxic chemicals found in conventional cigarettes, including formaldehyde, acetaldehyde and acrolein. The ACCC is seeking pecuniary penalties, declarations, injunctions, orders for a compliance program, publication orders and costs.

HJ HEINZ COMPANY AUSTRALIA LTD (Heinz)

In June 2016 the ACCC instituted proceedings in the Federal Court against Heinz in relation to its Little Kids Shredz products. The ACCC alleges that Heinz made false and misleading representations, and engaged in conduct liable to mislead the public, in relation to the nature, characteristics and suitability of these products. The Shredz products' packaging features prominent images of fresh fruit and vegetables and statements such as '99% fruit and veg' and 'our range of snacks and meals encourages your toddler to independently discover the delicious taste of nutritious food'. The ACCC alleges that these images and statements represent to consumers that the products are of equivalent nutritional value to fruit and vegetables and are a healthy and nutritious food for children aged one to three years, when this is not the case. The ACCC is seeking declarations, injunctions, pecuniary penalties, corrective notices and costs.

Proceedings ongoing

SNOWDALE HOLDINGS PTY LTD (Snowdale)

In May 2016 the Federal Court found that Snowdale made false or misleading representations that its eggs were 'free range' in contravention of the ACL. Snowdale supplied eggs labelled as 'free range' to suppliers in Western Australia under brands Eggs by Ellah, Swan Valley Free Range and Wanneroo Free Range. Snowdale also promoted its eggs as 'free range' on the Eggs by Ellah website from May 2013. The Court found that Snowdale represented that the eggs were laid by hens which were able to, and did, go outdoors and roam freely on an open range on most days, when this was not the case. The Court found that

between April 2011 and December 2013, most of the hens from the Snowdale sheds did not move around on an open range because the farming conditions significantly inhibited them from doing so. The hearing on relief is scheduled for 10 August 2016. The ACCC is seeking declarations, injunctions, pecuniary penalties, implementation of a compliance program, corrective notices and costs.

Proceedings concluded

DERODI PTY LTD AND HOLLAND FARMS PTY LTD T/AS FREE RANGE EGG FARMS

In April 2016 the Federal Court ordered a penalty of \$300 000 against Free Range Egg Farms for making false or misleading representations in their labelling and promotion of eggs as 'free range.' Free Range Egg Farms supplied eggs labelled as 'free range' under the brands Ecoeggs, Port Stephens and Field Fresh. Free Range Egg Farms also promoted these eggs as 'free range' on the brands' respective websites, Facebook, Twitter and in a magazine advertisement. The Court found that by labelling and promoting the eggs as 'free range,' Free Range Egg Farms contravened the ACL by representing to consumers that the eggs were produced by hens which were able to, and did, move about freely on an open range on an ordinary day, when this was not the case.

CLA TRADING PTY LTD T/AS EUROPCAR (Europcar)

In April 2016 the Federal Court declared that a number of terms in Europcar Australia's 2013 standard rental agreement to be unfair, and therefore void. Europcar was also ordered to pay a penalty of \$100 000 for making false or misleading representations about consumers' liability in the event of vehicle damage. The Court found that various terms in Europcar's standard rental agreement were unfair because they held consumers liable for vehicle loss or damage regardless of whether the consumer was at fault. Other terms were also found to be unfair because consumers were liable for vehicle loss or damage when they breached the rental agreement, no matter how trivial the breach or whether it had any connection to the loss or damage caused.

Europcar has amended its standard rental agreement to remove the unfair terms. The misleading statements have also been removed from Europcar's website. In resolving these proceedings, Europcar agreed to facts and joint submissions to be put to the Court and consented to orders for corrective advertising and costs.

ADATA PTY LTD & ANOR (Adata)

In April 2016 the Federal Court dismissed a case brought by the ACCC against a travelling tax agent, Mr Wayne Wright, and his company Adata. The ACCC had alleged that Adata and Mr Wright had breached the unsolicited selling provisions of the ACL when providing tax return services to consumers in remote Aboriginal communities in the NT and WA, including Santa Teresa, Titjikala and Balgo. The Federal Court held that the agreements entered into with 191 consumers in 22 communities during 2012 and 2013 were not 'unsolicited consumer agreements' within the meaning prescribed by the ACL. As a result, the Court did not need to consider whether the requirements of the unsolicited consumer agreement provisions of the ACL had been complied with.

RECKITT BENCKISER (AUSTRALIA) PTY LTD (Reckitt Benckiser)

In April 2016 the Federal Court ordered Reckitt Benckiser to pay \$1.7 million in penalties for making representations on its website and packaging that Nurofen Specific Pain products were each formulated to specifically treat a particular type of pain, when this was not the case. In fact, each product contains the same active ingredient, ibuprofen lysine 343mg, which treats a wide variety of pain conditions and is no more effective at treating the type of pain described on its packaging than any of the other Nurofen Specific Pain products.

The ACCC filed a Notice of Appeal from the Federal Court's decision in relation to penalties in May 2016. The ACCC had submitted to the Court that a penalty of at least \$6 million was appropriate in order to send a strong deterrence message, taking into account the longstanding and widespread nature of the conduct, and the substantial sales and profit that was made by selling the product.

FDRA PTY LTD & ANOR (FDRA)

In May 2016 FDRA (formerly known as Angel Digital) and its director Mr Jackson Anni have given undertakings to the Federal Court not to enter any Indigenous community in Australia or the Royal Darwin Hospital and its associated hostels to sell any goods or services for a period of 5 years.

In December 2015 the ACCC brought proceedings in the Federal Court alleging that Mr Anni and FDRA engaged in unconscionable conduct, misleading and deceptive conduct and contraventions of the unsolicited selling provisions of the Australian Consumer Law in the sale of electronic tablets and related extras in Indigenous communities and at the Royal Darwin Hospital and its associated hostels.

The undertakings, which were made to the Federal Court and are enforceable, also require Mr Anni and FDRA to:

- cease accepting payments and automatic deductions in relation to goods or services supplied within 7 days of executing the undertaking
- only sell electronic tablets to any Australian consumer that first approach them, provide a 10 day cooling off period (including not taking payment or supplying goods)
- have written agreements with all the goods or services it sells to every consumer, irrespective of whether they are unsolicited consumer agreements and,
- provide \$20,000 for consumer redress, to be distributed by the ACCC.

The undertakings have been given without admissions. On the basis of these undertakings the ACCC agreed to discontinue its proceedings against FDRA and Mr Anni.

MULTIMEDIA INTERNATIONAL SERVICES PTY LTD T/AS THE COMMUNITY NETWORK

In May 2016 the Federal Court ordered The Community Network to pay penalties totalling \$230 000 for breaches of the ACL in its dealings with certain small businesses. The Community Network sells digital advertising services to small businesses throughout Australia. The advertising is presented on branded LCD screens at various sites such as fitness centres, newsagencies and shopping

centres. The Court declared that The Community Network engaged in unconscionable conduct in its dealings with one small business, including by refusing to release it from its contract for advertising services when The Community Network was not providing those advertising services, then pursuing it for non-payment, threatening legal action and engaging debt collectors. The Court also declared that The Community Network made false or misleading representations to two other small businesses and wrongly accepted payments from them.

The ACCC also accepted a court enforceable undertaking from the Community Network to resolve the ACCC's concerns about the standard form contract used by The Community Network, which included an automatic renewal term. The Community Network cooperated with the ACCC in resolving the proceedings and consented to orders which included declarations, implementation of an ACL compliance program and a contribution to the ACCC's costs.

SENSASLIM PTY LTD & ORS (SensaSlim)

In May 2016 the Federal Court ordered a \$3.55 million penalty against SensaSlim for engaging in misleading and deceptive conduct and making false representations. Mr Foster was ordered to pay \$660 000, the maximum penalty for each of the contraventions found by the court for being knowingly concerned or a party to some of the conduct. The Court banned Mr Foster for life from being involved with businesses promoting or supplying weight loss products or services, or being involved in any franchising business where his identity and involvement has not been disclosed in writing to prospective franchisees. The Court also permanently disqualified Mr Foster from managing corporations.

The Court also found that SensaSlim made false representation about the role of SensaSlim's officers, Mr Michael Boyle and Mr Peter O'Brien, that there was a 'worldwide clinical trial' of the SensaSlim solution and the earning potential of SensaSlim franchises. Mr Foster, Mr Boyle and Mr O'Brien were found to be knowingly concerned in, or party to, some of SensaSlim's contraventions. The Federal Court ordered a penalty of \$75 000 against Mr Boyle and be disqualified from managing a corporation for 3 years; and a penalty of \$55 000 against Mr O'Brien and be disqualified from managing a corporation for 10 years.

On 1 June 2016, Mr Foster filed a Notice of Appeal to the penalty judgment.

HILLSIDE (AUSTRALIA NEW MEDIA) PTY LTD T/AS BET365 (Bet365)

In June 2016 the Federal Court ordered Bet365 and its UK service company, Hillside (Shared Services) Limited, to pay penalties totalling \$2.75 million for making false representations by Bet365's 'free bets' offer to new customers. In September 2015, the Federal Court found that Bet365's promotion of a '\$200 free bets for new customers' offer to customers in Australia between March 2013 and 13 January 2014 was misleading and deceptive and involved false representation because there was a number of restrictions and limitations that applied to the offer that were not brought to the customer's attention. The Court also ordered Bet365 to send a corrective notice, by email, to affected consumers.

ONLINE DEALZ PTY LTD & ANOR (Online Dealz)

In June 2016, the Federal Court ordered Online Dealz to pay a penalty of \$100 000 for supplying a household cot, portable cot and stroller that did not comply with the safety standards, and for making misleading representations in advertisements for the household cot. The Court also ordered Online Dealz' sole

director, Janet Lucas, to pay a penalty of \$20 000 after finding she was knowingly concerned in the conduct of Online Dealz in relation to the household cost.

Infringement notices

- 2.7. 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 CCA.
- 2.8. In the June quarter the ACCC received payment for 12 infringement notices arising from seven matters.

HIGH LIFT JACK SUPPLIERS

In April 2016 and May 2016 online retailers Autoplus Pty Ltd (Autoplus), Smartchannel Pty Ltd trading as Outbax Camping, and Update Technology Pty Ltd each paid a penalty of \$10 200 following the issue of an infringement notice. The ACCC issued the infringement notices because it had reasonable grounds to believe that each of Autoplus and Outbax Camping had supplied a high lift jack that did not comply with the mandatory safety standard. This is because jacks tested by the ACCC from these suppliers did not meet overload safety requirements and did not have the required safety markings. The supply of a product which does not comply with a safety standard is a breach of the ACL.

MOMENTUM ENERGY PTY LTD (Momentum)

In April 2016 Momentum paid penalties totalling \$54 000 following the issue of five infringement notices. The ACCC was concerned that an advertising campaign by Momentum, which included television, print, radio, social media and its website, represented that Momentum generated and supplied renewable electricity, when this is not the case. The ACCC issued the infringement notices because it had reasonable grounds to believe that Momentum had contravened the ACL by engaging in conduct liable to mislead the public as to the nature, manufacturing process and/or characteristics of its electricity products, in a television, print and radio advertising campaign, as well as through social media and on its website.

