



# ACCCount

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

1 October to 31 December 2018

Australian Competition and Consumer Commission  
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# Key outcomes dashboard

## Maintaining and promoting competition

### Competition enforcement

- 1 case commenced
- 2 cases concluded
- 12 cases ongoing

### Mergers and adjudication

- 91 confidential mergers matters pre-assessed
- 6 public reviews undertaken
- 2 statements of issues released
- 5 draft and 7 final authorisation determinations
- 1 exclusive dealing notification allowed to stand
- 4 collective bargaining notifications allowed to stand
- 19 final certification trade mark assessments issued

## Infrastructure Regulation

- Released the third Measuring Broadband Australia report
- Published the internet activity record keeping rule whereby information on internet activity in Australia will be collected and published bi-annually
- Released the September quarter 2018 petrol monitoring report
- Released the third petrol industry report examining petrol price cycles in Australia

## Protecting consumers and supporting fair trading

### Consumer enforcement

- 7 cases commenced
- 7 cases concluded
- 27 cases ongoing

- 8 infringement notices paid
- 8 administrative resolutions
- 5 undertakings accepted
- \$27.75 million in total penalties

### Consumer and small business education

- 1 116 899 consumer education resources accessed
- 868 861 Scamwatch visits
- 91 434 contacts received from consumers and businesses
- 357 366 small business education resources accessed
- 21 email updates to small businesses and franchising networks

### Product safety

- 177 recalls assessed
- 831 mandatory injury reports assessed
- 249 reports of unsafe products assessed
- 2313 product lines inspected at 767 sites—118 products requiring further assessment identified

## Market studies and research

- Published the fifth interim report of the inquiry into gas supply arrangements in Australia
- Released the first interim report on northern Australian markets for home, contents and strata insurance
- Released a discussion paper into the supply of electricity in the national electricity market
- Released the annual report to the Australia Senate on the Private Health Insurance Industry
- Released the Digital Platforms Inquiry preliminary report

## Executive Summary

1. The Australian Competition and Consumer Commission (ACCC) works to enhance the welfare of Australians by promoting competition, fair trading and regulating national infrastructure. This report highlights the range of activities engaged in by the ACCC to achieve its purpose in the October to December 2018 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. The ACCC commenced proceedings against:
  - NSW Ports Operations Holds Co Pty Ltd and others for making agreements with the state of NSW that have an anti-competitive purpose and effect
  - Seven traders for breaches of the Australian Consumer Law (ACL), including for false and misleading statements and conduct, and unconscionable conduct.
3. The ACCC achieved penalties against seven traders for breaches of the ACL, including:
  - Penalties totalling \$18 million against We Buy Houses Pty Ltd and its sole director, Rick Otton, for making false and misleading representations about how people could create wealth through buying and selling real estate. The penalties of \$12 million against We Buy Houses and \$6 million against Mr Otton are the highest ever imposed for contraventions of the ACL by a corporation and an individual respectively.
  - Outcomes in agriculture, with former Murray Goulburn Co-operative Managing Director Gary Helou to pay \$200 000 in penalties for being knowingly concerned in Murray Goulburn's false and misleading claims about the 2015-16 farmgate milk price and \$1 million in penalties against Seednet for making false, misleading and deceptive claims relating to its barley variety known as 'Compass'.
4. The High Court dismissed Yazaki Corporation's application for special leave to appeal the Full Federal Court's earlier decision, resulting in the \$46 million in penalties for cartel conduct against Yazaki continuing to stand.
5. The ACCC made a number of significant merger decisions, including in regard to Nine Entertainment's proposed merger with Fairfax Media, Cabcharge Australia Limited's proposed acquisition of Mobile Technologies International Pty Ltd, and Thales S.A.'s proposed acquisition of Gemalto N.V.
6. The ACCC granted authorisation to Council Solutions and a group of four Adelaide councils to jointly procure kerbside waste collection services until 30 June 2031.

7. ACCC publications released during the quarter included:
  - The Residential Mortgage Price Inquiry Final Report
  - The annual report on the private health insurance industry
  - The third Measuring Broadband Australia report
  - An update on internet interconnection arrangements in Australia
  - A discussion paper highlighting five key issues to be considered in the second phase of the NBN wholesale service standards inquiry
  - The NBN wholesale market indicators report
  - A petrol monitoring report for the September quarter 2018 and a third industry report examining petrol price cycles in Australia
  - The first interim report for the northern Australia insurance inquiry
  - A discussion paper on the supply of electricity in the national electricity market
  - The preliminary report on the inquiry into the impact of digital search engines, social media platforms and digital content aggregation platforms on competition in the media and advertising markets.
8. The ACCC published the internet activity record keeping rule, whereby information on internet activity in Australia will be collected and reported bi-annually, including services in operation and data download volumes. This information will be valuable for the industry, regulatory decision making, and the ACCC's annual communications market report.
9. The ACCC continued to monitor and oversee compliance with the compulsory Takata airbag recall. We released comprehensive state-by-state data detailing recall rates for Takata airbags and the first data detailing progress made by vehicle manufacturers in removing the airbags from Australian cars under the compulsory recall.
10. The ACCC undertook surveillance across 767 retail outlets (bricks and mortar and online) to gauge the effectiveness of, and compliance with, particular safety regulations. As a result of this proactive surveillance program, six products across the following product categories were recalled by their respective suppliers due to non-compliance: bean bags, combustible candle holders, swimming and flotation aids, trolley jacks and vehicle jacks.
11. During the December quarter the ACCC worked closely with the Commonwealth Treasury and state and territory ACL regulators to progress many of the recommendations from the ACL Review Final Report.
12. The ACCC continued engage with international counterparts on a range of product safety, consumer, competition and regulatory matters, and delivered a number of capacity building activities under the ASEAN-Australia New Zealand Free Trade Area Competition Law Implementation Program (CLIP).

# 1. Maintaining and promoting competition

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

- 1.1. Competitive markets lead to lower prices, better quality products and services, greater efficiency and more choice, all of which benefit consumers. As Australia's only national competition regulator, the ACCC works to enhance the welfare of Australians by maintaining and promoting competition.
- 1.2. The ACCC does so by enforcing Part IV of the *Competition and Consumer Act 2010* (CCA) in relation to anti-competitive conduct and assessing whether mergers and acquisitions would substantially lessen competition.
- 1.3. In addition, the ACCC considers applications for authorisation and notifications, which enable some anti-competitive conduct to go ahead where the public benefit outweighs the public harm, including harm from reduced competition.
- 1.4. The ACCC's Compliance and Enforcement Policy sets out priorities for the year and the factors the ACCC takes into account when deciding whether to pursue matters. In 2018 a number of clear priorities were established including enduring priorities covering cartel conduct causing detriment in Australia, anti-competitive agreements and practices, and the misuse of market power. In addition, the ACCC has prioritised competition issues in the financial services, commercial construction, agriculture and energy sectors, and conduct that may contravene the new misuse of market power and concerted practices provisions.
- 1.5. Outcomes are achieved through a variety of means. These include litigated proceedings, accepting court-enforceable undertakings<sup>1</sup>, administrative resolutions and completing market studies.

### Proceedings

- 1.6. In the December quarter the ACCC was involved in 14 legal proceedings relating to competition enforcement in a range of industries including shipping, travel, construction and financial services. A complete list of these proceedings is included in the Appendix.
- 1.7. Of the 14 competition enforcement proceedings:
  - 13 cases were carried over from the previous quarter
  - 1 new case was commenced in the quarter
  - 2 cases were concluded, and
  - 12 cases remained ongoing at the end of the quarter.

### *Proceedings commenced*

#### **NSW PORTS OPERATIONS HOLD CO PTY LTD & ORS**

In December the ACCC instituted proceedings in the Federal Court against NSW Ports Operations Hold Co Pty Ltd (NSW Ports) and its subsidiaries Port Botany Operations Pty

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

Ltd (Port Botany) and Port Kembla Operations Pty Ltd (Port Kembla) for making agreements with the state of New South Wales (NSW) that the ACCC alleges had an anti-competitive purpose and effect.

The NSW Government privatised Port Botany and Port Kembla in May 2013 and the agreements, known as Port Commitment Deeds, were entered into for a term of 50 years as part of the privatisation process.

The Botany and Kembla Port Commitment Deeds obligate the state of NSW to compensate the operators of Port Botany and Port Kembla if container traffic at the Port of Newcastle is above a minimal specified cap. The ACCC alleges that entering into each of the Botany and Kembla Port Commitment Deeds was likely to prevent or hinder the development of a container terminal at the Port of Newcastle, and had the purpose, or was likely to have the effect of, substantially lessening competition.

The ACCC alleges that in making agreements containing these provisions, Port Botany and Port Kembla would effectively be compensated if the Port of Newcastle developed a container terminal. The ACCC considers this anti-competitive and illegal.

Another 50 year deed, signed in May 2014 when the Port of Newcastle was privatised, requires the Port of Newcastle to reimburse the state of NSW for any compensation paid to operators or Port Botany and Port Kembla under the Botany and Kembla Port Commitment Deeds. The ACCC considers this reimbursement provision in the Port of Newcastle Deed is an anti-competitive consequence of the Botany Kembla Port Commitment Deeds, and that it makes the development of a container terminal at Newcastle uneconomic. The compensation and reimbursement provisions effectively mean that the Port of Newcastle would be financially punished for sending or receiving container cargo above a minimal level if Port Botany and Port Kembla have spare capacity.

The ACCC's action seeks to remove a barrier to competition in an important market, the supply of port services, which has significant implications for the cost of goods and services across the economy.

### ***Proceedings appealed***

Nil

### ***Proceedings concluded***

#### **PFIZER AUSTRALIA PTY LTD (APPEAL)**

In October 2018 the High Court dismissed the ACCC's application for special leave to appeal the Full Federal Court decision in a case against Pfizer Australia Pty Ltd.

The ACCC sought leave to appeal against the judgement handed down by the Full Federal Court in May 2018. The Full Federal Court found that Pfizer took advantage of its substantial market power, but it did not accept the ACCC's argument that Pfizer had acted for the purpose of substantially lessening competition or deterring or preventing competitors from competing.

In early 2012, Pfizer offered significant discounts and the release of rebates accrued on previous sales of Lipitor to pharmacies. Pfizer's offer was conditional upon pharmacies acquiring a minimum volume of Pfizer's generic atorvastatin and agreeing to restrict their re-supply of competing generic atorvastatin products.



The High Court's decision ends this case, however the ACCC remains committed to pursuing companies who engage in what it considers to be anti-competitive conduct.

### **YAZAKI CORPORATION & AUSTRALIAN ARROW PTY LTD (APPEAL)**

In October 2018 the High Court dismissed a special leave application by Japanese company Yazaki Corporation (Yazaki) to appeal the Full Federal Court's decision ordering Yazaki to pay \$46 million in penalties for cartel conduct.

Yazaki had sought special leave to appeal against a decision handed down by the Full Federal Court in May 2018, which significantly increased penalties imposed on Yazaki from \$9.5 million to \$46 million, the highest total penalties ever imposed under the CCA.

The ACCC first launched proceedings against Yazaki in December 2012. The High Court's October 2018 dismissal of Yazaki's special leave application signals the end of these proceedings.

### **Undertakings accepted and administrative resolutions**

- 1.8. The ACCC also resolves alleged contraventions of the CCA by accepting court-enforceable undertakings under s.87B of the CCA. In these undertakings, which are on the public record, companies or individuals generally agree to:
  - remedy the conduct
  - accept responsibility for their actions, and
  - establish, or review and improve, compliance programs and culture.
- 1.9. In the December quarter, no undertakings relating to competition enforcement were accepted by the ACCC.
- 1.10. The ACCC will sometimes resolve matters administratively. This can involve seeking agreements to stop or change conduct and provide appropriate redress to the conduct in question. In some cases, we will publicly announce these administrative resolutions.
- 1.11. There were no administrative resolutions in respect of competition enforcement this quarter.

### **Agriculture Sector**

- 1.12. In the December quarter, the ACCC agriculture sector work included:
  - Successful court outcome against Murray Goulburn Co-operative and its former Managing Director Gary Helou. Further details are provided at page 21 below.
  - Successful court outcome against Landmark Operations (trading as Seednet) for making misleading and deceptive claims. Further details are provided at page 21 below.
  - The announcement that dairy processors Brownes Food Operations, Lion Dairy & Drinks, Norco Co-operative Limited, Parmalat Australia and Fonterra Australia each agreed to amend specific terms in their milk supply agreements to address our concerns these terms were unfair to dairy farmers. Further details are provided at page 24 below.
  - Continuing litigation against Mitolo Group Pty Ltd and a related entity (together, Mitolo) alleging that several terms in Mitolo's standard form contracts with potato

farmers are unfair contract terms, and that Mitolo has breached the Horticulture Code in its dealings with farmers.

- Investigating a range of standard form contracts in the agriculture sector for potentially unfair contract terms.
- Liaising with the Department of Agriculture and Water Resources (DAWR), Commonwealth Treasury and the Department of Prime Minister and Cabinet regarding the development of a draft mandatory code for the dairy industry. This follows a key recommendation in the ACCC's Dairy Inquiry and the announcement by the Commonwealth Minister for Agriculture and Water Resources, the Hon. David Littleproud MP, on 10 September that he would work with the industry to develop a draft code for consideration by Government.
- Convening the sixth ACCC Agriculture Consultative Committee meeting on 19 October.
- Continuing to advocate for implementation of our cattle and beef market study recommendations. In this quarter we engaged with governments and the DAWR about certain recommendations that will require legislative reform.

## Financial Services

- 1.13. The ACCC released the [Residential Mortgage Price Inquiry Final Report](#) on 11 December 2018. The report made the following key findings:
- The opaque discretionary pricing of residential mortgages unnecessarily inflates borrowers' costs (including their time and effort) to discover better offers. This reduces their willingness to shop around.
  - While new borrowers pay lower interest rates than existing borrowers on average, existing borrowers can reduce the prices they pay. About 11 per cent of existing variable rate borrowers obtained a reduced interest rate or reduced fees in the year to 30 June 2018 as a result of asking their bank for a better deal or accepting a bank-initiated offer.
  - Measures implemented by APRA in March 2017 to limit new interest-only residential mortgage lending created an opportunity for banks to synchronise increases to headline variable interest rates for those mortgages.
  - There was no evidence of any price changes made specifically to recover the cost of the Major Bank Levy from residential mortgage borrowers.
- 1.14. The ACCC is currently examining the pricing of foreign currency conversion services in Australia and evaluating whether there are impediments to effective price competition in the sector. An Issues Paper in relation to this inquiry was released on 2 October 2018, and during October and November 2018, over 200 submissions were received from consumers, small businesses and market participants in response.

## Consumer Data Right

- 1.15. There were a number of significant Consumer Data Right (CDR) developments this quarter. On 21 December 2018 the ACCC published the CDR Rules Outline. The Rules Outline provides guidance on what the ACCC expects to include in the draft of version one of the CDR rules based on the passage of the CDR legislation in the first quarter of 2019. The focus of the Rules Outline is on the banking sector, as the first sector in which consumers will be able to share their data under the CDR. Also on 21 December, the Treasurer announced a revised implementation timetable for CDR in the banking sector.

1.16. In addition, the ACCC has:

- progressed the selection of a partner for the development of an address book and a platform to manage applications for accreditation of CDR participants.
- continued to work with Data 61, the Australian Energy Market Operator, Treasury and the Department of the Environment and Energy in relation to implementation of the CDR in the energy sector. On 19 December 2018, COAG Energy Council approved the ACCC's short-term work program and priority issues to enable the implementation of CDR in the energy sector in the first half of 2020.

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

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

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

### Informal clearance process

1.19. The informal merger review process enables merger parties to seek the ACCC's view on whether the proposed acquisition is likely to have the effect of substantially lessening competition under s.50.

1.20. The ACCC deals with matters considered under the informal clearance system 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, a significant proportion of the mergers considered by the ACCC are 'pre-assessed', enabling the ACCC to respond quickly when there are no significant competition concerns.

**Table 1: Matters pre-assessed and reviews undertaken – October to December 2018**

	Confidential	Public	Total
Pre-assessed 1 October – 31 December 2018	91	0	91
Public reviews undertaken 1 October – 31 December 2018	0	6	6
Total matters assessed and reviews undertaken	91	6	97
<b>Public reviews by category:</b>			
Not opposed	0	5	5
Finished—no decision (including withdrawn)			
Post SOI	0	0	0
Other	0	0	0
Opposed outright	0	0	0

	Confidential	Public	Total
Confidential review—ACCC concerns expressed	0	0	0
Resolved through undertakings	0	1	1
Variation to undertaking			
Accepted	0	0	0
Rejected	0	0	0

## Merger authorisation

- 1.21. With the revisions to the CCA that came into effect on 6 November 2017, the ACCC has the role of first instance decision maker for merger authorisations meaning that applications must now be made directly to the ACCC.
- 1.22. Merger parties may seek statutory protection from legal action under s.50 of the CCA by lodging an application for merger authorisation.
- 1.23. While the merger authorisation is in force, the authorised parties will be able to acquire the relevant shares or assets without risk of the ACCC or third parties taking legal action for a contravention of s.50 of the Act.
- 1.24. Merger authorisation may be granted on the basis that the acquisition will not substantially lessen competition, or alternatively, results in public benefits that outweigh any detriments.
- 1.25. There have been no applications for merger authorisation made to the ACCC since the revisions to the CCA came into effect.

## Significant merger decisions

### NINE ENTERTAINMENT – PROPOSED MERGER WITH FAIRFAX MEDIA

On 8 November 2018 the ACCC announced that it would not oppose the proposed merger between Nine Entertainment (Nine) and Fairfax Media (Fairfax).

Nine's main business activities involve its television business, digital publishing assets and a 50 per cent share in Stan.

In addition to its publishing business, Fairfax has shareholdings in Domain, radio broadcaster Macquarie Media Limited, Australian Associated Press Pty Limited and a 50 percent share in Stan.

The ACCC examined a number of markets affected by this proposed merger. The key issue was whether the merger would substantially lessen competition in the creation and provision of Australian news content.

The ACCC concluded that while the merger will likely reduce competition to some degree, it is not likely to substantially lessen competition in any market in breach of the CCA.

The ACCC found that Nine's television operations and Fairfax's main media assets generally do not compete closely with each other. Nine's news and current affairs programs target a mass market audience, while Fairfax's print and online publications tend to provide more in-depth coverage, targeting the demographic of its subscription audience.

While the parties directly overlap in online news, Nine and Fairfax online sites currently do not provide much constraint on each other. In addition, with the growth in online news, many other players, albeit smaller, now provide some degree of competitive constraint. While there are important barriers to building trust and scale, significant new entry into the Australian online news market has already occurred and made a noticeable difference.

The ACCC reached the conclusion that any changes to the way Fairfax and Nine operate in future would not be, to a significant extent, caused by the merger lowering the level of competition.

The ACCC also investigated potential competition issues in the provision of regional news. In particular, concerns were raised about combining the two key newsrooms in the Hunter/Newcastle region. It determined, however, that in the Hunter region, Fairfax and Nine do not compete sufficiently closely with each other.

In relation to advertising markets, content acquisition markets and non-news content markets, Nine and Fairfax do not currently compete strongly against each other, and would continue to face a range of competitive constraints after the merger.

### **CABCHARGE AUSTRALIA LIMITED - PROPOSED ACQUISITION OF MOBILE TECHNOLOGIES INTERNATIONAL PTY LTD**

On 18 October 2018 the ACCC announced that it would not oppose Cabcharge Australia Limited's (Cabcharge) proposed \$6.6 million acquisition of Mobile Technologies International Pty Ltd (MTI).

Cabcharge owns and operates taxi networks and offers taxi payment processing services, while MTI supplies a taxi dispatch system. Most taxi networks in Australia, including Cabcharge, use the MTI dispatch system.

The ACCC investigated whether the proposed acquisition could impact competition in the following ways:

- Cabcharge supplying inferior dispatch systems or services to rival taxi networks, and/or withholding new MTI features from rival networks.
- Cabcharge gaining access to the data of rival taxi networks through the MTI dispatch system and using the data to harm its competitors.
- Cabcharge bundling the supply of the MTI dispatch system with its own payment terminal to harm rival suppliers of taxi dispatch systems and payment systems.

The ACCC consulted with and received feedback from a wide range of industry participants, including taxi networks, alternative dispatch system providers, taxi councils and government regulators.

The ACCC concluded that the proposed acquisition was unlikely to lead to a substantial lessening of competition.

Alternative dispatch system providers are available in Australia. The ACCC considered that the threat of network switching is likely to provide a sufficient constraint to discourage Cabcharge from supplying inferior dispatch systems or withholding technology features from rival networks.

The ACCC also considered that Cabcharge is unlikely to be able to substantially lessen competition through any use of data that could be obtained from the MTI dispatch system.

The ACCC noted that drivers tend to have another payment terminal available in their

vehicles. The ACCC considered that Cabcharge is unlikely to engage in anti-competitive bundling of the supply of the MTI dispatch system with its payment terminal, as it would risk degrading its payment processing business.

### **THALES S.A - PROPOSED ACQUISITION OF GEMALTO N.V**

On 20 December 2018 the ACCC announced that it had decided not to oppose Thales S.A.'s proposed acquisition of Gemalto N.V, after accepting a court-enforceable undertaking from Thales to divest part of its business.

French company Thales and Dutch company Gemalto both supply data security products, including enterprise encryption software and hardware security modules (HSM) in Australia. The ACCC's investigation focused on the markets for the supply of general purpose (GP) HSMs and payment HSMs.

Thales and Gemalto are each other's closest competitors and the two largest suppliers of GP HSMs worldwide and in Australia. The ACCC was therefore concerned about the removal of Gemalto as a competitor of Thales in relation to the development and sale of GP HSMs. We concluded that, without the divestiture undertaking, the proposed acquisition was likely to substantially lessen competition in Australia.

To remedy these competition concerns, Thales provided a court-enforceable undertaking to sell its global GP HSM business to an ACCC approved purchaser. The undertaking is linked to the commitment made by Thales to the European Commission, reflecting the global nature of the divestiture obligations.