KINGDOM GROUPS INTERNATIONAL PTY LTD (Kingdom)

In May 2016 Kingdom paid penalties totalling \$10 800 following the issue of an infringement notice. The ACCC issued the infringement notice because it had reasonable grounds to believe that Kingdom had breached the ACL by making a false or misleading representation on its website about the country of origin of its footwear branded 'UGG® Aries Sheepskin Australia'.

APG & CO PTY LTD TRADING AS SPORTSCRAFT (Sportscraft)

In June 2016, clothing retailer Sportscraft paid penalties totalling \$21 600 following the issue of two infringement notices. The ACCC issued the infringement notices because it had reasonable grounds to believe that Sportscraft had made false or misleading representations about consumer guarantees to its customers, in breach of the ACL.

UNILEVER AUSTRALIA LTD (Unilever)

In June 2016, Unilever paid a penalty of \$10 800 following the issue of an infringement notice. The ACCC issued the infringement notice because it had

reasonable grounds to believe both companies made false or misleading representation on the packaging of popular products they supply that the products had been approved or were suitable as healthy options for school canteens.

Undertakings accepted

- 2.9. The ACCC also resolves alleged contraventions of the ACL by accepting court enforceable, non-court based undertakings under s87B of the CCA, or via an administrative resolution.
- 2.10. In the June quarter there were three s87B undertakings accepted relating to consumer protection.

HERTZ AUSTRALIA PTY LTD (Hertz)

In April 2016, Hertz provided the ACCC with a court enforceable undertaking following an ACCC investigation into Hertz's vehicle damage charging processes.

From 2013 to August 2015, Hertz represented to some of its customers that the vehicle that they had hired was damaged during their rental period, when in fact the damage was pre-existing. Hertz incorrectly invoiced and charged these customers for the vehicle damage.

Hertz also represented to some customers that the amount that they were charged to repair certain vehicle damage was Hertz's actual repair cost, when in fact Hertz received repair discounts that it did not pass on to customers.

Hertz has acknowledged that its conduct was likely to have contravened the Australian Consumer Law prohibitions on misleading or deceptive conduct and false or misleading representations, and has provided a court enforceable undertaking to refund affected consumers and to take other steps to address the ACCC's concerns.

Hertz has taken voluntary steps to improve its damage charging and assessment practices, and has also provided an undertaking to the ACCC which include the following commitments:

- Hertz will contact and refund customers who were charged for pre-existing damage or overcharged for vehicle repairs due to errors in Hertz's repair charging processes;
- Hertz will conduct thorough damage review processes prior to charging customers for suspected new vehicle damage to confirm that the damage is not pre-existing damage or existing 'fair wear and tear';
- Hertz will make improvements to its damage recording procedures to minimise the risk of pre-existing damage charging and overcharging for vehicle repairs; and
- Hertz will appoint an independent external auditor to monitor Hertz's compliance with the undertaking.

MULTIMEDIA INTERNATIONAL SERVICES PTY LTD Trading as THE COMMUNITY NETWORK

In April 2016 in addition to Court ordered penalties, the ACCC accepted a court enforceable undertaking from The Community Network to resolve certain aspects of proceedings that were instituted by the ACCC in the Federal Court on 30

November 2015 in relation to allegations of unconscionable conduct, misleading or deceptive conduct, making false or misleading representations and wrongly accepting payments from small business.

The ACCC had concerns that The Community Network failed to adequately disclose to some of its customers the fine print that qualified the roll-over clause in its standard form contract, and that this had the potential to be misleading or deceptive to potential advertisers.

CAREERS AUSTRALIA GROUP LTD (Careers Australia)

In May 2016, Careers Australia provided the ACCC with a court enforceable undertaking following concerns about its marketing of VET FEE-HELP courses.

The ACCC was concerned and Careers Australia now admits that, through the conduct of some of its agents in door-to-door marketing across Australia, it made false or misleading representations and engaged in unconscionable conduct, in breach of the ACL. The conduct included misrepresenting that the courses were free, misrepresenting that the courses would allow consumers to find employment or would increase their chances of finding employment, and offering inducements such as iPads and laptops and claiming they were provided for free if the consumer signed up to the courses.

Careers Australia has undertaken to automatically cancel the enrolments of students who have not completed a unit of study, and to repay the Commonwealth any amounts received as a result of those enrolments.

Between 1 August 2013 and 31 March 2015, Careers Australia received and processed applications from around 40 000 students for enrolments into its VET FEE-HELP courses. Of these students, 20 242 were enrolled and incurred a debt to the Commonwealth. Careers Australia received approximately \$190 million worth of payments from the Commonwealth in relation to these students.

Careers Australia will also invite other students who may have been misled to approach them should they want to have their enrolment and debt cancelled. Careers Australia has undertaken to:

- inform students on its website and at its 15 campuses across Australia about the potential availability of having their enrolment and debt cancelled
- implement an ACL Compliance Program, including training for staff and regular reviews; and
- not engage in the conduct of concern in the future.

Administrative resolutions

- 2.11. The ACCC will also resolve matters administratively often involving agreements to stop or change conduct and provide appropriate redress to the conduct in question. In some cases, the ACCC will publicly announce these administrative resolutions.
- 2.12. This quarter such resolutions were agreed with Yale Prima Pty Ltd, True Value Solar Pty Ltd, Asia Deal Group Pty Ltd and JustFab Inc.

YALE PRIMA PTY LTD (Yale Prima)

In June 2016 Yale Prima committed to the ACCC that it will comply with its ACL consumer guarantee obligations as a manufacturer in relation to providing

remedies to consumers who purchased faulty JVC-branded televisions from Dick Smith Electronics prior to 5 January 2016.

As required by the ACL, Yale Prima will offer full refunds to consumers under its own 12 month manufacturer's warranty for unrepairable televisions purchased from Dick Smith prior to 5 January 2016.

Yale Prima provided this commitment following an ACCC investigation into consumer complaints after Dick Smith went into external administration.

TRUE VALUE SOLAR PTY LTD (True Value Solar)

Between February 2015 and September 2015, True Value Solar implemented a program of offering its customers a free solar panel service valued at \$199 for publishing a review on the online review platform www.productreview.com.au (Product Review).

The free solar panel service was only offered to customers who indicated that they had a positive experience with True Value Solar, and therefore likely to provide a positive review. The offer of the incentive was not disclosed in the review.

Following contact by the ACCC, True Value Solar immediately discontinued its incentives program. It also agreed that if it were to reintroduce a similar program in the future, incentives would be offered to all customers regardless of whether their review was a positive or a negative one, and the offering of the incentive would be prominently disclosed to readers of the review.

JUSTFAB INC trading as Fabletics

In June 2016 Fabletics, a US-based exercise clothing retailer, cooperated with the ACCC and agreed to change its website after the ACCC raised concerns about inadequate disclosure of conditions and the ongoing costs of its "VIP" membership program.

Following their first purchase of discounted active wear clothing, Fabletics' customers were charged a monthly USD \$49.95 subscription charge for VIP membership. This membership entitled customers to purchase active wear each month using a membership 'credit' gained through their monthly payments. The ACCC received complaints that some Fabletics customers were unaware they had signed up to monthly subscription payments, and some had difficulty cancelling their memberships.

ASIA DEAL GROUP PTY LTD trading as ScootPrice

In June 2016 the ACCC investigated complaints regarding online retailer Scootprice failing to adequately disclose the fees for its "Premium" membership, which ranged from \$29.90 per month to \$99 per quarter. The ACCC received complaints that some Scootprice customers were unaware they had signed up to ongoing subscription payments. Scootprice cooperated with the ACCC's investigation, including by refunding customers who it signed up to its "Premium" membership without being fully aware of the fees payable for this service.

Public warning notices

- 2.13. In certain circumstances, the ACCC may issue a Public Warning Notice to alert consumers to a suspected breach of certain provisions of the ACL. The ACCC may issue these notices where it has reasonable grounds to suspect a breach 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.

- 2.14. In the June quarter there was one public warning notice issued.

AUSTRALIAN BUSINESS FUNDING CENTRE PTY LTD

In June 2016 the ACCC issued a Public Warning Notice about the conduct of Australian Business Funding Centre (also known as Australian Business Financing Centre or ABFC) which operates the website www.australiangovernmentgrants.org.

The ACCC alleges that ABFC website, and its sales representatives, purport to offer access to an online database of the Australian government grants and loans available to small businesses. Small business owners paid fees ranging from \$497 to \$701 to access the database, only to find there were no suitable grants or that they were ineligible for grants listed.

The Public Warning Notice alleges ABFC has made false or misleading representations about the service's capability and quality, and the role the service has played in assisting small businesses gain government grant funding.

The website also prominently features a range of 'success stories' from actual Australian small businesses, but when those businesses were contacted by the ACCC, they said the stories were used without their permission and that they had not obtained any government funding via ABFC.

The ACCC says despite the australiangovernmentgrants.org including an Australian address, it is operated by ABFC's sole director who is based overseas.

Legitimate information about government grants can be obtained for free at www.business.gov.au and other websites ending with .gov.au.

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

- 2.15. The ACL gives consumer 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.
- 2.16. 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.
- 2.17. The ACCC also works with businesses, industry associations and consumer groups to promote awareness of the ACL.

Consumer Consultative Committee

- 2.18. The Consumer Consultative Committee provides a forum through which consumer protection issues can be addressed collaboratively between the ACCC and consumer representatives. The ACCC held a meeting of this committee on 17 June 2016 which focused on current product safety issues, including access to information, product safety within the financial services sector, product stewardship and the ACCC's button batteries initiative.

Australasian Consumer Fraud Taskforce

- 2.19. The ACCC hosted an Australasian Consumer Fraud Taskforce meeting on 29 April 2016 to coordinate activities for National Consumer Fraud Week 2016. National Australia Bank also presented at this meeting on initiatives it has put in place to disrupt scam activity.

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

- 2.20. Educating consumers about their consumer rights is central to the ACCC 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.
- 2.21. During this quarter ACCC online consumer education resources were accessed 860 615 times.