### **Merger review consultation**

1.26. During the course of a public review, the ACCC may reach a preliminary view that a proposed merger raises competition concerns that require further investigation. In this circumstance, the ACCC will publicly release a Statement of Issues. A Statement of Issues provides the ACCC's preliminary views, drawing attention to particular competition issues, as well as identifying further lines of inquiry that the ACCC wishes to undertake. It provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to understand and consider the primary issues identified by the ACCC. It also has the purpose of assisting the merger parties and other interested parties to frame further submissions should they consider it necessary.

1.27. The ACCC issued two Statements of Issues in the December quarter:

- [TPG Telecom Limited \(TPG\) - proposed merger with Vodafone Hutchison Australia Pty Ltd \(VHA\)](#)
- [Bingo Industries Limited - proposed acquisition of Dial-a-Dump Industries Pty Ltd.](#)

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

1.28. The ACCC assesses and makes decisions about applications for the authorisation and notification of certain types of anti-competitive conduct. We do this primarily by evaluating whether the arrangements or conduct are likely to result in a net public benefit and therefore warrant exemption.

1.29. With the revisions to the CCA that came into effect on 6 November 2017 for certain forms of conduct, the ACCC may now also grant authorisation if it is satisfied that no substantial lessening of competition is likely.

## Authorisations

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

**Table 2: Authorisations received and decisions issued**

Total authorisations received	Number of applications
	1 October – 31 December 2018
New	1
Revocation	0
Revocation and substitution	2
Minor variations	0

Decisions issued	Number of applications
	1 October – 31 December 2018
Draft determinations	5
Final determinations	7
Interim decisions (prior to draft)	1

### *Significant authorisations*

#### **COUNCIL SOLUTIONS**

On 12 October 2018 the ACCC granted authorisation to Council Solutions and a group of four Adelaide councils to jointly procure kerbside waste collection services until 30 June 2031.

Council Solutions, on behalf of the Cities of Adelaide, Charles Sturt, Marion and Port Adelaide Enfield (the Participating Councils), sought authorisation to conduct a joint tender and appoint a single provider to supply kerbside waste collection services to residents in their municipalities.

The ACCC received submissions from 44 interested parties about Council Solutions' application, with some interested parties providing more than one submission. This included strong objections from bodies representing the two national waste companies who currently hold the collection contracts for these councils.

The ACCC considered that the joint tender was likely to:

- stimulate additional competition to provide kerbside waste collection for the Participating Councils. While some potential suppliers may consider the contract

too large for them to compete for, others will be attracted by this greater volume

- increase the purchasing power of the Participating Councils, which was likely to be reflected in the negotiated terms and conditions of agreements, resulting in lower prices and/or better quality of waste management services delivered to the Participating Councils' ratepayers and
- generate other public benefits in the form of transaction cost savings and other efficiencies compared with each participating council conducting its own procurement process.

The ACCC concluded that the joint tender was unlikely to reduce competition to supply waste collection services in Adelaide in the longer term. While the proposed tender will cover around 180,000 rateable properties, unsuccessful suppliers will continue to have other opportunities to provide waste management services in other parts of Adelaide and around Australia. This will ensure there are a number of competitors for future tender processes.

On 4 May 2018 Council Solutions, on behalf of the Participating Councils, lodged two further applications for authorisation with the ACCC, relating to the joint procurement of:

- the receipt and processing of recyclables and organics and receipt and processing or disposal of residual waste (the Processing Application – AA1000419) and
- the collection of bulk bins, hard waste and street/park litter bins (the Ancillary Application – AA1000420).

On 23 November 2018 the ACCC also granted authorisation to the Processing and Ancillary Applications.

## Notifications

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

### *Exclusive dealing notifications*

1.32. 'Exclusive dealing' describes a business trading with another business imposing restrictions on the other business' freedom to choose with whom, in what, or where it deals, and is prohibited under the CCA in certain circumstances.

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

**Table 3: Exclusive dealing notifications**

Exclusive Dealing Notifications	Number of notifications*
	1 October – 31 December 2018
Matters lodged in the quarter	1
Matters allowed to stand	1

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



## Collective bargaining notifications

- 1.34. Groups of small businesses can lodge a collective bargaining notification to obtain protection from legal action for a collective bargaining activity. The protection provided by a collective bargaining notification comes into force automatically 14 days after the notification is validly lodged and continues for three years (or another specified period) unless the ACCC objects to it. Notifications can be reviewed at any time.
- 1.35. Businesses seeking to lodge a valid collective bargaining notification must satisfy a number of requirements. For example, each member of the collective bargaining group must reasonably expect that they will make at least one contract with the target and that the value of each member's transactions with the target will not exceed \$3 million per year (this figure differs for certain industries). These requirements do not apply to the authorisation process.

**Table 4: Collective bargaining notifications**

Collective Bargaining Notifications	Number of notifications
	1 October – 31 December 2018
Matters lodged in the quarter	5
Matters allowed to stand	4

### Significant collective bargaining notifications

#### PHARMACY GUILD

On 19 December 2018 the ACCC decided not to object to the notification lodged by The Pharmacy Guild of Australia – Victorian Branch (the Guild) to enable its members to collectively negotiate with electricity retailers. The notification was lodged on 16 November 2018 and the ACCC has decided to allow it to remain in force for a period of 10 years from that date (unless revoked earlier) instead of the default period of three years.

The Guild proposes to invite members to provide their electricity usage data to the Guild, which will use this data to negotiate with electricity retailers. Guild members will then be offered the opportunity to enter into individual contracts, on otherwise standard commercial terms, for the supply of electricity with the electricity retailer who has offered the best/lowest rate to members. Participation is voluntary.

The ACCC considers that the Notified Conduct is likely to result in public benefits from improved efficiency through sharing transaction costs and potentially increased competition for the supply of electricity.

The ACCC considers that the Notified Conduct is likely to result in minimal, if any, public detriment. In reaching this view, the ACCC notes the following:

- participation in the Notified Conduct is voluntary for the members of the group and the targets
- tender processes will be open to all electricity retailers
- retail electricity represents a small component (less than 1.2 per cent) of annual expenses for a typical Australian pharmacy and total consumption by Victorian pharmacies represents a miniscule proportion of the electricity consumed in Victoria.

The Guild sought to collectively bargain on behalf of its members for up to 10 years. The Guild notes that the initial contract terms are likely to be for at least three years and that if the notification were in force for a period of 10 years this would enable the Guild to renegotiate on behalf of its members, several times, with the intention of maximising the cost savings to its members. The ACCC decided that it was appropriate for the notification to remain in force until 15 November 2028 because the likely benefits of the arrangements are expected to continue and therefore total benefits are likely to be greater with the extended notification period. The extended notification period is unlikely to change the minimal public detriment which is likely to result from the arrangements.

### **Resale price maintenance notifications**

- 1.36. In broad terms, resale price maintenance occurs when a supplier of goods or services (for example, a manufacturer or wholesaler) specifies a minimum price below which a reseller must not onsell, or advertise for sale, those goods or services.
- 1.37. Resale price maintenance is prohibited outright under the CCA, regardless of whether it has the purpose, effect or likely effect of substantially lessening competition.
- 1.38. Changes to the CCA from 6 November 2017 mean that it is now possible to obtain protection from legal action for resale price maintenance conduct by lodging a notification. Before this date, ACCC authorisation was the only way to obtain legal protection for resale price maintenance conduct. Authorisation will continue to be available, so businesses proposing to engage in resale price maintenance now have a choice of lodging a notification or seeking authorisation.

**Table 5: Resale price maintenance notifications**

Resale price maintenance notifications	Number of notifications
	1 October – 31 December 2018
Matters lodged in the quarter	0
Matters allowed to stand	0

### **Certification trademarks**

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

**Table 6: Certification trademarks**

Certification trademarks (CTMs)	Number of related applications (number of CTMs*)
	1 October – 31 December 2018
CTMs received	6 (7)
Final assessments issued	18 (19)

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

## 2. Protecting consumers and supporting fair trading

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

- 2.1. The ACCC enforces the Australian Consumer Law (ACL) to prevent and redress harm to consumers and small businesses. Another key role of the ACCC is to inform businesses and consumers of their rights and obligations under the CCA through engagement, education and the provision of specialised information. This function also includes actions taken to ensure Australian consumers are not harmed by unsafe products.
- 2.2. Each year the ACCC reviews its compliance and enforcement priorities to determine where to focus its efforts to maximise impact, including by preventing and redressing harm to consumers and small businesses.
- 2.3. In 2018 the ACCC's Compliance and Enforcement priorities for consumer protection include:
  - consumer issues in new car retailing, including responses by retailers and manufacturers to consumer guarantee claims, and other matters identified in the ACCC's 2017 New Car Retailing Industry Report
  - consumer issues in the provision of broadband services, including addressing misleading speed claims and statements made during the transition to the NBN
  - systemic issues involving large or national traders avoiding or misrepresenting consumer guarantee rights
  - consumer issues concerning the use of digital platforms, algorithms and consumer data, with a focus on emerging markets and matters identified by the ACCC's digital platforms inquiry
  - consumer issues in the provision of energy as an essential service, including matters identified in the ACCC's retail electricity pricing inquiry report and the ACCC's wholesale gas inquiry
  - ensuring small businesses receive the protections of industry codes and the unfair contract terms law, with a focus on Franchising Code of Conduct issues involving large or national franchisors
  - ensuring better product safety outcomes for consumers in the online marketplace
  - issues arising from the Takata airbags recall
  - consumer issues in the agriculture sector, with a focus on the dairy inquiry, Horticultural Code of Conduct enforcement, and analysis of the viticulture industry.
- 2.4. Conduct impacting Indigenous Australians is an enduring priority. This recognises that certain conduct in breach of the Act has the potential to specifically impact on the welfare of Indigenous Australians. We also recognise that Indigenous Australians, particularly those living in remote areas, continue to face challenges in asserting their consumer rights. This means that we will always prioritise our work in this area while these challenges remain.
- 2.5. Consumer protection for vulnerable and disadvantaged consumers is also an enduring priority for the ACCC.

2.6. The ACCC continued to action consumer product safety priorities announced in 2018, including the compulsory recall of vehicles fitted with defective Takata airbags and specified spare parts; quad bikes; the Infinity electrical cables recall; button batteries; baby walkers; toppling furniture; and improving the safety of products supplied over the internet. The ACCC also continues to work towards the introduction of a general safety provision into the ACL.

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

2.7. Total ACL penalties awarded by the Federal Court in ACCC matters are over \$166.95 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.<sup>2</sup> As at 31 December 2018, this figure encompasses 40 ACCC cases where penalties awarded by the Court have been at or above \$1 million.

2.8. In the December quarter, the ACCC was involved in 34 legal proceedings relating to consumer protection. Of these:

- 27 cases were carried over from the previous quarter
- 7 cases were commenced
- 7 cases were concluded
- 27 cases continue at the end of the quarter.

### ***Proceedings commenced***

#### **AUSTRALIAN PRIVATE NETWORKS PTY LTD (T/A ACTIV8ME)**

In December 2018 the ACCC instituted proceedings against internet provider Australian Private Networks Pty Ltd (trading as Activ8me) for allegedly making false or misleading representations when advertising its internet services.

The ACCC alleges that between June and October 2018, Activ8me breached the ACL when it made the false or misleading claims in three direct mail advertisements and five online banner advertisements marketing its Opticomm fibre-to-the-premises packages. Activ8me sent thousands of advertisements with allegedly false or misleading claims about the speed, data limits and costs of its internet services.

This was the second time in 2018 that the ACCC has taken enforcement action against Activ8me for alleged misleading or deceptive conduct. In March 2018 the ACCC issued Activ8me with an Infringement Notice for false or misleading claims.

#### **EMPLOYSURE PTY LTD**

In December 2018 the ACCC instituted proceedings against Employsure Pty Ltd (Employsure) for allegedly misleading small business consumers that it was affiliated with a government agency, which was not the case. It is also alleged that Employsure represented to consumers that it provided a helpline for free workplace relations advice, when the primary function of that helpline was to secure marketing leads to sell its services.

Employsure is an employment relations company. The ACCC alleges that Employsure engaged in the misleading conduct in breach of the ACL through its use of Google Ads

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<sup>2</sup> This includes consumer matters pursued by the ACCC under ASIC Act delegation.

campaigns and on its website between January 2016 and November 2018.

The ACCC alleges that Employsure targeted small businesses who were seeking the free workplace relations helpline operated by the government. Its primary objective was to sign these businesses up to long-term contracts with ongoing fees. In some cases, the advice sought by these businesses was available free of charge from the Fair Work Ombudsman.

The ACCC alleges that Employsure engaged in unconscionable conduct towards four small businesses between August 2015 and June 2018.

It is also alleged that during the period of November 2017 to at least October 2018, Employsure's contracts contained unfair terms, including that it made it difficult for small businesses to exit the long term contracts.

The ACCC is seeking declarations, pecuniary penalties, injunctions, consumer redress orders for the four small businesses, corrective publications and compliance orders, and costs.

### **JETSTAR AIRWAYS PTY LTD**

In December 2018 the ACCC instituted proceedings against Jetstar Airways Pty Ltd (Jetstar) for making false or misleading representations about consumer guarantee rights under the ACL.

Jetstar has admitted that it made representations on its website that some fares were not refundable, and that consumers could only get a refund if they purchased a more expensive fare.

The ACCC and Jetstar have jointly submitted to the Federal Court that Jetstar should be ordered to pay a penalty of \$1.95 million and make a contribution to the ACCC's costs. The Federal Court will decide whether the proposed penalties and other orders sought are appropriate.

The ACCC has accepted a court-enforceable undertaking from Jetstar, as well as Qantas, Virgin Australia and Tiger with a commitment from the airlines to amend their policies and practices in relation to ACL consumer guarantees. Further information is at page 23 below.

### **OPTUS MOBILE PTY LIMITED**

In October 2018 the ACCC instituted proceedings against Optus, alleging it made false or misleading representations to consumers in relation to its third-party billing service known as 'Direct Carrier Billing'.

Optus has admitted that it made false or misleading representations in contravention of the ASIC Act, and has agreed to apply jointly with the ACCC for orders from the Federal Court.

The proposed orders include declarations that Optus breached the ASIC Act, and for Optus to pay \$10 million in penalties. The Federal Court will decide at a later date whether the orders sought, including the proposed penalties, are appropriate.

Optus has also committed to offer refunds to customers affected by its conduct. It is possible that more than 240 000 Optus customers were affected.

### **PRODUCTIVITY PARTNERS PTY LTD (T/A CAPTAIN COOK COLLEGE)**

In November 2018 the ACCC instituted proceedings against Productivity Partners Pty Ltd (trading as Captain Cook College), alleging systemic unconscionable conduct in breach of the ACL.

The ACCC alleges that from September 2015, Captain Cook College removed consumer safeguards from its enrolment and withdrawal processes for online courses to improve its financial performance. It is alleged that the removal of these consumer safeguards increased the number of students that Captain Cook College enrolled and who remained enrolled, allowing the College to increase VET FEE-HELP payments from the Commonwealth.

It is also alleged that Captain Cook College made false or misleading representations, engaged in unconscionable conduct and failed to provide unsolicited consumer agreement protections in its dealings with four individual consumers.

The ACCC is seeking pecuniary penalties, declarations, corrective notices, adverse publicity orders, finding of fact orders and orders requiring the implementation of a consumer law compliance program, as well as costs. The ACCC is also seeking orders disqualifying former CEO Ian Cook and former COO Blake Wills from managing corporations.

### **SERVICE SEEKING PTY LTD**

In December 2018 the ACCC instituted proceedings against online tasking platform Service Seeking Pty Ltd (Service Seeking) for engaging in misleading conduct relating to customer reviews. Service Seeking operates an online platform where tradespeople can quote and book jobs requested by consumers, such as gardening and cleaning services.

From July 2016 Service Seeking's 'Fast Feedback' feature allowed businesses to use a template form to write their own reviews and chose a star rating after completing a job. The proposed review was then emailed to the customer. If the customer did not respond to a business' self-written review within three days, the review was automatically published under the business's profile on the Service Seeking website.

### **TPG INTERNET PTY LTD**

In December 2018 the ACCC instituted proceedings against TPG Internet Pty Ltd (TPG) for engaging in misleading conduct about a '\$20 prepayment' made by consumers, and including unfair prepayment contract terms in some of their plans.

Customers signing up to a TPG plan had to pay \$20 for what TPG describe as a 'prepayment' to cover costs that might be incurred but are not included in their plan, such as overseas phone calls. From March 2013 TPG represented on its website that the prepayment of \$20 could be used for excluded telecommunications services before the consumer cancelled their plan. However, the prepayment operates as a non-refundable fee and TPG retains at least \$10 of the prepayment when a customer cancels their plan.

The ACCC also alleges TPG's standard contract term requiring forfeiture of the prepayment is unfair under the ACL.

The ACCC is seeking penalties and compensation for consumers.

### ***Proceedings appealed***

Nil

## ***Proceedings concluded***

### **ACM GROUP PTY LTD**

In December 2018 the Federal Court ordered that ACM Group Ltd (ACM) pay penalties totalling \$750 000 for ACM's misleading, harassing, coercive and unconscionable pursuit of unpaid debts from two vulnerable consumers.

ACM is one of Australia's largest debt collection firms. Between 2011 and 2015 ACM pursued two consumers, one of who was a resident in a care facility and the other a single parent with limited income, for unpaid mobile services debt which ACM purchased from Telstra.

ACM's continued harassment and intimidation of a care facility resident who had difficulty speaking after suffering multiple strokes was considered one of the worst cases of unconscionable conduct the ACCC has seen in the debt collection sector. ACM's conduct towards another consumer who was in difficult financial circumstances, which included giving false information and making empty threats of court action, was also considered particularly egregious.

The Court made a number of other orders, including that ACM pay the ACCC's legal costs.

### **EQUIFAX PTY LTD**

In October 2018 the Federal Court ordered that Equifax Australia Information Services and Solutions Pty Ltd (Equifax) pay penalties totalling \$3.5 million for misleading and deceptive conduct and unconscionable conduct in relation to credit report services following joint submissions by Equifax and the ACCC.

Equifax admitted it breached the ACL in 2016 and 2017 when its representatives made false or misleading representations to consumers during phone calls. Equifax told consumers that its paid credit reports were more comprehensive than free reports it had to provide under the law, when in fact they contained the same information. Equifax also admitted that it told consumers they would be charged a single 'one-off' or 'one-time' payment, but failed to disclose that payments for its paid credit report packages would automatically renew unless consumers opted out.

In respect of three vulnerable consumers, Equifax admitted that it acted unconscionably by using unfair sales tactics and making misleading representations during telephone calls.

The Court ordered, by consent, that Equifax establish a consumer redress scheme which will allow affected consumers to seek refunds for a 180 day period.

### **OTICON AUSTRALIA PTY LTD & SONIC INNOVATIONS PTY LTD**

In November 2018 the Federal Court ordered hearing aid retailers Oticon Australia Pty Ltd (Oticon) and Sonic Innovations Pty Ltd (Sonic) to pay penalties totalling \$2.5 million for misleading pensioners through newspaper advertisements for hearing aids sold to AudioClinic and HearingLife clinics.

Oticon and Sonic admitted that the advertisements contained three false and misleading representations about hearing aids available to pensioners under the Australian Government Hearing Services Program.

### **MEDIBANK PRIVATE LIMITED**

In December 2018 the Full Federal Court dismissed the ACCC's appeal against an earlier



August 2017 Federal Court judgement in relation to Medibank Private Limited (Medibank).

The ACCC alleged that Medibank made false, misleading or deceptive representations and engaged in unconscionable conduct in relation to its failure to notify members of Medibank and its subsidiary ahm of its decision to limit benefits for in-hospital pathology and radiology services, despite representing across a number of its communication and marketing materials that it would.

The Full Federal Court's decision ends this case. However the ACCC remains committed to taking action against businesses, including private health insurers, if there is evidence they are misleading their customers.

### **MURRAY GOULBURN COOPERATIVE CO. LIMITED & ORS**

In December 2018 the Federal Court ordered former Murray Goulburn Co-operative Managing Director Gary Helou to pay \$200 000 in penalties for being knowingly concerned in Murray Goulburn's false or misleading claims about the farmgate milk price it expected to pay dairy farmers during the 2015-16 milk season. Mr Helou has undertaken to the Court that he will not be involved in the dairy industry for three years.

Murray Goulburn admitted to making false or misleading representations in breach of the ACL when it represented to farmers in Victoria, South Australia and southern New South Wales in February 2016, and subsequently until April 2016, that it could maintain its opening milk price of \$5.60 per kilogram of milk solids.

The ACCC did not seek a penalty against Murray Goulburn because, as it was a co-operative, any penalty imposed against it could end up being paid by the farmers that were misled.

The Court also ordered by consent that Murray Goulburn and Mr Helou pay a portion of the ACCC's legal costs.

### **LANDMARK OPERATIONS LTD (T/A SEEDNET)**

In December 2018 the Federal Court ordered Landmark Operations Limited (trading as Seednet) to pay a \$1 million penalty for making false, misleading and deceptive claims in a fact sheet for its barley variety known as 'Compass'.

From at least December 2014 to December 2016 Seednet told farmers that Compass barley had strong straw and better straw strength and lodging resistance (ability to remain upright) than an older variety of barley known as 'Commander' when that was not the case. Seednet also misled farmers into thinking Compass was better suited to early sowing, higher fertility paddocks and higher nitrogen rates than Commander.

The Court also ordered Seednet to pay \$50 000 as a contribution to the ACCC's legal costs.

### **WE BUY HOUSES & RICK OTTON**

In November 2018 the Federal Court ordered record penalties totalling \$18 million against We Buy Houses Pty Ltd (We Buy Houses) and its sole director, Rick Otton, for making false or misleading representations about how people could create wealth through buying and selling real estate.

The penalties of \$12 million imposed against We Buy Houses and \$6 million imposed against Mr Otton personally are the highest ever imposed for contraventions of the ACL by a corporation and an individual respectively. We Buy Houses and Mr Otton have also effectively been permanently banned from any further involvement in real estate in order to protect consumers.

We Buy Houses and Mr Otton taught real estate investment strategies via free seminars, paid 'boot camps' and mentoring programs claiming that people could buy a house for \$1 without needing a deposit, bank loan or real estate experience, or using little or none of their own money. They also claimed people could create passive income streams through property and quit their jobs, build a property portfolio without their own money invested, new bank loans or any real estate experience, and start making profits immediately and create or generate wealth.