Scams

- 2.22. National Consumer Fraud Week ran in the week commencing 16 May 2016 with a theme of 'Wise up to scams' to raise awareness about scams targeting those over 55.
- 2.23. During Fraud Week the ACCC also released its annual Targeting scams: report of the ACCC on scam activity 2015. The report revealed that the ACCC received 105 201 scam-related contacts in 2015, with reported losses of \$84 941 766—both figures slightly higher than in 2014. In 2015, investment scams overtook dating and romance scams as the category with the largest financial losses which almost doubled from \$12.5 million to \$24.4 million. This year's report also combined data from Scamwatch, ACORN and scam disruption work, with total reported losses to scams in 2015 exceeding \$229 million.
- 2.24. The ACCC continued its scam disruption project to stop potential scam victims from sending more money to scammers. The project uses financial intelligence to identify Australians sending funds to high-risk jurisdictions and advising them that they may have been targeted by a scam.
- 2.25. During this quarter the ACCC identified and sent letters to 473 new potential scam victims. The ACCC also sent 145 letters to those who continued to send money beyond six weeks. 73 per cent of those that received a letter have not been detected as sending further funds beyond six weeks, down from 74 per cent in the previous quarter.
- 2.26. The ACCC's Scamwatch website provides consumers and small businesses with information about scams. The Scamwatch website attracted 582 505 visits this quarter.
- 2.27. Four Scamwatch radar alerts were issued this quarter. Two related to National Consumer Fraud Week 2016 and the release of the Targeting scams report, one highlighted scams targeting indigenous consumers and the other warned about the risks of becoming involved in property investment schemes.
- 2.28. The ACCC also operates a Scamwatch Twitter account, @Scamwatch_gov, which alerts the public to scams targeting consumers and businesses, and how to recognise, avoid and report them. The Scamwatch Twitter account continued to expand its reach with 11 261 followers by the end of the quarter. 70 tweets were posted during the quarter.

Consumers with disability

2.29. The ACCC is leading a project to educate consumers with disability and businesses about their rights and obligations in preparation for the roll out of the National Disability Insurance Scheme (NDIS). Working with other Australian, state and territory ACL regulators, the ACCC is developing a series of consumer targeted publications and videos, for training and engagement by ACL agencies, the National Disability Insurance Agency (NDIA) and the disability sector. From 11 July, three consumer guides and one industry guide will be publicly available through state and territory regulators, the ACCC and the NDIA, and on the ACCC website.

Supporting a vibrant small business sector

2.30. 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's aim is to promote a competitive and fair operating environment for small business and to ensure that small businesses understand how the legislation can help them.

2.31. During this quarter the ACCC's online business education resources were accessed more than 370 000 times.

2.32. The ACCC continued to promote its three free online education programs:

- a program for small businesses—almost 25 000 users have accessed this program since its launch in April 2013, including more than 1900 this quarter
- a program for tertiary students—almost 30 000 users have accessed this program since its launch in November 2013, including over 4800 this quarter, and
- a franchising pre-entry education program administered by Griffith University—over 10 500 people have enrolled in this program since July 2010, including more than 480 this quarter.

2.33. The new business-to-business unfair contract terms (UCT) law received Royal Assent on 12 November 2015. This law extends UCT protections previously only for consumers to small business standard form contracts entered into or renewed on or after 12 November 2016. The ACCC is reviewing standard form contracts in the telecommunications, advertising, retail leasing, franchising and independent contracting sectors to identify potentially unfair terms.

2.34. The *Country of Origin Food Labelling Information Standard 2016* commenced on 1 July 2016 and has a two-year transition period, allowing businesses time to change their labels to comply with the new law before it becomes mandatory on 1 July 2018. On 1 July 2016 the ACCC released industry guidance on the Standard, including content on our website and a guide to assist businesses to comply with the Standard.

2.35. On 9 June 2016 the ACCC participated in a joint webinar with ATO, ASIC and FWO, *Preparing your business for the 2016-2017 financial year: What you need to know and do*. The ACCC provided information about excessive payment surcharges, business-to-business unfair contract terms and scams.

2.36. 12 email updates were sent to the ACCC's small business and franchising information networks. The updates provided subscribers with information about excessive payment surcharges, small business resources, court outcomes and the 9 June webinar.

Small Business & Franchising Consultative Committee

2.37. The amalgamated Small Business & Franchising Consultative Committee held its inaugural meeting on 13 May 2016. Ms Kate Carnell, the Australian Small Business & Family Enterprise Ombudsman, gave a presentation on the role and functions of her office and Treasury updated members on the ACL review. ACCC staff provided an overview of the enforcement activities and gave presentations on excessive payment surcharges, the new business-to-business unfair contract terms provisions and the new country of origin labelling reforms.

Identify and address the risk of serious injury and death from safety hazards in consumer products

2.38. Risk and intelligence inform the ACCC approach to assessing current and emerging safety issues. 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 changes to packaging labelling or product design
- working to introduce changes to voluntary or mandatory requirements, and/or
- introducing and/or working to implement changes to product safety mandatory standards and bans.

Product safety recalls

Table 6: Recalls—1 April to 30 June 2016

Recalls by category	
General consumer goods	53
Motor vehicles	88
Food	11
Therapeutic goods	3
Other	18

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

Infinity electrical cable recall

2.39. A national recall is underway to remediate premises that have been installed with approximately 3 900 km of substandard Infinity electrical cable, which is 41 per cent complete.

2.40. The ACCC is administering 25 voluntary supplier recalls and recently commissioned an external audit to validate the methodology accounting for supplier progress. The method has been validated. The ACCC continues to audit individual suppliers' to assess their communication strategies and recall efforts.

- 2.41. For further information on the recall, visit www.accc.gov.au/update/infinity-cable-recall-act-now-before-its-too-late.

Samsung top-loading washing machines recall

- 2.42. There is a serious defect in every unit of six models of Samsung top-loading washing machines that may cause, and has caused, electrical fires leading to property loss.
- 2.43. The ACCC continues to monitor the recall of the faulty Samsung washing machines, which is led by the NSW electrical safety regulator. As at June 2016 the recall was approximately 76.54 per cent complete.
- 2.44. Clear ACCC advice about consumer rights in relation to the faulty machines has helped consumers seek their choice of remedy.
- 2.45. Visit www.recalls.gov.au/content/index.phtml/itemId/1047306 for more information on the recall.

Mandatory safety reports

- 2.46. The ACCC receives mandatory safety reports from suppliers, which are assessed directly or referred to a specialist regulatory agency for assessment.
- 2.47. During the June quarter, the ACCC received 857 mandatory reports: 332 related to consumer products and were assessed by the ACCC and 525 were referred to other agencies. Of the referred reports, 370 related to food matters to be dealt with by FSANZ, with the remaining 155 referred to other regulators such as the electrical regulators, motor vehicle standards regulators and gas appliance regulators.

Table 7: Mandatory reports—assessment by jurisdiction April–June 2016

	April	May	June	Totals
Assessed	147	154	31	332
Other Regulators	15	14	6	115
FSANZ	134	131	105	370
To be assessed	0	9	111	120
Total received	296	308	253	857

Action on emerging safety hazards

- 2.48. The total number of assessed mandatory reports for this period was 332.
- 2.49. During the quarter the ACCC also conducted hazard assessments of product safety reports; 232 reports were received. 126 were assessed and 88 remain to be assessed.

Emerging safety hazard—Self-balancing scooters

- 2.50. The ACCC alerted the public to safety hazards with self-balancing scooters ('hoverboards') in early December 2015.
- 2.51. The Minister for Small Business imposed an interim ban on unsafe self-balancing scooters because of the risk of house fires. The ban began on 18 March 2016 and based on two subsequent ACCC reviews and recommendations, the Minister

extended the ban twice. The ACCC also reviewed the safety of these products more generally and consulted on regulatory options. The Minister introduced a mandatory standard under the ACL to ensure the safety of self-balancing scooters, which will commence on 17 July 2016.

- 2.52. The ACCC will work with state and territory electrical regulators to develop a longer term solution under the electrical safety framework during the next two years.

Emerging safety hazard—Thermomix

- 2.53. In October 2014 Vorwerk Elektrowerke GmbH & Co. KG (Thermomix) issued a voluntary recall for a defective seal in the Thermomix TM31 model food processor. The fault caused mixing bowl contents to splash out and, if hot, created a burning or scald hazard.
- 2.54. In February and March considerable media attention focused on consumer injuries linked to the use of the Thermomix TM31 food processor.
- 2.55. In May the ACCC met with representatives of the manufacturer. The ACCC safety investigation is continuing.

Product safety risk assessments

- 2.56. Risk informs the ACCC approach to assessing reports and responding to identified safety hazards.
- 2.57. Table 8 illustrates reports assessed in the quarter by risk and priority. A total of 548 reports were assessed in the quarter. Of these, 76 per cent (419) were assessed as low risk/priority. The top ten highest risk product types this quarter were: washing machines, kitchen utensils/containers, bedding, household chemical products, electric cooking/small household appliances, clothing/accessories, powered garden tools, all-terrain vehicles, household cleaning products and pressure cookers.
- 2.58. The products associated with the most severe injuries include all-terrain vehicles (including quad bikes), powered garden tools, household cleaning agents and pressure cookers.
- 2.59. In some cases reports are received with insufficient information to enable the ACCC to assess them or contact the notifier. These reports are captured for intelligence but without a risk/priority rating.
- 2.60. Reports given a high or very high risk/hazard rating or which represent high stakeholder concern are subject to detailed assessment. In cases where safety concerns are confirmed voluntary recall is the most likely outcome.

Table 8: Product safety risk assessments April–June 2016

	April	May	June	Total
Low	125	164	130	419
Moderate	8	24	4	36
Significant	1	0	0	1
High	13	6	10	29
Insufficient Information	9	8	6	23

Higher Stakeholder Concern	13	26	1	40
All	169	228	151	548

Supplier and Consumer Education

- 2.61. In June the ACCC published guidance about safe sourcing of consumer products in four language formats: standard English, plain English, Chinese and Vietnamese.
- 2.62. A joint national button battery safety strategy was developed by the ACCC in June, for commencement in July. All state and territory consumer affairs agencies will be working with the ACCC to deliver the strategy in cooperation with industry representatives and health professionals.
- 2.63. With assistance from the ACCC, industry developed a voluntary industry code for consumer products that use button batteries. That code is expected to be finalised in July. It will provide guidance to suppliers on measures they can take to improve the safety of these products as part of the national button battery safety strategy.
- 2.64. Also in June the ACCC published a [video to raise awareness of the importance of anchoring unstable furniture](#) to prevent death or serious injury to small children.

Compliance campaigns

- 2.65. The ACCC conducts safety inspections of consumer products offered in the market through a three-tiered approach that categorises surveillance as high, medium or low priority. In prioritising the ACCC considers intelligence about market place problems, the length of time since a sector or product was last inspected and the need to plan activities with other agencies. Inspections are of a combination of:
- visual inspections of products in-store and online
 - performance testing by independent laboratories to check performance requirements mandated by the regulations.
- 2.66. ACCC inspections are also conducted to see how a particular regulation is working. During this quarter, one compliance campaign focussed on the new bean bag mandatory standard, which required the replacement of previously approved warning labels from June 30 2016. Inspections took place across the country, with visits to 128 stores to inspect 65 products. The results triggered two product recalls, while overall the ACCC found that industry had acted promptly to label the products with the new, improved warnings.
- 2.67. Inspections of other regulated products during this quarter triggered a further five recalls by suppliers. These recalled products included toy teeters, vehicle ramps and vehicle support stands.
- 2.68. A major national inspection program for household cots is planned to address ACCC concerns about the compliance levels of these products. The program will remove unsafe products from the marketplace, remind suppliers about their obligations under the mandatory safety standard and may lead to enforcement action where appropriate. The supply of non-compliant household cots from both online and bricks and mortar retailers across Australia is targeted. The program will coordinate across states and territories, working with local ACL regulators and will include performance testing by independent laboratories. It will run throughout the 2016-17 financial year and conclude in June 2017.

3. Infrastructure regulation

Promoting the economically efficient operation of, use of, and investment in infrastructure; and identifying market failure

- 3.1. The ACCC's infrastructure regulation role encompasses key infrastructure sectors of the economy, including telecommunications, petroleum, rail, water, ports and airports, and involves:
- regulating access to bottleneck infrastructure and the price for that access. Effective regulation of infrastructure services supports effective competition in upstream and downstream markets, and the economically efficient operation 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
 - enforcing industry-specific competition and market rules in some infrastructure sectors to improve the efficient operation of markets.

Telecommunications

- 3.2. The ACCC is responsible for the economic regulation of the communications, broadcasting and audio-visual content sectors.

Superfast broadband access service (SBAS) declaration inquiry

- 3.3. The ACCC has continued to progress its declaration inquiry into whether superfast broadband access service (SBAS), such as the very-high-bit-rate digital subscriber line (VDSL) service, should be regulated.
- 3.4. The inquiry followed the conclusion of the ACCC's investigation into TPG's proposal to deploy a fibre-to-the-basement (FTTB) network and recommendations made by the Vertigan panel for the ACCC to commence a declaration inquiry into vectored VDSL2 networks causing monopolies for technological and economic reasons.
- 3.5. Following its draft decision issued on 6 November 2015, the ACCC continued with targeted consultation during the March quarter 2016 on specific issues relating to the nature and scope of the service description.
- 3.6. The ACCC intends to release a final decision in July/August 2016.
- 3.7. Once the SBAS final decision is released the ACCC will then progress any SBAS Final Access Determination inquiry and the Local Bitstream Access Service (LBAS) FAD inquiry that commenced in April 2015 and was further extended until 7 October 2016. The ACCC is of the view that it will be efficient to conduct the FAD inquiries concurrently for these two services, given their similar characteristics, in the event that the SBAS is declared.

Final access determination for the DTCS

- 3.8. The ACCC released its final access determination (FAD) for the Domestic Transmission Capacity Service (DTCS) on 21 April 2016. The DTCS FAD followed the ACCC's extended consultation on a range of data and modelling issues which were raised in submissions to the draft FAD issued in September 2015. The ACCC re-engaged its consultant, Economic Insights, to undertake further regression analysis and modelling.
- 3.9. The DTCS FAD set price terms significantly lower than the regulated prices set in the 2012 DTCS FAD. For example, compared to the 2012 FAD:
- average regulated prices for low capacity (2Mbps) short distance services fell by 13 percent in metro areas and 22 percent in regional areas, and
 - average regulated prices for high capacity (100Mbps) long distance services fell by 76 per cent in metro areas and 78 percent in regional areas.
- 3.10. However the extent of the reduction in regulated prices for a specific route depends upon the geographic route type, capacity, and distance of a particular service. The ACCC has provided a calculator on its website to assist access seekers and providers determine regulated prices for declared DTCS routes.
- 3.11. In addition to the primary price terms, the DTCS FAD includes a number of supplementary terms including connection charges and new non-price terms and conditions for special linkage charges. For all other non-price terms and conditions which apply to the DTCS, the FAD adopts the term and conditions expressed by the ACCC in its final report for related declared services (released on 24 August 2015).
- 3.12. The DTCS FAD applies from 21 April 2016 to 31 December 2019.

Telstra migration plan – ACCC's assessment of variation

- 3.13. Telstra's migration plan outlines how Telstra will progressively migrate voice and broadband services from its copper and hybrid fibre coaxial (HFC) networks to the NBN as the fixed line network is rolled out across Australia.
- 3.14. On 9 May 2016 Telstra submitted a formal variation to the Migration Plan for ACCC approval. The variation reflects improvements to existing arrangements resulting from experience in migrating end-users to the multi-technology mix NBN, and includes:
- amendments to the in-train order arrangements to provide additional time for premises with an NBN order to be connected before managed disconnection occurs
 - changes to the disconnection arrangements for some business services (termed 'Special Services') so that they align with NBN Co's approach to releasing Special Service equivalent services by access technology (e.g. FTTP, FTTN/B)
 - formalising a range of other interim arrangements previously consented to by the ACCC that improve the migration process.
- 3.15. On 20 May 2016 the ACCC released a discussion paper seeking stakeholder views on whether the proposal complied with the Migration Plan Principles issued by the Government in 2015.
- 3.16. SingTel Optus Pty Limited (Optus) raised concerns about the complexity of migrating business customers and the potential for the proposed in-train order arrangements to

place service continuity at risk. Telstra subsequently submitted an amended variation to the ACCC responding to Optus' concerns.

- 3.17. On 21 July, the ACCC published a final decision approving Telstra's variation to the Migration Plan. The ACCC's role in approving the variation to the Migration Plan was limited to assessing whether it is consistent with the legislative requirements, which does not allow the ACCC to seek improvements beyond these requirements.

Final determination on NBN Co's revenue controls

- 3.18. On 3 June 2016, the ACCC issued its final determination on NBN Co's revenue controls for the 2014-15 financial year. In its final determination the ACCC accepted that NBN Co's proposed 2014-15 values for capital and operating expenditure, regulated asset base, revenue requirement and initial cost recovery account (and inputs to these values) have been calculated in accordance with the special access undertaking (SAU) requirements. The ACCC also accepted that NBN Co's prices did not exceed maximum regulated prices during 2014-15. The final determination is followed by the ACCC's draft determination issued in March 2016 for consultation.
- 3.19. The ACCC is required to make annual determinations on NBN Co's revenue controls in accordance with the Long Term Revenue Constraint Methodology (the LTRCM), which is set out in NBN Co's SAU. The SAU establishes part of the regulatory framework for the NBN and includes important provisions to encourage NBN Co to incur expenditure efficiently. Under the SAU, NBN Co must submit for each financial year a set of information relating to its LTRCM, including capital expenditure, operating expenditure, allowable revenue and accumulated losses.
- 3.20. NBN Co has also requested a minor amendment to the ACCC's 2013-14 determination to correct for an error in its submission. The ACCC considered NBN Co's proposed amendment in the same process as the final determination and decided to accept NBN Co's proposal.

ACCC submission to the Productivity Commission Inquiry into Intellectual Property arrangements in Australia

- 3.21. The ACCC has made a number of submissions to the Productivity Commission (PC) inquiry into Australia's intellectual property system including the effect on investment, competition, trade, innovation and consumer welfare.
- 3.22. In response to the PC's draft report released on 29 April 2016, the ACCC made a submission advancing its support for a number of the PC's key recommendations including:
 - the repeal of section 51(3) of the CCA (which provides a limited exception for certain licence conditions from some of the CCA's competition provisions),
 - the introduction of a broad 'fair use' exception,
 - providing greater clarity that it is not an infringement of the Copyright Act for consumers to circumvent geoblocking technology, and
 - the ACCC formally monitoring 'pay-for-delay' settlements in the pharmaceutical sector.
- 3.23. The PC's final report is due for release in August 2016.

Annual telecommunications reports

- 3.24. On 19 April 2016, the ACCC's annual telecommunications reports for 2014-15 to the Minister for Communications and the Arts were tabled in Parliament. The ACCC is required to prepare two reports under s151CM of the CCA:
1. Competition in the Australian telecommunications sector (Division 11 report), and
 2. Price changes for telecommunications services in Australia (Division 12 report).
- The ACCC provided these reports to the Minister in March 2016.
- 3.25. The Division 11 Report outlines the key trends, competitive developments and ACCC activities in the communications sector. It identified four key trends for the 2014-15 period:
- Industry consolidation had increased with a number of significant mergers (including iiNet Limited and TPG Internet Pty Ltd) and strategic partnerships
 - Consumer demand for data on both fixed and wireless networks continued to increase rapidly, and this was at least in part driven by the uptake of streaming video on demand services.
 - The rollout of the NBN continued, with a number of significant steps in the move to the multi-technology-mix NBN taking place. The ACCC would continue to monitor the migration of consumers to the NBN, as well as how competition is developing over the network.
 - Consumer safeguards remain important due to the complexity of communications services, broadband speed representations and in the NBN migration process.
- 3.26. The Division 12 report measures changes in the real prices of Australian telecommunications services through the calculation of annual percentage changes in price indices for component services. The report found that overall prices for telecommunications services were relatively stable, reporting 0.5 per cent fall in real terms in 2014-15 compared to 3.3 per cent average price decreases recorded in the previous eight years.

Issues in the transition to the NBN

- 3.27. The ACCC has continued to engage with key competition and consumer issues arising from the significant structural change occurring in the telecommunications industry.

Telstra's involvement in the NBN rollout

- 3.28. On 11 April 2016 the ACCC issued a media release raising concerns around the competition implications of Telstra's involvement in the rollout of the NBN. The ACCC acknowledged that using Telstra's technical expertise will contribute to a quicker rollout of the NBN, but expressed concerns about competition issues arising from agreements that involve Telstra in the construction and maintenance of the NBN, including the "HFC Delivery Agreement" announced in April 2016.
- 3.29. The ACCC has subsequently had extensive and productive discussions with NBN Co and Telstra to seek to address the concerns that could arise because of Telstra's role under these agreements. In particular, the ACCC has concerns that Telstra may receive a competitive advantage if it has access to better information than other service providers or if it is able to use infrastructure built for the NBN network before that infrastructure becomes available to other retail service providers. As a result,

NBN Co and Telstra have provided a set of proposals aimed at addressing these concerns.

- 3.30. The ACCC is currently examining these proposals and has undertaken targeted consultation with industry participants to assist its assessment.

Regulating the NBN – variation of NBN Co’s Special Access Undertaking

- 3.31. On 31 May 2016, the ACCC published NBN Co’s proposed variation to its special access undertaking (SAU) and supporting documentation on the ACCC’s website.
- 3.32. NBN Co submitted the SAU variation to the ACCC on 27 May 2016. The main purpose of the variation is to incorporate three new network architectures within the SAU to reflect the current NBN model. These technologies are fibre-to-the-node (FTTN), fibre-to-the-basement (FTTB) and hybrid fibre coaxial (HFC). NBN Co also proposes to make other changes to the SAU, including changes to the rollout information commitments, the inclusion of co-existence and remediation provisions for FTTN and FTTB services and minor changes to dispute resolution arrangements.
- 3.33. On 20 July 2016, the ACCC published a consultation paper on the SAU variation. Submissions to the consultation paper are due by 26 August 2016.