The ACCC instituted proceedings against We Buy Houses and Mr Otton in March 2015 following a coordinated investigation with New South Wales Fair Trading. The Federal Court delivered judgement on liability in April 2017, finding that We Buy Houses and Mr Otton had engaged in multiple contraventions of the ACL.

## **Judgments**

### **BIRUBI ART PTY LTD**

In October 2018 the Federal Court found that Birubi Art Pty Ltd (Birubi) made false or misleading representations about the products it sold, claiming they were made in Australia and hand painted by Australian Aboriginal persons in breach of the ACL.

From July 2015 to November 2018 Birubi sold over 18 000 boomerangs, bullroarers, digeridoos and message stones to retail outlets around Australia. These products, despite featuring designs associated with Australian Aboriginal art and words such as "Aboriginal Art", "genuine" and "Australia", were made in Indonesia.

The Court concluded that the overwhelming impression conveyed by some of the products and the associated images and representations is that they were made in Australia and were hand painted by Australian Aboriginal persons.

### **Infringement notices**

- 2.9. The ACCC can issue an infringement notice where it has reasonable grounds to believe a person has contravened certain consumer protection laws. The payment of infringement notice penalties is not an admission of a contravention of the ACL.
- 2.10. In the December quarter, the ACCC received payment for eight infringement notices across four matters.

### **LLOYDS AUCTIONEERS AND VALUERS PTY LTD**

In October 2018 Lloyds Auctioneers and Valuers Pty Ltd (Lloyds) paid \$37 800 in penalties after the ACCC issued three infringement notices for alleged breaches of the excessive payment surcharges law.

From September 2017 to March 2018 Lloyds charged customers a 2.25 per cent surcharge when making credit card or debit card payments online for auction items purchased. The ACCC considered these surcharges were excessive because they were higher than Lloyd's cost of processing those payments by as much as 1.43 per cent.

### **WESFARMERS KLEENHEAT GAS PTY LTD**

In December 2018 Wesfarmers Kleenheat Gas Pty Ltd (Kleenheat) paid \$25 200 in penalties after the ACCC issued two infringement notices for alleged false and misleading representations made about gas prices.

From 29 April 2018 Kleenheat advertised that new customers in Western Australia could 'Save 35% on gas charges' by switching to its Monthly Energiser Plan. The ACCC alleges that this representation was false and misleading because the discount only applied to a customer's gas usage charges (but not to other charges, like the gas supply charge or account fee). The ACCC also alleged that the overall impression created by the advertisements was that the discount would apply while the consumer remained a customer, where in fact the discount only applied for 12 months, after which it dropped to 25 per cent.

### **OZWEAR CONNECTION**

In October 2018 Ozwear Connection (Ozwear) paid \$25 200 in penalties after the ACCC issued two infringement notices for alleged false country of origin representations made about its 'Classic Ugg' footwear range.

Between at least January and April 2018 Ozwear claimed on its website it is '100% Aussie owned' and that its 'Classic Ugg' range were made using 'the best materials available in Australia'. Prior to May 2018 Ozwear also attached a tag that was green and gold, shaped like a map of Australia and included the words 'this exclusive premium label is a uniquely Australian owned brand for authentic Australian Ugg boots'.

The ACCC considered the representations created a false impression that Ozwear's 'Classic Ugg' footwear were Australian made when, in fact, they were made in China.

### **WIGGLE LIMITED**

In December 2018 Wiggle Limited (Wiggle) paid \$12 600 after the ACCC issued an infringement notice for allegations that its staff misled Australians about their rights to remedies for faulty products.

Wiggle's customer service staff told some Australian consumers who were trying to obtain a refund for faulty products that Wiggle was not subject to the ACL as it is based in the United Kingdom, the consumer needed to contact the manufacturer and Wiggle would not provide a full refund for a faulty product as the product had been used.

Under the ACL, consumers are entitled to a repair, replacement or refund when there has been a major problem with the product. This law applies to all businesses that sell products to consumers in Australia, including overseas based businesses.

Wiggle has also provided a court enforceable undertaking to the ACCC admitting it likely breached the ACL. As part of the undertaking, Wiggle has committed to implementing an ACL compliance program.

### **Undertakings accepted**

2.11. The ACCC also resolves alleged contraventions of the CCA by accepting court-enforceable undertakings under section 87B of the CCA. In the December quarter, there were five section 87B undertakings accepted relating to consumer protection. This includes the undertaking provided by Wiggle Limited, outlined above.

### **AIRLINES**

In December 2018 the ACCC accepted court enforceable undertakings from Jetstar Airways Pty Ltd (Jetstar), Qantas Airways Australia Pty Ltd (Qantas), Tiger Airways Australia Pty Ltd (Tiger) and Virgin Australia Airlines Pty Ltd (Virgin) (together, the airlines) in relation to false and misleading representations about consumer guarantee rights under the ACL.

As part of the undertaking, each airline will conduct a comprehensive review of their policies, compliance program, website and booking systems to ensure they are compliant with the ACL. They will also update their internal policies outlining their commitment to compliance with the ACL and notify relevant employees of their obligations to consumers under the ACL and their compliance policies.

Each airline will create an ACL webpage on their website and include a hyperlink to it in communications sent to customers in the event of cancellations and/or flight details.

The undertaking also requires the airlines to review staff training, undertake a review of past complaints, implement a complaint review process and conduct an annual risk review to ensure effective compliance with the undertakings.

The ACCC has commenced proceedings against Jetstar in the Federal Court of Australia in relation to the false and misleading representations made.

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

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

2.13. In the December quarter, the ACCC reached eight administrative resolutions.

### **WASTE MANAGEMENT**

In December 2018 Visy Paper Pty Ltd (trading as Visy Recycling), Cleanaway Pty Ltd (Cleanaway) and Suez Recycling & Recovery Pty Ltd (Suez) each amended potentially unfair contract terms (UCTs) in their standard form contracts following an ACCC investigation into the use of UCTs in the waste management industry.

All three companies have agreed to make changes to their price variation and liquidated damages clauses that previously allowed them to unilaterally increase their prices in specified circumstances, and impose penalties on customers who wanted to exit their contracts before the end of the contract term.

### **DAIRY PROCESSORS**

In December 2018 Brownes Food Operations, Lion Dairy & Drinks, Norco Co-operative Limited, Parmalat Australia and Fonterra Australia each agreed to amend specific terms in their milk supply agreements to address the ACCC's concerns that these terms were unfair to dairy farmers.

### **Public warning notices**

2.14. In certain circumstances the ACCC may issue a Public Warning Notice to alert consumers to a suspected contravention of certain provisions of the ACL. The ACCC may issue these notices where it has reasonable grounds to suspect a contravention of the ACL, it is satisfied that one or more other persons has suffered or is likely to suffer detriment as a result of the conduct, and it is satisfied that it is in the public interest to do so.

2.15. In the December quarter, no public warning notices were issued by the ACCC.

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

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

### Consumer Consultative Committee

- 2.19. The Consumer Consultative Committee (CCC) provides a forum through which consumer protection issues can be addressed collaboratively between the ACCC and consumer representatives.
- 2.20. The ACCC held a meeting with the CCC on 7 December 2018. Topics discussed included an ACCC enforcement update, the National Disability Insurance Scheme, the ACCC's inquiry into foreign currency conversion services, planning for the 2019 Consumer Congress and Ruby Hutchison Memorial Lecture events and reports to the ACCC from those consumers experiencing disadvantage or vulnerability.

### Scams Awareness Network

- 2.21. During this quarter the ACCC chaired the Annual Meeting of the Australian Scams Awareness Network which was attended by 22 government agencies. Discussion focused on innovation and collaborative initiatives in addressing scams impacting the community. The ACCC presented its Scams Intermediaries Project, a collaborative project with the private sector, aimed at restricting the ability of scammers to use legitimate companies to conduct their scams. The meeting also marked the commencement of planning for Scams Awareness Week 2019, scheduled for August 2019.

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

- 2.22. Educating consumers about their consumer rights is central to the ACCC's work protecting the interests and safety of consumers. The ACCC's education campaigns support consumers to navigate complex or difficult consumer decisions to help them make smart choices.
- 2.23. During this quarter ACCC online consumer education resources were accessed 1 116 899 times. The top three most accessed pages were:
  - [Petrol price cycles](#)
  - [Repair, replace, refund](#)
  - [Make a consumer complaint](#).
- 2.24. The top three publications viewed were:
  - [The little black book of scams](#)

- [Consumer guarantees – a guide for consumers](#)
- [Door to door - do not knock sign.](#)

## Scams

- 2.25. The ACCC's Scamwatch website provides consumers and small businesses with information about scams. The Scamwatch website attracted 868 861 visits in this quarter.
- 2.26. The ACCC received 60 085 scam reports to its Scamwatch service between October and December 2018. A total of \$19 225 842 was reported lost over this period.
- 2.27. The ACCC issued four media releases about prevalent or emerging scams this quarter. The topics covered fake charity scams, business email compromise scams, tax scams and holiday season scams. These four media releases were also sent as radar alerts to our 91 300 Scamwatch radar subscribers.
- 2.28. The ACCC also operates a Scamwatch Twitter account, @Scamwatch\_gov, which alerts the public to scams targeting consumers and businesses, and advises Australians how to recognise, avoid and report them. The Scamwatch Twitter account continued to expand its reach with almost 19 253 followers as at 31 December 2018, which was an increase of approximately 920 followers during the quarter. About 87 tweets or retweets were posted during the period.
- 2.29. The ACCC engaged with a large range of government and private stakeholders to inform them about current scams and share information. The ACCC also agreed to participate in the ACMA's Scam Technology project, which aims to explore technology solutions to address the proliferation of scams over the telecommunications network.

## Consumer directed care

- 2.30. On 16 July 2018 the ACCC published three educational resources and launched a campaign to educate consumers and providers of home care services about their rights and responsibilities under the CCA. The slogan for the campaign was 'Choose your care. Use your rights.'
- 2.31. In December 2018 the Department of Health promoted our resources in its newsletter which went out to 17 000+ subscribers. Subscribers include service providers, assessors, and health professionals.
- 2.32. As at 31 December 2018 the ACCC (through partnered stakeholders) had distributed 61 270 printed consumer brochures and 8009 industry guides, and the online resources have been viewed or downloaded as follows:
- Home care - know your consumer rights — 1419 page views / 930 downloads
  - Home care services - your business rights & obligations — 1448 page views / 1313 downloads.

## Supporting a vibrant small business sector

- 2.33. The ACCC helps to ensure small businesses understand and comply with their obligations and encourages them to exercise their rights under the CCA. The ACCC aims to promote a competitive and fair operating environment for small business and to ensure that small businesses understand how the legislation can help them.

- 2.34. The ACCC continues to focus on education and awareness within the franchising sector and has conducted a number of compliance checks under the CCA to enhance compliance with the Franchising Code and the CCA more broadly.
- 2.35. The ACCC has commenced a Franchising Project which will focus on conducting additional, targeted compliance checks to address specific problems or 'harms' of special interest, or examine sectors or industries of concern. The Project will be complemented by an education campaign which will promote the project outcomes and learnings to the franchise community and other interested stakeholders.
- 2.36. On 14 October 2018 ACCC Deputy Chair Mick Keogh delivered a speech at the National Franchise Convention Legal Symposium, in which he called for the Franchising Code to be strengthened to better protect franchisees.
- 2.37. In October 2018 the ACCC also participated in the Consumer Affairs Australia and New Zealand (CAANZ) roadshows alongside federal and state regulators.
- 2.38. During this quarter the ACCC's online business education resources were accessed 357 366 times and we continued to promote our three free online education programs:
- a program for small businesses covering major aspects of the CCA and ACL—over 38 000 users have accessed this program since its launch in April 2013, including over 1500 this quarter
  - a program for tertiary students studying subjects that touch on the CCA and the ACL—over 46 000 users have accessed this program since its launch in November 2013, including around 700 this quarter
  - a franchising pre-entry education program delivered by FranchiseED—around 17 000 people have enrolled in this program since July 2010, including nearly 200 this quarter.
- 2.39. During this quarter the ACCC sent 21 email updates to small business, franchising and oil code information networks. The updates provided subscribers with information about:
- seeking input on the ACCC's 2019 compliance and enforcement priorities
  - reminding potential franchisees to obtain independent professional advice as part of their due diligence
  - the Deputy Chair's speech about changes needed to the Franchising Code and the UCT law
  - an increase in business email compromise scams targeting businesses
  - the Federal Court's ruling on 'Made in Australia' claims made by Nature's Care
  - changes to the Mediation Adviser under the franchising and oil codes
  - opportunities to make submissions to the ACCC's inquiry into foreign currency conversion services and the Treasury's review of the UCT law.

### **Country of origin food labelling**

- 2.40. Since the Country of Origin Food Labelling Information Standard 2016 became mandatory on 1 July 2018, the ACCC has been working to ensure that businesses are presenting accurate information about country of origin to their consumers.

- 2.41. In the quarter we continued to conduct market surveillance with the National Measurement Institute to identify businesses that may not be complying with the food labelling laws. Market surveillance is being conducted on 10 000 food products with a focus on priority foods sold in supermarkets.
- 2.42. In December 2018 the Federal Court ruled that encapsulation in Australia of imported fish oil and Vitamin D by Nature's Care Manufacture Pty Ltd (Nature's Care) does not constitute 'substantial transformation' of the product. The product's 'Made in Australia' claim was therefore not protected by the safe harbour defence, which is available under the ACL. Under the country of origin labelling framework, products that are manufactured using imported ingredients must be at least 'substantially transformed' in Australia to have the benefit of the safe harbour defence.

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

- 2.43. The Small Business and Franchising Consultative Committee is a forum for industry and government to discuss competition and consumer law concerns related to the small business and franchising sectors.
- 2.44. Deputy Chair Mick Keogh chaired his first Committee meeting on 26 October. This meeting included a discussion about the franchising inquiry, the review of the unfair contract terms law and updates from the Office of the Franchising Mediation Advisor.

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

- 2.45. The ACCC draws from numerous data sources to identify safety issues in consumer products. Data sources include mandatory reports of serious illness, injury or death, recalls that have taken place internationally and information received from the community. After the ACCC assesses relevant information, action may include:
- negotiating the recall of goods
  - educating industry and consumers
  - negotiating voluntary future changes to packaging labelling or product design
  - working to introduce changes to voluntary or mandatory requirements
  - working to implement new or revised product safety mandatory standards and bans.

More information on how the ACCC identifies, prioritises and addresses product safety risks is available at [ACCC Product Safety Priorities](#).

- 2.46. A key economy-wide strategic issue for the ACCC in 2018 was working towards the introduction of a General Safety Provision. A General Safety Provision would place a legal obligation on traders to ensure the reasonable safety of goods placed on the market. The ACL does not presently impose this express obligation on suppliers.

### **Takata airbag recall**

- 2.47. As at 31 December 2018 around 2.8 million defective Takata airbags have been replaced, with around 1 million inflators remaining for replacement and 225 000 vehicles listed as unrepairable by vehicle manufacturers.<sup>3</sup>

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<sup>3</sup> On 28 February 2018 the then Assistant Minister to the Treasurer, the Hon. Michael Sukkar MP, issued the Consumer Goods (Motor Vehicles with Affected Takata Airbag Inflators and Specified Spare Parts) Recall Notice 2018 (Recall Notice).



- 2.48. The ACCC is particularly concerned about 7816 vehicles identified as fitted with a defective Takata 'alpha' airbag, which poses an immediate safety risk and should not be driven until fixed. Alpha airbags are fitted in certain models of Honda, Toyota, Nissan, BMW, Mazda and Lexus cars, sold in Australia between 2001 and 2004.
- 2.49. In November 2018 we published updated quarterly figures on the Product Safety Australia website outlining the progress of the recall by vehicle manufacturers, including a state and territory breakdown of vehicles requiring replacement of an airbag inflator. We will continue to publish updated data on a quarterly basis, with the next publication to occur in early February 2019.
- 2.50. The ACCC continues to engage closely with the Federal Chamber of Automotive Industries (FCAI) to ensure the efficacy of the national consumer awareness raising campaign that it is leading on behalf of many vehicle manufacturers. The message 'Faulty airbags? Don't die wondering' calls on consumers to use a vehicle look-up tool to check if their vehicle is affected by going to [www.IsMyAirbagSafe.com.au](http://www.IsMyAirbagSafe.com.au) or by texting 0487 AIRBAG. As at December 2018, this tool has been accessed 5.35 million times, with 826 000 affected vehicles identified.
- 2.51. The ACCC continues to engage with businesses in the automotive industry, including vehicle manufacturers, parallel importers, auction houses and auto recyclers regarding their rights and obligations under the Recall Notice.
- 2.52. The ACCC also continues to work through the Takata Interagency Group with state and territory fair trading agencies, road traffic authorities and other interested stakeholders on initiatives to increase the effectiveness of the recall. A key initiative is registration sanctions for vehicles fitted with high risk defective 'alpha' inflators. The ACCC has welcomed announcements from jurisdictions that have adopted these sanctions and we continue to work closely with authorities around the country.
- 2.53. Another initiative of the Takata Interagency Group is the Australian Financial Security Authority's (AFSA) publication of information on the Takata recall in search certificates on the Personal Property Securities Register (PPSR). This initiative is proving to be a valuable contribution to the recall effort. Following its launch on 27 September to 30 November, 838 502 searches and 62 721 affected vehicles were identified—equating to around 1000 affected vehicles identified per day.
- 2.54. The ACCC is assessing reports and plans required under the Recall Notice including Recall Initiation Schedules for grey importers and Registered Automotive Workshop Scheme (RAWS) participants, Independent Auditor nominations, applications for assessment of compliance, quarterly reports and VIN Status Reports.

## **Quad bike safety**

- 2.55. Quad bikes, also known as all-terrain vehicles (ATVs), have caused at least 124 deaths in Australia since 2011, including 17 deaths of children.
- 2.56. During the December quarter the ACCC continued its investigation into the safety of quad bikes, including whether a safety standard is required for quad bikes under the ACL. A safety standard could require quad bikes to:
  - adopt the requirements of applicable international standards
  - be tested in accordance with a national quad bike safety rating system and display the rating achieved
  - integrate crush protection devices into the design
  - meet minimum performance standards.

2.57. The ACCC has obtained advice from local and international quad bike and engineering experts to help inform its work. A final recommendation will be provided to the responsible Minister early in 2019.

## Product safety recalls

**Table 7: Recalls—1 October to 31 December 2018**

Recalls assessed and published by regulator	
General consumer goods – ACL regulators including the ACCC	104
Motor vehicles – Department of Infrastructure	51
Food – FSANZ	17
Therapeutic goods – TGA	5
<b>TOTAL</b>	<b>177</b>

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

## Infinity electrical cable recall

- 2.58. A national recall is underway to remediate premises that have had substandard Infinity electrical cable installed.
- 2.59. The ACCC handed over administration of the Infinity Taskforce to NSW Office of Fair Trading in December 2018. The largest quantities of unaccounted for/unremediated cable were supplied in NSW.

## Samsung top-loading washing machines recall

- 2.60. There is a serious defect in six models of Samsung top-loading washing machines that may cause, and has caused, electrical fires leading to property loss.
- 2.61. The ACCC continues to monitor the recall of the faulty Samsung washing machines, which is being led by the NSW electrical safety regulator. The recall is compulsory in NSW, but is offered voluntarily on the same terms to consumers in all other states and territories. In December the recall reached 89 per cent completion.
- 2.62. Samsung is continuing to receive assistance from state and territory agencies to identify the addresses of consumers who have changed address since purchasing their washing machine.

## Recall monitoring

- 2.63. The ACCC applies a risk-based approach to assessing recall performance and to guide recall monitoring actions.
- 2.64. There are currently 619 open recalls monitored by the ACCC. This quarter the ACCC assessed 499 recall progress reports submitted by suppliers. There were eight recalls escalated for further assessment which resulted in additional consumer awareness campaign programs being initiated.
- 2.65. During this quarter, the Recall Monitoring team received 38 reports and enquiries that required assessment and response.

- 2.66. There were five mandatory injury reports received and assessed relating to recalled products.

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

- 2.67. The ACCC receives mandatory injury reports from suppliers, which are assessed directly by the ACCC or are referred to a specialist regulatory agency for assessment. The total number of mandatory injury reports received for this quarter was 831. Of these, 375 were out of jurisdiction or were referred to another agency for assessment, 15 were progressed for further assessment, 12 were closed and added to an existing investigation, and 429 were closed after review of risk and the factors in the ACCC's annual Product Safety Priorities for allocating our finite resources.
- 2.68. During this quarter, the ACCC received 249 reports of unsafe products and related enquiries that were escalated for hazard analysis and assessment.
- 2.69. The number of consumer enquiries received regarding the Takata compulsory recall increased from 568 in the previous quarter to 693 this quarter. This increase is likely to be the result of the 60 Minutes story on Takata airbags which aired on 28 October.

### **Consumer product safety strategies**

- 2.70. The ACCC continues to educate consumers and suppliers about the importance of product safety. Consumers expect the goods and services they purchase to be safe and of acceptable quality. Businesses can better manage their legal risks if they have better buying practices and make sure the goods and services they sell are safe. The ACCC has delivered a number of initiatives to meet these objectives.
- 2.71. Online compliance: The ACCC issued a media release about its proactive engagement with online platforms such as eBay, AliExpress, eBay, Gumtree, Etsy and Catch.com.au to improve product safety in the online marketplace. The media release also raised awareness of the global campaign the ACCC co-led on the safety of products sold online. In December, the ACCC met with ACL regulators to share insights on product safety compliance in the online marketplace.
- 2.72. The ACCC commenced the evaluation stage of the National Strategy for Button Battery Safety in this quarter. The ACCC is working with other ACL regulators to assess the effectiveness of voluntary safety improvements made by suppliers of button batteries and products containing button batteries. The evaluation will include an analysis of the evidence collected as part of the National Strategy to consider whether there is a need for regulatory intervention.
- 2.73. The ACCC continues to assist the Industry Working Group with revision of the voluntary Industry Code for Button Battery Safety. The second edition is expected to be released by Industry next quarter.

### **Mandatory safety standards reviews**

- 2.74. The ACCC is responsible for administering and enforcing mandatory safety standards for consumer products. These standards are made by the Minister responsible for consumer product safety and specify the minimum safety requirements that specific products must meet before they are supplied to the Australian market, to prevent the risk of death or serious injury to consumers.
- 2.75. In 2015–16 the ACCC established a program to review all 42 mandatory safety standards.