Re-appointment of NBN Co’s resolution advisor

- 3.34. On 6 April 2016, the ACCC approved NBN Co’s proposal to re-appoint its current dispute resolution advisor and the draft terms of appointment. Endispute Pty Ltd was reappointed, with the performance of the advisor functions to be carried out by Professor Tania Sourdin, until 31 October 2016, with a further option to extend the term until 31 October 2017.

Telstra’s structural separation annual compliance report

- 3.35. On 15 April 2016 the ACCC’s report to the Minister for Communications and the Arts on Telstra’s compliance with its Structural Separation Undertaking (SSU) for 2014-15 was tabled in Parliament. The ACCC is required to prepare this report under section 105C of the Telecommunications Act 1997.
- 3.36. The report found that there has been a reduction in the number of breaches reported by Telstra in 2014-15. The most common compliance issue continues to be Telstra’s failure to prevent unauthorised disclosure of wholesale customer confidential or commercially sensitive information. This includes a small number of incidents of inadvertent disclosure, as well as ongoing IT system issues. For each breach of the SSU, the ACCC continues to focus on stopping the conduct, ameliorating its impacts, promoting transparency and safeguarding against recurrence.
- 3.37. The report also described actions taken by the ACCC to identify areas for improvement in Telstra’s systems and processes to ensure its SSU and Migration Plan obligations are being implemented effectively. This included an independent review of Telstra’s IT systems to assess whether they had been fully remediated to prevent retail business unit staff from accessing wholesale customer protected information.

ACCC’s first report on the NBN wholesale market

- 3.38. On 29 April 2016 the ACCC released its initial quarterly NBN wholesale market indicators report for the period ending 31 March 2016. The report provides a count of

wholesale access services acquired over the NBN by access technology, geographic region, speed tier, traffic class and established NBN access seeker.

3.39. Key points from the initial report include, as at 31 March 2016:

- NBN Co was supplying 941,235 wholesale access services and had contracted to supply 1,004 gigabits per second of aggregate network capacity (Connectivity Virtual Circuits) over the NBN.
- NBN access seekers were present at the 121 listed points of interconnection (POIs), of which 115 had 3 or more Access Seekers.
- Telstra has the largest national market share with 49% of NBN wholesale access services, followed by TPG with 27%, Optus with 14% and M2 Group with 6%.
- TPG was acquiring the most higher speed NBN wholesale access services (50 Mbps and higher), closely followed by Telstra and Optus.

3.40. The quarterly reports will assist in the continued development of competitive NBN markets that benefit broadband consumers. In particular, providing information on the state of the market will help service providers in the NBN environment make informed planning decisions so that they are better placed to tailor their services and products to what consumers want.

3.41. The next report is due late-July 2016. NBN Co provides its quarterly report to the ACCC for publication, pursuant to a disclosure direction issued by the ACCC in March 2016.

Fuel price monitoring

3.42. The ACCC closely follows developments in the petroleum industry and monitors the retail prices of petrol, diesel and automotive LPG in all capital cities and around 190 regional locations.

3.43. In December 2014 a new direction for the ACCC to continue monitoring prices, costs and profits of unleaded petroleum products was issued by the then Minister for Small Business. Under these arrangements the ACCC produces:

- quarterly "macro" reports, which examine fuel price movements in all capital cities and regional locations
- market studies, which look at "micro" issues in depth, including reports analysing the drivers of petrol prices in targeted regional markets

Latest quarterly petrol monitoring report

3.44. On 6 June 2016 the ACCC released its sixth quarterly report on the Australian petroleum market, covering the March 2016 quarter. Key points of the report were:

- The March quarter 2016 average price in the five largest cities (i.e. Sydney, Melbourne, Brisbane, Adelaide and Perth) was the lowest quarterly average since the June quarter 2005 (or the June quarter 1999 in inflation-adjusted terms).
- The average petrol price in the five largest cities in the March quarter 2016 was 111.0 cents per litre (cpl), which was 13.4 cpl lower than in the previous quarter and 22.2 cpl lower than in the September quarter 2015.
- Historically low international crude oil and refined petrol prices, combined with an increase in the AUD-USD exchange rate, were the main reasons for the low retail prices.

- Gross Indicative Retail Differences (GIRDs) are the difference between retail prices and published wholesale prices, and they are a broad indicator of gross retail margins. Quarterly average GIRDs in the five largest cities decreased by 2.6 cpl from the record high in December quarter 2015 (12.4 cpl) to 9.8 cpl in the March quarter 2016.
- Between December 2015 and March 2016 monthly average regional prices decreased by 12.7 cpl. This was in line with the decrease in prices in the five largest cities.
- In the March quarter 2016 retail petrol prices in Darwin were 9.6 cpl higher than in the five largest cities, compared with a peak quarterly average price differential of 24.7 cpl in September quarter 2014.
- A number of mobile phone apps were released during the March quarter 2016 which will provide more petrol price information to consumers and help them find lower prices. These include apps by 7-Eleven and GasBuddy.
- In addition, on 20 May 2016 MotorMouth updated its app to provide motorists with access to near real time petrol price information for the first time. These changes to the MotorMouth app were a result of the settlement between the ACCC and data provider Informed Sources to resolve ACCC proceedings on petrol price information sharing.

Petrol market studies

- 3.45. On 19 April 2016 the ACCC announced Cairns as the location for the fourth petrol market study.
- 3.46. The ACCC continued its studies into the Launceston and Armidale petrol markets, which had been announced on 8 May 2015 and 3 August 2015 respectively.

Rail access

New Hunter Valley access undertaking

- 3.47. The ACCC continued to assess a replacement access undertaking from the Australian Rail Track Corporation (ARTC) for its Hunter Valley rail network during the quarter. The network is predominantly used to transport export coal from the region's mines to the Port of Newcastle in one of the world's largest coal export operations. It is also used for domestic coal and non-coal freight.
- 3.48. On 8 January 2016 the ACCC released a consultation paper following the receipt of the ARTC's proposed access undertaking pursuant to Part IIIA of the Act (the 2016 HVAU) on 23 December 2015. In response to the consultation paper, the ACCC received 12 stakeholder submissions. Overall, stakeholder submissions reflected the view that it would not be appropriate to accept the 2016 HVAU in its proposed form.
- 3.49. ARTC withdrew the 2016 HVAU on 15 June 2016 and intends to submit a revised application shortly. Given the timing of the withdrawal, the ACCC has accepted the ARTC's request to extend the 2011 HVAU which is due to expire in July 2016. The 2011 HVAU will now continue until 31 December 2016.

Annual compliance reporting under existing Hunter Valley undertaking

- 3.50. The 2011 HVAU requires ARTC to annually submit documentation to the ACCC demonstrating its compliance with the financial model and pricing principles in the undertaking.

- 3.51. On 6 June 2016 the ACCC released its final determination on ARTC's annual compliance submission for the 2013 calendar year. Consistent with the draft decision released on 30 October 2015, the ACCC determined that ARTC has not complied with respect to its application of the ceiling limit test. This led to a cross-subsidisation between different users of the rail network.
- 3.52. The ACCC's assessment involved four stages of public consultation with stakeholders. The ACCC also engaged with stakeholders at a number of other stages throughout the assessment process to ensure that all their views were heard and understood.

Australia Post

Australia Post cross-subsidy assessment and record-keeping rules

- 3.53. On 14 April 2016 the ACCC issued its Australia Post cross-subsidy report for 2014-15. Similar to previous years, the ACCC concluded that the regulatory accounts did not show that Australia Post was cross-subsidising its contestable services with revenue from its monopoly services.
- 3.54. The ACCC has decided to cease the publication of the cross-subsidy report because it is unlikely that Australia Post will be able to cross-subsidise its contestable services in the future.
- 3.55. Given this, the ACCC reviewed the record-keeping rules that apply to Australia Post's regulatory accounting framework. While the ACCC is legislatively obligated to have such rules in place, it revised the rules so that Australia Post would only be required to provide the information if it was requested to do so by the ACCC. The revised rules took effect on 1 July 2016.

Bulk wheat port terminal services

Wheat Port Code Exemptions

- 3.56. The ACCC regulates port access in accordance with the mandatory Port Terminal Access (Bulk Wheat) Code of Conduct (the Code). The Code regulates bulk wheat port terminal operators to ensure that exporters have fair and transparent access to terminal facilities.
- 3.57. The Code contains a range of obligations on port operators including a non-discrimination requirement, dispute resolution processes, ACCC approval of capacity allocation systems and certain reporting requirements. The Code allows for some port operators to be exempted from certain of these obligations. The ACCC can make an exemption determination after having regard to a series of matters, including the interests of exporters, the public interest in having competition and the legitimate business interests of the port operator.
- 3.58. On 1 April 2016 the ACCC released final determinations granting exemptions to both GrainCorp Operations Limited and Quattro Ports at their respective port terminal facilities at Port Kembla from Parts 3 to 6 of the Code. On the same day the ACCC also released a final determination to exempt Patrick Stevedoring Pty Ltd at its port terminal facility at Port Adelaide.

Water

ACCC draft advice on water charge rules

- 3.59. During the June quarter 2016 the ACCC continued to assess submissions it received from stakeholders on its draft advice on changes to the water charge rules that was issued for consultation on in November 2015.
- 3.60. The draft advice focused on the ways for increasing transparency, promoting efficiency and increasing protections for some customers while also reducing the regulatory burden in the implementation of water charge rules in future. Recommendations include:
- promoting a 'level playing field' by streamlining the application of the rules to apply to all infrastructure operators;
 - removing overly-prescriptive reporting requirements on operators;
 - improving pricing transparency requirements;
 - expanding protections against charging requirements that unfairly advantage some customers over others;
 - preventing discriminatory charges being unreasonably imposed by operators;
 - reducing regulatory cost and complexity for operators by returning the regulatory role to the economic regulators in each basin state; and
 - merging the three sets of water charge rules into one.
- 3.61. The ACCC's draft advice followed an extensive period of stakeholder consultation. The consultation included 8 regional forums across the Basin, individual consultation with water service infrastructure operators, regulators and government departments in addition to the written submissions from stakeholders.
- 3.62. Under the Water Act 2007, the ACCC is required to provide advice to the Minister for Agriculture and Water Resources on the making, amending or revoking of water charge rules and water market rules. Reflecting the recommendations of an independent review of the Water Act 2007, in December 2014 the Minister requested that the ACCC provide advice on possible amendments to the water charge rules. The water charge rules regulate the charges imposed on rural water users in the Murray-Darling Basin. The current rules have been in place for five years.
- 3.63. The ACCC will soon provide its final advice to the Minister.

WaterNSW's 2016-17 charges in the Murray-Darling Basin

- 3.64. On 19 May 2016 the ACCC issued its final decision on charges that WaterNSW is able to levy for infrastructure services in the Murray-Darling Basin (MDB) during 2016–17. The decision followed the ACCC's draft decision issued in April 2016. This decision is an annual process which adjusts future charges to account for changes in usage from the levels forecast according to the methodology that the ACCC developed in consultation with WaterNSW and water users in 2014.
- 3.65. The ACCC decided that most charges will increase for 2016-17. Ongoing drier conditions throughout 2015–16 resulted in lower than forecast water usage in all valleys. This in turn led to a shortfall in revenue from usage charges for WaterNSW, adding to the existing shortfall in revenue, carried over from 2014–15. The ACCC's pricing model allows charges to increase to recover a portion of the cumulative shortfall.

- 3.66. There are larger increases of between 8 and 9 per cent for Lachlan Valley and Macquarie Valley high security entitlement holders and for users in the Peel Valley charges will increase by 11.4 per cent. Charges for some other valleys (Border, Gwydir, Namoi, Murray and Murrumbidgee) will increase less than 3 per cent in nominal terms.
- 3.67. Charges for 2015–16 and 2016–17 have been determined according to the methodology set out by the ACCC in its determination of June 2014 on charges for the 2014–17 regulatory period. This methodology adjusts charges for changes in demand according to an ‘unders and overs mechanism’ which allows WaterNSW to recover a portion of any cumulative under-recovery of revenue resulting from below-forecast demand. Similarly, WaterNSW has to pay back a portion of any cumulative over-recovery.
- 3.68. This is the ACCC’s second and final annual review of WaterNSW charges. From 1 June 2016, the NSW Independent Pricing and Regulatory Tribunal (IPART) will become the accredited regulator of WaterNSW’s charges under Part 6 of the Water Charge (Infrastructure) Rules 2010.

Annual water monitoring report

- 3.69. On 6 June 2016 the ACCC publicly released the [ACCC Water Monitoring Report 2014-15](#) following the ACCC’s submission of the report to the Minister in May 2016.
- 3.70. The report found that charges faced by most customers increased in 2014–15. Typical (‘hypothetical’) bills calculated by the ACCC increased in real terms for 26 out of 36 systems, with real changes over that time ranging between a decrease of 11 per cent to an increase of 30 per cent.
- 3.71. The report also found that the charging arrangements by some operators have resulted in preferential treatment for certain customer groups, for example charging structures that favour larger customers. The report further found that such arrangements are likely to influence irrigators’ decisions on using, carrying over and trading their water and may impact the efficiency of water use across the Murray Darling Basin.

ACCC water compliance and enforcement activities

- 3.72. During this quarter the ACCC has addressed a number of water charging related queries and complaints with a number of preliminary investigations underway. Some of these focused on key pricing obligations under the water charge rules while others raised issues of conduct under the CCA and ACL, for example in the water brokering industry. The ACCC has also initiated preliminary investigations into the accuracy of the schedule of charges (ensuring the inclusion of all regulated charges on bills) and the timeliness of the schedule issued by some infrastructure operators.

Infrastructure regulation guidelines

Guidelines on Part IIIA access undertakings

- 3.73. On 9 May 2016 the ACCC released draft Part IIIA undertaking guidelines for public consultation. The draft guidelines provide information about the ACCC’s processes for assessing access undertaking applications. The draft guidelines also discuss how to draft an access undertaking and cover the types of provisions that applicants may consider including in their proposed undertakings.

- 3.74. Submissions were due by 7 June 2016 and three submissions were received (from ARTC, the Hunter Rail Access Taskforce and Aurizon). The ACCC is currently making revisions to the guidelines in response to issues raised in submissions, and expect to release final guidelines in August 2016.

Draft Part XIC declaration guidelines for telecommunications services

- 3.75. On 1 June 2016 the ACCC released draft Part XIC declaration guidelines for telecommunication services for public consultation. The draft guidelines are an update to those originally released in July 1999 and reflect the changes to the way in which services can be declared under Part XIC of the CCA.
- 3.76. Under Part XIC, a carriage service, or service that facilitates the supply of a carriage service, can be declared. Once declared an access provider must provide access to that service upon request. There are various ways in which a relevant service can be declared under Part XIC.
- 3.77. The draft guidelines provide information about the processes for declaring a service, including an explanation of the differences between how an NBN and non-NBN service can be declared. The key concepts to be applied by the ACCC in considering whether to declare a service are also outlined in the draft guidelines, including how the ACCC applies the long-term interests of end-users test in Part XIC.
- 3.78. Submissions were due by 13 July 2016. These will be considered and relevant issues addressed in drafting the final guidelines, which are expected to be released in August or September 2016.

4. Market studies and research

Inquiry into East Coast Gas Markets

- 4.1. The ACCC reported its findings to the relevant Minister in April 2016 concerning the inquiry into the competitiveness of wholesale gas prices in eastern and southern Australia. The ACCC found that there has been unprecedented change in the east coast gas market over the last four years with the development of Liquefied Natural Gas (LNG) facilities in Queensland. The report makes a number of recommendations that the COAG Energy Council and state and territory governments can consider to alleviate gas market issues, particularly for industrial users. These include:
- Enabling new gas supply to come to market, in particular in south eastern Australia,
 - Revisiting the regulatory coverage of pipelines, increasing the ability for pipelines with market power to be regulated, and
 - The consistency and transparency of the provision of information to the market.
- 4.2. The ACCC will consider the lack of consistent publically available data on the sector and will also consider some practices in the market, including the joint marketing of the Gippsland Basin Joint Venture between Esso Australia Resources Ltd and BHP Billiton Petroleum (Bass Strait) Pty Ltd (BHP).
- 4.3. The ACCC website hosts the East Coast Gas Inquiry 2015 report, together with other materials relevant to the inquiry.

Private health insurance report

- 4.4. During this quarter the ACCC invited and received submissions to inform its 17th annual report to the Senate on anti-competitive practices in the private health insurance industry for the 2014-15 financial year (Private Health Insurance 2014-15 report). The focus of this year's report will be on the communication of policy changes to consumers. On 1 June 2016 the ACCC chaired a forum with invited stakeholders from industry, consumer groups and government to further discuss the issue of policy change communication. The report is due to be published in the second half of 2016.

New car retailing market study

- 4.5. On 17 June 2016 the ACCC issued a media release announcing the ACCC's intention to undertake a market study into the new car retailing industry. The ACCC will be commissioning research in July 2016 to inform the study and an issues paper will be released inviting public submissions later this year.

Cattle and beef market study

- 4.6. On 5 April 2016 the ACCC issued a media release announcing the ACCC's intention to undertake a market study into the cattle and beef industry. An issues paper was released on 7 April 2016 and over 50 public submissions were received. Public forums were also held in Wodonga, Toowoomba, Mt Gambier, Dubbo, and Bunbury. A final report from the market study will be released in late 2016.

5. Advocacy and legislative and legal developments

Australian Consumer Law Review

- 5.1. The Australian Consumer Law (ACL) is a consumer protection law that applies uniformly across Australia. The review of the ACL formally commenced with the release of an Issues Paper on 31 March 2016 and is the first review of the ACL. The ACCC participated in the review during the quarter along with Commonwealth, state and territory counterparts. The ACL review will:
- assess the effectiveness of provisions of the law and whether it is operating as intended
 - consider the 'single law multiple regulator' model (the joint enforcement arrangements between the Commonwealth, state and territory consumer protection agencies)
 - examine whether the national consumer policy framework is sufficiently flexible to address new and emerging issues.
- 5.2. Feedback will inform the development of an interim report which will be released for consultation in the second half of 2016. Submissions for feedback on the Issues Paper closed on 27 May 2016. 147 submissions and 84 comments were received on the Issues Paper.
- 5.3. The [Australian Consumer Survey](#) was completed in May 2016 and found a number of improvements in consumer and business awareness, understanding and acceptance of the ACL.
- 5.4. The [Comparative analysis of overseas consumer policy frameworks](#) project was also completed in May 2016 and showed a generally high level of similarity between Australia's consumer policy framework and the frameworks of other comparable jurisdictions.
- 5.5. On 29 April 2016 the Government announced that a Productivity Commission (PC) [Consumer Law Enforcement and Administration study](#) will examine the multi-regulator enforcement and administration arrangements underpinning the ACL. The PC will report to Government by March 2017.

Competition Policy Review

- 5.6. On 24 November 2015 the Government released its response to the [Competition Policy Review](#)'s final report. The report made 56 recommendations for reforms to competition law and policy as well as the institutions that promote competition, including the ACCC.
- 5.7. The ACCC is continuing to engage with the Commonwealth Treasury on implementation.

Country of origin labelling

- 5.8. The Government approved a new food labelling system on 21 July 2015. The system is to be based on an ACL information standard designed to show consumers where products are made, grown or packaged. The ACCC worked closely with other Commonwealth agencies and ACL regulators in relation to the information standard, an information campaign, and an enforcement and compliance strategy.

- 5.9. On 15 April 2016, the Minister for Industry, Innovation and Science registered the *Country of Origin Food Labelling Information Standard 2016* under section 134 of the ACL. The Standard commenced on 1 July 2016.
- 5.10. ACL regulators will be responsible for enforcing compliance with the new laws after a 2 year transition period.
- 5.11. Under the new system, most foods that are produced, grown or made in Australia will be required to display a label with:
- the kangaroo in a triangle symbol so consumers can easily and quickly identify the Australian origin of the food
 - a statement indicating that the food was grown, produced or made in Australia
 - the minimum proportion, by ingoing weight, of Australian ingredients, indicated as a percentage shown in a bar chart.
- 5.12. On 4 May 2016, the Minister for Industry, Innovation and Science introduced the *Competition and Consumer Amendment (Country of Origin) Bill 2016*. The Bill is to amend the definition of 'substantial transformation' within the ACL safe harbour provisions. The aim is simplifying the test for 'made in' and removing the 50 per cent production cost test. That Bill lapsed upon the prorogation of Parliament on 9 May 2016.
- 5.13. If the Bill is reintroduced and the standard made, it will replace the current mandatory labelling requirements outlined in the *Australia New Zealand Food Standards Code*. ACL regulators will then be responsible for enforcing compliance with the new laws after a 2 year transition period.

Excessive payment surcharges

- 5.14. The *Competition and Consumer Amendment (Payment Surcharges) Act 2016* received Royal Assent on 25 February 2016. The Act will ensure that consumers using payment cards from designated systems cannot be surcharged in excess of a merchant's cost of acceptance for that card system. Designated systems include eftpos (debit and prepaid), MasterCard (credit, debit and prepaid), Visa (credit, debit and prepaid), and the American Express companion card system.
- 5.15. The ACCC engaged with the Reserve Bank of Australia (RBA) during the quarter as it developed and published the standard that sets out the costs that can be included by a merchant as part of their costs of acceptance.
- 5.16. The standard was released on 26 May 2016. The ACCC has investigation and enforcement powers under the new framework to require merchants and other payment system participants to provide documents or information to help it assess the costs incurred against any surcharges imposed by a merchant. These will take effect for large merchants on 1 September 2016 and for other merchants on 1 September 2017.
- 5.17. The ACCC published [surcharges guidelines and information](#) on 23 June 2016.