- 2.76. The ACCC reviews mandatory safety standards in line with the principles set out in the [ACCC's 2018 Product Safety Priorities](#). Reviews consider a number of factors including the time since the introduction of the standard or its last review, technical issues with the standard's operation, updates in safety specifications (voluntary standards), innovations in product design and the relative risk of death and serious injury.
- 2.77. Reviews are guided by the ten principles contained in The Australian Government Guide to Regulation. They also have regard to the Australian Government's reform agenda, the Industry Innovation and Competitiveness Agenda, which seeks to promote harmonisation between Australian and overseas safety standards.
- 2.78. As part of these reviews, the ACCC regularly publishes consultation papers seeking stakeholder submissions. Interested stakeholders can subscribe to our mailing list and receive email alerts about future consultation processes by visiting the ACCC website.
- 2.79. As at 31 December 2018 the ACCC has completed 16 of the reviews of the mandatory safety standards. The review schedule has been slower than anticipated, as resources were diverted to the Takata Compulsory Recall.

### Consumer product safety compliance

- 2.80. The ACCC uses an established risk-based assessment method to identify priorities for safety inspections of consumer products offered in the market. Before choosing target sectors or products, the ACCC also considers intelligence about market place problems, the length of time since a sector or product was last inspected and the opportunities to undertake activities jointly with other agencies. Inspections generally involve:
- visual inspections of products in-store and online
  - performance testing by independent laboratories to check performance requirements mandated by the regulations.
- 2.81. The ACCC also conducts inspections to gauge the effectiveness of particular safety regulations. During this quarter we undertook surveillance for the following regulated and non-regulated products: baby walkers, combustible candle holders, novelty cigarette lighters, swimming and flotation aids, portable ramps for motor vehicles, support stands for vehicles, trolley jacks and vehicle jacks. As a result of this proactive surveillance program, six products across the following product categories were recalled by their respective suppliers due to non-compliance: bean bags, combustible candle holders, swimming and flotation aids, trolley jacks and vehicle jacks.
- 2.82. Additionally, an assessment of mini jelly cups containing konjac took place after receiving a complaint about the products, which are subject to a permanent ban. The assessment resulted in 11 products recalled by their respective suppliers.

**Table 8: Quarterly surveillance snapshot**

<b>Total number of retailers/sites surveyed</b>	<b>767</b>
Total number of product lines inspected	2313
Total number of products requiring further assessment	118

### 3. Infrastructure regulation

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

### Telecommunications

#### Measuring Broadband Australia

- 3.2. On 5 November 2018 the ACCC released its third [Measuring Broadband Australia \(MBA\) report](#). The report revealed that competition among internet service providers (ISPs) to perform well in the ACCC's speed tests is delivering good results for fixed-line national broadband network (NBN) customers, including in the busy hours (7pm to 11pm). However, some consumers continue to receive substantially slower speeds than typically available to other consumers on the same plan.
- 3.3. Overall, 69 per cent of all tests continued to achieve download speeds of above 90 per cent of maximum plan speeds, while seven per cent of tests recorded less than 50 per cent of the maximum. The ACCC noted that the MBA program is being taken seriously by ISPs and is delivering noticeable improvements to consumers' broadband speeds.
- 3.4. In this report, the ACCC explored in more depth the difference in busy hour broadband performance between NBN urban services and NBN regional services.
- 3.5. Urban services, which are those provided in towns with a population of over 10,000, received higher speeds than regional services, but the difference was not significant, with those in urban areas receiving 84.8 per cent of maximum speeds on average compared with 83 per cent per cent of speeds in regional areas.
- 3.6. For the current report, testing of 25, 50, and 100 Mbps plans and ADSL services took place in August 2018 and involved 950 NBN and ADSL services supplied by 15 ISPs, using 171,000 download speed tests by our testing provider, SamKnows. The ACCC encourages consumers, particularly those with smaller ISPs, to register their interest in the program to enable reporting on a wider range of services in future reports.

#### Internet interconnection arrangements

- 3.7. The ACCC published an update on its assessment of internet interconnection arrangements in Australia on 23 October 2018. The ACCC considers that recent developments in the wholesale market for internet interconnection services will boost

competition in the supply of internet connectivity and hosted services to corporate and government customers and lead to a better online experience for end-users.

- 3.8. The ACCC welcomed the recent agreement between Telstra and Vocus to enter into a peering arrangement. Optus, Telstra, and TPG have recently published the criteria on which they will consider peering with other ISPs, detailing the requirements other providers need to achieve in order to directly interconnect with them on a settlement free basis.
- 3.9. Peering is an arrangement between ISPs to physically connect to other networks in order to exchange internet traffic, often without payment being exchanged. Gaining peering with other networks enables carriers to provide more competitive wholesale 'transit' services to other ISPs, which should have positive impacts in downstream markets including the corporate internet market.
- 3.10. The ACCC considered internet interconnection arrangements as part of its communications market sector study. The ACCC raised concerns in its final report which was issued in April 2018 that the static peering arrangements in Australia appeared to be resulting in weak competitive incentives in relation to the supply of internet interconnection to smaller ISPs.

### **NBN wholesale service standards**

- 3.11. On 7 December 2018 the ACCC released a discussion paper highlighting five key issues to be considered in the second phase of the inquiry to decide whether regulation is needed to improve customer experience. These include:
  - Aspects of the rebate framework that were not addressed as part of the enforceable undertaking
  - Information regarding speed and performance issues
  - Wholesale support for retail consumer safeguards and regulatory obligations targeted at the retail level
  - Information and reporting of operational outcomes
  - Matters relating to liability and third party claims against NBN Co.
- 3.12. The discussion paper follows the ACCC's acceptance of an enforceable undertaking from NBN Co to improve the availability of service rebates and reporting under its current wholesale agreements with NBN retail service providers (RSPs). While NBN Co's undertaking addressed some of the more pressing issues affecting customer experience, the ACCC is now consulting on whether regulation might be needed on a broader range of topics.
- 3.13. Submissions to the discussion paper closed on 15 February 2019.

### **Fixed line telecommunications services review**

- 3.14. On 26 November 2018 the ACCC decided to extend the declaration of Telstra's fixed line services regulation until 30 June 2024. The six regulated, or declared, services are the unconditioned local loop service, line sharing service, wholesale line rental, local carriage service and fixed originating and terminating access services.
- 3.15. On 12 December 2018 the ACCC commenced a separate inquiry to consider and then determine access terms and pricing that would apply to the six fixed line and wholesale ADSL declared services. The inquiry will consider the terms and conditions

that should be covered in a final access determination (FAD), including the prices for the services and non-price terms and conditions of access.

- 3.16. The ACCC is currently consulting with stakeholders about a range of factors that can influence the cost of providing the fixed line services. It will also explore whether existing FAD prices should be continued. In addition, the ACCC is considering the structure and term of this arrangement.
- 3.17. The ACCC will release a more detailed consultation and position paper in February 2019 with submissions due by 31 March 2019. The FAD is expected to be published in June 2019.

### **DTCS declaration review**

- 3.18. On 5 December 2018 the ACCC released a draft report proposing that its declaration, or regulation, of Australia's Domestic Transmission Capacity Service (DTCS) continue for a further five years, after the current arrangement expires on 31 March 2019.
- 3.19. The ACCC regulates transmission services in areas where there is a lack of competition between providers, so that telephony and data services can be delivered to consumers at affordable prices. The ACCC considers that extending the declaration for a further five years will allow time for the rollout of the NBN to be completed as the NBN is likely to both complement and compete with existing DTCS services.
- 3.20. The ACCC's draft report proposes to end regulation of 137 metropolitan and 27 regional exchange service areas, where the ACCC is satisfied there is now effective competition due to new investment in transmission infrastructure.
- 3.21. The ACCC is also proposing to update the DTCS service description, which sets out which types of transmission services can be classified and regulated. The draft report proposes separate service categories for mobile backhaul transmission and common bandwidth capacities.
- 3.22. Submissions on the draft report closed on 1 February 2019 and a final decision is due by 31 March 2019.

### **DTCS FAD inquiry and BROCC for services to Christmas Island**

- 3.23. On 19 December 2018 the ACCC announced the commencement of a public inquiry into the making of a new DTCS FAD to replace the existing FAD, which expires on 31 December 2019.
- 3.24. On the same date the ACCC made binding rules of conduct (BROCC) setting interim prices for wholesale transmission services to Christmas Island. The rules set temporary price terms for access to regulated domestic transmission capacity services provided over long-distance subsea cable infrastructure.
- 3.25. The rules were issued after the ACCC concluded that current regulated prices do not take into account the higher costs of building and operating long distance subsea cables. The prices will apply until the ACCC determines longer term pricing following a public inquiry into varying the DTCS FAD to account for DTCS services to Christmas Island.
- 3.26. The ACCC intends to run a combined public consultation process covering both inquiries and will release a more detailed consultation and position paper in early 2019.

## **Telstra Migration Plan variation**

- 3.27. On 26 October 2018 the ACCC approved a variation to Telstra's Migration Plan which sets out the steps Telstra will take to progressively migrate voice and broadband services from its copper and hybrid fibre coaxial networks to the NBN.
- 3.28. The variation relates to Special Services which are business telecommunications products delivered on copper, other than standard landline phone or internet services. The variation establishes an In Train Order (ITO) process for Special Services.
- 3.29. This ITO process will improve service continuity for business customers by providing them with a longer period (170 business days) before disconnection commences, where they have a valid order in place for migration to the NBN.

## **NBN Co's SAU variation withdrawn**

- 3.30. On 26 October 2018 NBN Co provided the ACCC with a formal notice to withdraw its proposed variation to its special access undertaking (SAU), which specifies price and non-price terms and conditions of access to NBN Co's fibre, fixed wireless and satellite networks and other related services.
- 3.31. NBN Co submitted its SAU variation for ACCC assessment in June 2017. The main purpose of the variation was to incorporate the three additional technologies under the multi-technology mix model. These are fibre to the node (FTTN), fibre to the building (FTTB) and hybrid fibre coaxial (HFC) services.
- 3.32. As noted in a [statement the ACCC published on its website](#), the ACCC had been concerned that accepting the proposed SAU variation could make it less likely for NBN consumers to benefit from more competitive pricing and improvements in service quality.

## **Internet activity record keeping rules**

- 3.33. On 11 December 2018 the ACCC published the internet activity record keeping rule (RKR), under Section 151BU of the CCA following consultation with data providers and users.
- 3.34. The RKR will collect information on internet activity in Australia on a bi-annual basis with the first collection of data to be undertaken for the December 2018 reporting period. The information to be collected via the RKR relates to services in operation and data download volume for fixed line and mobile services.
- 3.35. This follows a decision by the Australian Bureau of Statistics to discontinue its Internet Activity Survey, with the final release of data in October 2018 for the June 2018 reporting period.
- 3.36. The RKR will be a valuable source of information for the industry and the ACCC's annual communications market report. Data collected through the RKR will also assist the ACCC in its regulatory decision making, improving competition in relevant markets.
- 3.37. Data from the RKR for the December 2018 reporting period is expected to be released in late April 2019 and will be published on the ACCC website.

## **Digital radio access undertakings**

- 3.38. On 30 October 2018 the ACCC received three new access undertakings regarding the commencement of digital radio services in Canberra, Darwin and Hobart. The



three undertakings lodged by the joint venture companies in each licence area (i.e. Canberra, Darwin and Hobart) are identical.