Extending unfair contract term protections to small business

- 5.18. The *Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Act 2015* received Royal Assent on 12 November 2015. This extends to small businesses the existing protection afforded to consumers against unfair contract terms in standard form contracts. The protections will come into effect in November

2016. The ACCC continues to engage with businesses so that they are ready to comply with the new laws.

Free range eggs

- 5.19. On 31 March 2016 Commonwealth, state and territory consumer affairs ministers agreed to the introduction of a new information standard for free range eggs. The information standard will require eggs labelled as 'free range' to have been laid by hens with meaningful and regular access to the outdoors, and there will be a ceiling on outdoor stocking density of 10,000 hens per hectare.
- 5.20. The information standard is intended to be in place within 12 months pending an ACL amendment to ensure that a person complying with the standard will not contravene ACL prohibitions on misleading or deceptive conduct and representations.
- 5.21. The ACCC will look to revisit and adjust its [free range hen egg claims guidance](#) as the development of the information standard progresses.

Horticulture Code of Conduct Review

- 5.22. The *Horticulture Code of Conduct* is a mandatory industry code under section 51AE of the CCA and is enforced by the ACCC.
- 5.23. An independent review of the *Horticulture Code of Conduct*, to be led by Mr Mark Napper and Mr Alan Wein, was launched on 3 June 2015.
- 5.24. On 18 February 2016, the [Independent Review of the Horticulture Code of Conduct: Final Report](#) was released.
- 5.25. The ACCC has continued to work with an interdepartmental committee of federal government agencies to assist in developing the Government response to the review's recommendations, during the quarter.

White Collar Crime Inquiry

- 5.26. On 25 November 2015, the Senate referred an inquiry into the inconsistencies and inadequacies of current criminal, civil and administrative penalties for corporate and financial misconduct or white-collar crime to the Senate Economics References Committee for inquiry and report by 27 July 2016.
- 5.27. An April 2016 [ACCC submission to the penalties for white collar crime inquiry](#) submitted that it remains a challenge for the regulator and the Courts to award penalties in proportion to the wrongdoing occurring. It also argued that consumer law penalties ought to be more comparable to the competition law penalties that also operate across the economy.

6. International collaboration

- 6.1. The ACCC continued to engage closely with competition and consumer protection counterparts around the world. The need for international cooperation has grown as trading across jurisdictional borders has become more frequent and consumers are exposed to more complex transactions occurring across multiple jurisdictions.
- 6.2. This particularly applies to trade with Australia's Asian neighbours, 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. Recognising the value of effective competition and consumer protection regulation and regional cooperation, the ACCC continues to commit efforts to relationship and capacity building in the Asia Pacific region and beyond.
- 6.3. The ACCC regularly engages and exchanges information with regulators in other countries on a range of matters, including product safety, consumer and competition investigations and regulatory developments. This quarter the ACCC:
 - received and responded to 29 requests for information from international agencies including in Canada, Colombia, Indonesia, Japan, New Zealand, UK and the USA
 - made 15 requests for information to agencies in the European Union, France, Netherlands, New Zealand, Singapore, Sweden and the USA
 - met with delegations from Bhutan and Vietnam
 - participated in the twelfth round of negotiations for the Regional Comprehensive Economic Partnership (RCEP) held in Wellington in June. The ACCC's focus is on the proposed competition chapter of the RCEP agreement.

Competition focus

- 6.4. The ACCC continued to expand its capacity building assistance to countries in South East Asia through the Competition Law Implementation Program (CLIP). Funded under the Association of Southeast Asian Nations (ASEAN) - Australia and New Zealand FTA Economic Cooperation Work Program (ECWP), CLIP aims to strengthen competition regulation and enforcement in the region. This quarter the ACCC delivered a number of CLIP activities including:
 - presenting with the Organisation for Economic Co-operation and Development (OECD) Korea Policy Centre and Vietnam Competition Authority at the OECD Workshop on Building Cartel Enforcement
 - co-hosting the Train-the-Trainer Workshop for investigators of the Malaysian Competition Commission
 - provided expert assistance to the Ministry of Commerce, Myanmar. This placement included delivering a series of seminars for members of the business community as well as small group discussions and advisory sessions for Ministry of Commerce staff on competition law, investigation skills and institutional capacity.
- 6.5. The ACCC also took part in panel sessions during the International Competition Network's Annual Meeting, presenting on the detection and deterrence of cartels, the use of leniency for cartel matters in Australia, merger remedies and the ACCC's technical capacity building activities.
- 6.6. The ACCC, in consultation with Treasury, drafted two submissions for the OECD's Competition Committee meetings in June on the use of enforceable undertakings in competition matters and public interest considerations in merger review.

Consumer focus

- 6.7. The ACCC continued to work closely with international counterparts on matters of consumer protection enforcement and policy, including:
- presenting at the Annual Meeting of the International Consumer Protection Enforcement Network (ICPEN) on a range of topics including the value of networks, why international collaboration is important and achieving enforcement outcomes through collaboration
 - presenting at the OECD Ministerial Meeting on the Digital Economy in Mexico on Australia's work to support the OECD's Global Recalls portal and in working with colleagues in the ICPEN to provide guidance in relation to the use of online reviews and endorsements.

Regulatory focus

- 6.8. The ACCC continued to work closely with international counterparts on matters of regulatory practice and policy, including:
- attending the Utility Regulators Forum hosted in Wellington in 2016
 - presenting at the Asia-Pacific Economic Cooperation (APEC) Structural Reform Capacity Building Workshop: Developing RAASR Individual Action Plans on the importance of competition policy in structural reform
 - presenting at the 32nd meeting of the Energy Intermarket Surveillance Group on market performance assessment and reporting, and renewables and disruptive technologies integration issues and governance arrangements for electricity markets and market monitors
 - attending the OECD Regulatory Policy Committee and the Network of Economic Regulators Forum to contribute to work on building regulatory policy systems, stakeholder engagement best practice principles, the role of regulators in governance of infrastructure, and safeguarding regulators against undue influence.

Appendices

A Complaints and enquiries

During the June 2016 quarter the ACCC received 100 156 complaints and enquiries from businesses and consumers (58 243 phone calls, 41 726 emails and 187 letters). Of these, 98 were escalated for assessment.

These volumes represent all attempts to contact us by phone and are artificially inflated by customers needing to make multiple attempts to get through particularly during May and June. This problem is being addressed and performance is improving.

Table 1: ACCC complaints, investigations and litigation funnel

Category	June 2016 quarter
Contacts received (phone, email and letters)	100 156
Contacts recorded in the database	58505
Under assessments commenced	142
Initial investigations commenced	98
In-depth investigations commenced	62
First instance litigation commenced	6

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

State	ACL	Scams	(ACL + Scams)	Anti-competitive Practices	Industry Codes	Other	Total
NSW	3 300	11 995	15 295	96	47	1220	16498
VIC	3 309	8 559	11 868	101	35	995	12838
QLD	2 721	9 038	11 759	85	53	762	12507
WA	1 202	4 848	6 050	46	30	363	6412
SA	945	3 797	4 742	36	13	315	5057
ACT	483	1 165	1 648	22	1	132	1769
TAS	175	1 081	1 256	14	3	85	1279
NT	264	931	1 195	2	1	45	582
Overseas	112	427	539	0	0	79	1323
Not specified	51	139	190	8	3	42	240

Note: single contacts may involve multiple issues

Table 3: Complaints and inquiries – top ten by industry

Industry	Contacts
Non-Store Retailing	1012
Car Retailing	817
Other Electrical and Electronic Goods Retailing	615
Electrical, Electronic and Gas Appliance Retailing	481
Telecommunications Services	333
Clothing Retailing	285
Furniture Retailing	281
Supermarket and Grocery Stores	244
Air and Space Transport	224
Fuel Retailing	188

Table 4: Top scam categories reported to the ACCC

Scam category	Contacts
Buying, selling or donating (classifieds, business listings, auction, health, fake business etc.)	11 317
Attempts to gain your personal information (fake bank or telco, computer hacking, ID theft)	11 117
Unexpected money (inheritance, helping a foreigner, fake government or bank, loan opportunity)	10 520
Jobs & investment (sport, high return, pyramid scheme, employment)	3 384
Threats & extortion (malware and software by email, malware and software by phone, hitman etc.)	2 252
Unexpected Prizes (lottery, travel, scratchies)	2 220
Dating and Romance (Including Adult Services)	1 017

B Enforcement outcomes & matters in court

Proceedings commenced

Competition		
Cartel	Air New Zealand Ltd (HC appeal)	
	commenced jurisdiction	18 April 2016 Federal Court Sydney awaiting judgment
Anti-competitive agreements	Cement Australia Pty Ltd & Ors (appeal)	
	commenced jurisdiction	6 June 2016 Federal Court Brisbane
Cartel	Oakmoore Pty Ltd	
	commenced jurisdiction	23 June 2016 Federal Court Brisbane
Cartel	P.T. Garuda Indonesia Ltd (HC appeal)	
	commenced jurisdiction	18 April 2016 Federal Court Sydney awaiting judgment
Consumer protection		
Unconscionable conduct	ACM Group Ltd	
	commenced jurisdiction	3 June 2016 Federal Court Sydney
False or misleading representations	Elusion New Zealand Ltd and Anor	
	commenced jurisdiction	20 June 2016 Federal Court Perth
Unconscionable conduct	Harrison Companies and Anor	
	commenced jurisdiction	4 April 2016 Federal Court Melbourne
False or misleading representations	HJ Heinz Company Australia Ltd	
	commenced jurisdiction	21 June 2016 Federal Court Adelaide
False or misleading	Medibank Private Ltd	

representations and unconscionable conduct	commenced jurisdiction	16 June 2016 Federal Court Melbourne
False or misleading representations	Reckitt Benckiser (Australia) Pty Ltd (appeal)	
	commenced jurisdiction	23 May 2016 Federal Court Sydney
Scam	Sensaslim Australia Pty Ltd & Ors (appeal)	
	commenced jurisdiction	1 June 2016 Federal Court Sydney
False or misleading representations	Social-Lites Pty Ltd & Anor	
	commenced jurisdiction	20 June 2016 Federal Court Brisbane

Proceedings ongoing

Competition		
Cartel	Australian Egg Corporation Limited & Ors (appeal)	
	commenced jurisdiction	2 March 2016 Federal Court Adelaide
Cartel	Cascade Coal Pty Ltd & Ors	
	commenced jurisdiction	25 May 2015 Federal Court Sydney
Cartel	Colgate-Palmolive Pty Ltd & Ors	
	commenced jurisdiction	12 December 2013 Federal Court Sydney Continues following settlement with some of the parties
Secondary boycott	Construction Forestry Mining and Energy Union (CFMEU)	
	commenced jurisdiction	20 November 2014 Federal Court Melbourne
Anti-competitive agreements	Flight Centre Ltd (HC appeal)	
	commenced jurisdiction	11 March 2016 Federal Court Brisbane
Cartel	OLEX Australia Pty Limited & Ors	
	commenced jurisdiction	4 December 2014 Federal Court Melbourne

Misuse of market power and exclusive dealing	Pfizer Australia Pty Ltd (appeal)	
	commenced jurisdiction	18 March 2015 (Appeal) Federal Court Sydney
Cartel	Prysmian Cavi e Sistemi	
	commenced jurisdiction	23 September 2009 Federal Court Adelaide
Cartel	Yazaki Corporation & Australian Arrow Pty Ltd	
	commenced jurisdiction	13 December 2012 Federal Court Sydney
Consumer protection		
Vulnerable and disadvantaged consumers and unconscionable conduct	Acquire Learning & Careers Pty Ltd	
	commenced jurisdiction	17 December 2015 Federal Court Melbourne
Unconscionable conduct and unfair contract terms	Advanced Medical Institute Pty Ltd & Ors (appeal)	
	commenced jurisdiction	21 December 2010 Federal Court Melbourne
Vulnerable and disadvantaged consumers and unconscionable conduct	Australian Institute of Professional Education Pty Ltd	
	commenced jurisdiction	31 March 2016 Federal Court Sydney
Vulnerable and disadvantaged consumers	Clinica Internazionale Pty Ltd	
	commenced jurisdiction	9 December 2015 Federal Court Sydney
Vulnerable and disadvantaged consumers	Cornerstone Investment Australia Pty Ltd t/a Empower Institute	
	commenced jurisdiction	9 December 2015 Federal Court Sydney
Credence claims	DuluxGroup (Australia) Pty Ltd	
	commenced jurisdiction	5 December 2012 Federal Court Perth
Drip pricing	Jetstar Airways Pty Ltd	
	commenced jurisdiction	19 June 2014 Federal Court Sydney
Non-compliance with court	Laurence Glynne Hann	

order	commenced jurisdiction	16 December 2015 Federal Court Melbourne
Consumer guarantees	LG Electronics Australia Pty Ltd	
	commenced jurisdiction	15 December 2015 Federal Court Sydney
Unconscionable conduct	Lifestyle Photographers Pty Ltd t/a Expression Sessions	
	commenced jurisdiction	18 September 2015 Federal Court Sydney
Product safety	Ozsale Pty Ltd t/a BuyInvite	
	commenced jurisdiction	8 December 2015 Federal Court Sydney
Vulnerable and disadvantaged consumers and unconscionable conduct	Phoenix Institute of Australia Pty Ltd & Anor	
	commenced jurisdiction	24 November 2015 Federal Court Sydney
Credence claims	Snowdale Holdings Pty Ltd	
	commenced jurisdiction	9 December 2013 Federal Court Perth
False or misleading representations	Taxsmart Group Pty Ltd	
	commenced jurisdiction	20 June 2013 Federal Court Melbourne
Vulnerable and disadvantaged consumers and unconscionable conduct	Unique International College Pty Ltd	
	commenced jurisdiction	27 October 2015 Federal Court Sydney
Consumer guarantees	Valve Corporation Pty Ltd	
	commenced jurisdiction	28 August 2014 Federal Court Sydney
Drip pricing	Virgin Australia Airlines Pty Ltd	
	commenced jurisdiction	19 June 2014 Federal Court Sydney
False or misleading representations	We Buy Houses Pty Ltd and Rick Otton	
	commenced jurisdiction	2 March 2015 Federal Court Sydney
Unconscionable conduct	Woolworths Ltd	

	commenced jurisdiction	10 December 2015 Federal Court Sydney
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Proceedings concluded

Consumer Protection		
Indigenous consumer protection / unsolicited consumer agreements	Adata Pty Ltd	
	commenced	20 June 2014
	concluded	22 April 2016
	jurisdiction	Federal Court Darwin
	outcome	The ACCC's case was dismissed.
False or misleading representations	CLA Trading Pty Ltd, t/a Europcar	
	commenced	10 November 2014
	concluded	19 April 2016
	jurisdiction	Federal Court Perth
	outcome	Declarations, pecuniary penalty of \$100 000, corrective notices and \$65 000 towards ACCC costs.
Credence claims	Derodi Pty Ltd and Holland Farms Pty Ltd	
	commenced	5 December 2014
	concluded	14 April 2016
	jurisdiction	Federal Court Sydney
	outcome	Declarations, pecuniary penalty of \$300 000, corrective notices, implementation of a compliance program and \$35 000 towards ACCC costs.
Unconscionable conduct	FDRA Pty Ltd (Angel Digital) & Anor	
	commenced	23 December 2015
	concluded	6 May 2016
	jurisdiction	Federal Court Darwin
	outcome	The ACCC discontinued proceedings following the respondent providing undertakings to the Court.
False or misleading representations	Hillside (Australia New Media) Pty Ltd t/as Bet365	
	commenced	13 August 2014
	concluded	10 June 2016
	jurisdiction	Federal Court Melbourne
	outcome	Declarations and pecuniary penalties totalling \$2.75 million.

Unconscionable conduct	Multimedia International Services Pty Ltd t/a The Community Network	
	commenced	30 November 2015
	concluded	29 April 2016
	jurisdiction	Federal Court Brisbane
	outcome	Declarations, pecuniary penalties of \$230 000, implementation of an ACL compliance program and a contribution of \$35 000 towards ACCC costs.
Product safety	Online Dealz Pty Ltd & Anor	
	commenced	30 March 2015
	concluded	21 June 2016
	jurisdiction	Federal Court Sydney
	outcome	Declarations, pecuniary penalties totalling \$120 000, injunctions, orders requiring Online Dealz to advertise the recall on its websites and 70% contribution towards ACCC costs.
False or misleading representations	Reckitt Benckiser (Australia) Pty Ltd *matter has been appealed*	
	commenced	4 March 2015
	concluded	29 April 2016
	jurisdiction	Federal Court Sydney
	outcome	Declarations and pecuniary penalties totalling \$1.7 million.
Scam	Sensaslim Australia Pty Ltd & Ors *matter has been appealed by one of the respondents*	
	commenced	15 July 2011
	concluded	11 May 2016
	jurisdiction	Federal Court Sydney
	outcome	Declarations, injunctions, pecuniary penalties totalling \$4.34 million, disqualification orders against Mr Foster (lifetime ban), Mr Boyle (3 years) and Mr O'Brien (10 years) and ACCC costs.
Competition		
Cartel	Australian Egg Corporation Limited & Ors (Mr Zelko Lendich)	
	commenced	26 May 2014
	concluded	29 April 2016
	jurisdiction	Federal Court Adelaide
	outcome	Declarations, pecuniary penalty of \$120 000, attend and undertake a compliance program,

		pay an agreed amount towards the ACCC's costs.
Anti-competitive agreements	Cement Australia Pty Ltd & Ors *matter has been appealed*	
	commenced	12 September 2008
	concluded	29 April 2016
	jurisdiction	Federal Court Brisbane
	outcome	Declarations and \$18.6 million in penalties against Cement Australia, penalty of \$20 000 against Mr White.
Cartel	Colgate-Palmolive Pty Ltd & Ors *proceedings continue against some of the parties*	
	commenced	12 December 2013
	concluded	28 April 2016 (Colgate-Palmolive and Mr Ansell) 3 June 2016 (Woolworths Ltd)
	jurisdiction	Federal Court Sydney
	outcome	Colgate-Palmolive: declarations, \$18 million in penalties, update its compliance program and maintain for three years, contribution of \$450 000 towards ACCC costs. Mr Ansell: declarations, disqualification order for 7 years and contribution of \$75 000 towards ACCC costs. Woolworths: declarations, \$9 million in penalties, update its compliance program and contribution of \$250 000.

Infringement notices

Consumer Protection		
Category	Trader	Date paid and amount
Product safety	Smartchannel Pty Ltd	5 April 2016 1 notice totalling \$10 200
Product safety	Autoplus Pty Ltd	12 April 2016 1 notice totalling \$10 200
Misleading representations	Momentum Energy Pty Ltd	18 April 2016 5 notices totalling \$54 000
Misleading representations	Kingdom Groups International Pty Ltd	2 May 2016 1 notice totalling \$10 800
Product safety	Update Technology Pty Ltd	9 May 2016 1 notice totalling \$10 200

Misleading representations	APG & Co Pty Ltd	8 June 2016 2 notices totalling \$21 600
Misleading representations	Unilever Australia Ltd	23 June 2016 1 notice totalling \$10 800

Section 87B undertakings

Consumer Protection		
Category	Trader	Date
False or misleading representations	Hertz Australia Pty Ltd	4 April 2016
Unconscionable conduct	Multimedia International Services Pty Ltd	27 April 2016
Vulnerable and disadvantaged consumers and unconscionable conduct	Careers Australia Group Ltd	16 May 2016

C Use of compulsory information gathering powers

During the June 2016 quarter, the ACCC issued:

- 43 notices pursuant to sections 155(1)(a)&(b)
- 18 notices pursuant to section 155(c)
- two notices pursuant to section 155AAA
- 6 notices pursuant to section 95ZK
- 5 notices pursuant to section 51ADD, and
- No notices were issued under sections 60H or 133D.

Under section 155 of the CCA the ACCC may in certain cases issue a notice requiring the provision of information (s155(1)(a)) or documents (s155(1)(b)), or the giving of sworn evidence at a formal examination (s155(1)(c)). Section 155AAA notices relate to the ACCC sharing information with other regulators.

Under s95ZK of the CCA, the ACCC may require a person to provide information or documents relevant to a price notification, inquiry or monitoring under Part VIIA of the CCA.

Under s51ADD of the CCA, the ACCC may require a franchisor to provide information or produce documents in order to check their level of compliance with the *Franchising Code of Conduct*.

D Major speeches

During the June quarter, the ACCC took part in 40 major speaking events², including:

Unfair contracts terms

Deputy Chair Michael Schaper
Shopping Centre Council of Australia Seminar, Sydney
11 April 2016

[Competition and consumer issues for a changing industry](#)

Commissioner Roger Featherston
Australian Auto Aftermarket Conference, Melbourne
21 April 2016

Cartel detection and deterrence

Chairman Rod Sims
International Competition Network Annual Conference, Singapore
27 April 2016

Competition, consumer and regulatory update

Chairman Rod Sims
AmCham Business Luncheon, Melbourne
20 May 2016

Australian agriculture's competitive advantages

Commissioner Mick Keogh
Agribusiness Outlook Conference, Sydney
25 May 2016

² List includes panel discussions and unpublished speeches.

Dating and Romance Scams
Deputy Chair Delia Rickard
QUT Romance Fraud Seminar, Brisbane
31 May 2016

The first year of the Food and Grocery Code of Conduct
Deputy Chair Michael Schaper
Food and Grocery Australia Conference, Brisbane
2 June 2016

Disruption and opportunity in the energy sector
AER Chair Paula Conboy
Australian Financial Review Infrastructure Summit, Sydney
16 June 2016

Consumer trust and market growth
Deputy Chair Delia Rickard
OECD Ministerial Forum on the Digital Economy, Mexico
22 June 2016