- 3.39. On 19 November 2018 the ACCC released a consultation and position paper to seek stakeholders' views on the degree to which the undertakings meet the legislative requirements and the associated decision-making criteria developed by the ACCC.
- 3.40. The digital radio access regime administered by the ACCC ensures that individual broadcasters (including from the community broadcasting sector) are able to access the digital radio access service for transmission of their content services on reasonable terms and conditions.
- 3.41. The ACCC will consider submissions received before making a final decision in February 2019.

### **Copyright guidelines**

- 3.42. On 23 October 2018 the ACCC commenced public consultation on draft guidelines to assist the Copyright Tribunal (the Tribunal) in the determination of copyright remuneration for the purposes of section 157A of the Copyright Act 1968.
- 3.43. The draft guidelines seek to strike an appropriate balance between the interests of content owners and those that are looking to licence a broad repertoire of copyright works. The guidelines may also help collecting societies and copyright users negotiate reasonable copyright remuneration outside the Tribunal.
- 3.44. There are a variety of revenue sources available to copyright owners and content creators, and these guidelines only relate to the revenue that is available from collecting societies in the provision of blanket licences.
- 3.45. Submissions to the consultation closed on 20 November 2018. The ACCC intends to issue final guidelines in early 2019.

### **NBN wholesale market indicators report – September quarter 2018**

- 3.46. The ACCC released its wholesale market indicators report for the September quarter 2018 on 13 November 2018.
- 3.47. The key findings of the report include that:
  - Almost 4.5 million residents now have an NBN broadband connection at home (up by 8.6 per cent from 4.1 million).
  - Nearly half (more than 2.2 million consumers) are now on high speed plans of 50 Mbps or more, an increase of 20 per cent on the previous quarter. Of these, there are 1.8 million connections on the 50 Mbps speed tier, a more than 10-fold increase from December 2017, reflecting NBN Co's 'Focus on 50' promotion and various other initiatives, including the ACCC's broadband speed claims industry guidance.
  - The number of customers choosing the most basic NBN services also continues to rise. Just over 1.2 million consumers are on the lowest 12Mbps speed plan (up by 4.3 per cent).
  - Average bandwidth capacity (connectivity virtual circuit or CVC) per user also continued to rise this quarter, up by 2.9 per cent from 1.66Mbps in June 2018 to 1.71Mbps in September 2018. In March 2017 it was 1.00Mbps.

- The number of services provided over fibre to the curb (FTTC) technology as at the end of September was 39 204. This is the first time it was reported.
- Overall, wholesale market shares remained relatively stable; smaller RSPs increased their market share slightly from 6.1 per cent to 6.3 per cent, adding about 27 000 more services.

### **Report on effectiveness of broadband speed claims guidance and consultation on further enhancement**

- 3.48. On 21 November 2018 the ACCC published its report on the effectiveness of the ACCC's broadband speed claims industry guidance, which noted market improvements following the implementation of the guidance in August 2017. The ACCC commenced consultation on further enhancing the guidance.

### **Speech on challenges and opportunities of 5G**

- 3.49. Rod Sims, the Chair of the ACCC, delivered a [speech](#) at the ACMA's 2018 RadComms Conference on 30 October 2018 on the challenges and opportunities of 5G for both industry and consumers. The speech discussed the evolving dynamic between mobile networks and the NBN in Australia, the importance of competition to drive investment and bring benefits to consumers, and future challenges for spectrum use and allocation to support 5G.

## **Fuel**

### **Petrol monitoring report – September quarter 2018**

- 3.50. On 20 December 2018 the ACCC released the September quarter 2018 petrol monitoring report. Average retail petrol prices across the five largest cities (Sydney, Melbourne, Brisbane, Adelaide and Perth) in the September quarter 2018 were 146.7 cents per litre (cpl), an increase of 1.4 cpl from the previous quarter. Higher international crude oil and refined petrol prices combined with a lower AUD–USD exchange rate pushed retail prices up during the quarter.
- 3.51. The report also found that:
- In the September quarter 2018 average gross indicative retail differences (GIRDs, which are retail prices minus wholesale prices) in the five largest cities decreased by 2.4 cpl to 10.4 cpl. This was their lowest level since the September quarter 2017.
  - The average differential between prices in regional locations and prices in the five largest cities in the September quarter 2018 was 6.4 cpl. This was 1.5 cpl higher than the average differential in the June 2018 quarter.
  - After the quarter, daily average prices (on a seven-day rolling average basis) continued to increase in October 2018 and by the end of the month they had reached 159.9 cpl, their highest level since mid-July 2008 (in nominal terms). They subsequently decreased by over 30 cpl in November 2018 and ended the month at 128.5 cpl, their lowest level since October 2017.
  - The sharp movements in daily average retail prices in October and November were due to similar sharp movements in international crude oil and refined petrol prices. The fall in crude oil prices in November 2018 was influenced by concerns over a global trade war and increasing US shale oil production.

## **Petrol price cycles report**

- 3.52. On 6 December 2018 the ACCC released its third industry report, which examined petrol price cycles in Australia. Price cycles have been a longstanding feature of retail petrol prices in the five largest cities. They involve a sudden, sharp increase in petrol prices (by 20 cpl or more), usually led by one or more retail sites, with other retail sites subsequently raising their prices. This is followed by a much slower decline back to lower price levels. Retailers use the price cycles to maximise profits.
- 3.53. The report found that the common perception that all retailers put their prices up or down at exactly the same time was not correct. If motorists see prices going up at one retailer, they can use fuel price websites and apps to find another retailer that has not yet raised its price.
- 3.54. The report found that motorists in the five largest cities can save money by buying petrol at the bottom of the price cycle. It is estimated that this can lead to a yearly saving per motorist of around \$175 in Sydney, \$150 in Melbourne and Brisbane, and \$200 in Adelaide. Perth motorists can save up to \$520 per year because of Perth's regular weekly cycles compared with other cities where there are fewer cycles.
- 3.55. The report also found motorists can save even more money by choosing where they buy. There is a significant difference between the cheapest and most expensive service stations throughout the price cycle. Purchasing petrol from those retailers that are consistently among the lowest-priced will save consumers money.
- 3.56. The report estimated that if all motorists took advantage of the 'where' and 'when' to buy petrol, total potential yearly savings would be around \$260 million in Sydney, \$220 million in Melbourne, \$105 million in Brisbane and \$75 million in Adelaide.
- 3.57. The ACCC encourages motorists to be active in the market. Information about the state of price cycles in the five largest cities, and buying tips, are available from the ACCC website.

## **Fuel consultative committee**

- 3.58. The ACCC hosted the second half-yearly meeting of its Fuel Consultative Committee (FuelCC) on 9 November 2018. The FuelCC was established in 2010 to provide an opportunity for dialogue between the ACCC, the fuel industry, and motoring organisations. The information shared increases our understanding of fuel industry issues and assists us in undertaking our role on issues related to competition and consumer protection in the fuel industry.
- 3.59. The November meeting included an update by the ACCC on its recent fuel monitoring and reporting activities, and updates from the fuel industry and motoring organisations on a range of issues, including capital investment in Australian downstream assets, implementation and take-up of fuel price information services and recent international and domestic pricing influences.

## **Waterfront and shipping**

### **Container stevedoring monitoring report 2017-18**

- 3.60. The ACCC released its 20th annual monitoring report on container stevedoring on 30 October 2018.
- 3.61. The report found that a record 5.1 million containers were lifted at the monitored ports last financial year, but that profit margins in the container stevedoring industry

dropped to a low of 4.5 per cent after a further fall in prices charged to shipping lines. However, stevedores continued to increase 'infrastructure charges' to other users, which likely added costs to the supply chain. Productivity remained largely unchanged.

- 3.62. The ACCC noted that the container stevedoring industry has changed significantly over time, with large increases in productivity and reductions in costs since monitoring began 20 years ago.
- 3.63. During the year, shipping lines were able to negotiate lower stevedoring rates because of growing competition between stevedores and consolidation in the shipping line industry.
- 3.64. Stevedores continued to rapidly increase infrastructure charges applied to truck and rail companies delivering or collecting laden containers at container terminals, which has led to strong criticism from transport operators and cargo owners. The ACCC is concerned about the increase in charges. Although it is not unreasonable for stevedores to use the charges to cover increases in some costs and the need to invest, transport operators and cargo owners are limited in being able to respond to these charges by taking their business elsewhere, unlike shipping lines. The likely result is that consumers pay higher charges for goods and make exporters less competitive.
- 3.65. The ACCC does not have the power to determine stevedoring charges as they are not a regulated service. The ACCC does not have the power to determine stevedoring charges. State governments may need to conduct further detailed examination and, if warranted, use their regulatory powers.

## Rail

### September 2018 Hunter Valley Access Undertaking variation

- 3.66. In September 2018 the Australian Rail Track Corporation (ARTC) submitted an application to vary the 2011 Hunter Valley Access Undertaking (HVAU) to the ACCC for assessment pursuant to Part IIIA of the CCA. In particular, ARTC sought to incorporate a number of provisions in the HVAU, including:
  - incorporating path based pricing
  - allocating incremental capital costs on the basis of contracted capacity for certain segments of the network, and
  - applying a dual ceiling limit for revenue in the network.
- 3.67. Although the ACCC has significant concerns with elements of ARTC's amendments to the 2011 HVAU, it decided to consent to the September 2018 variation on 29 November 2018. This was in light of the support by a majority of stakeholders, who submitted that the 'package' of proposed amendments was preferable to the current HVAU. Based on its extensive consultation with stakeholders, the ACCC was confident that stakeholders were fully aware of the implications of the variation on the operation of the HVAU.

### 2018 Interstate Access Undertaking (IAU) and variation

- 3.68. On 20 December 2018, the ACCC issued a draft decision to not accept ARTC's proposed 2018 IAU. In particular, the ACCC set out a number of concerns with ARTC's proposed approach to the regulated asset base, the rate of return and the ceiling limit which determines the bounds of the access charges ARTC can levy.

On 20 December 2018 the ACCC sought submissions on the draft decision, however, the ARTC withdrew the proposed 2018 IAU during the consultation period.

- 3.69. On 12 December 2018 the ACCC consented to a variation to extend the term of the 2008 IAU until 29 February 2019.

## Wheat

### **Bulk grain ports monitoring report 2017-18**

- 3.70. On 14 December 2018 the ACCC released the 2017-18 bulk grain ports monitoring report. The ACCC produces the report to fulfil a commitment to ongoing public monitoring of bulk grain exports, following a number of decisions to reduce the level of regulation applying to specific port terminal facilities in 2015.
- 3.71. The report presents the ACCC's findings and observations about the 2017-18 Australian grain export shipping year (which ran from 1 October to 30 September 2018). It presents and analyses:
- trends in grain production, domestic grain consumption, exporter market shares and capacity utilisation at Australia's 25 bulk grain export terminals
  - the views and concerns of port terminal service providers (PTSPs), exporters and growers from each bulk grain exporting state.
- 3.72. The ACCC consulted extensively with PTSPs, exporters and growers in preparation for this year's report, attending a total of 22 meetings.
- 3.73. On the basis of analysing key data and views received during consultation, the report details the following key findings for the 2017-18 grain export shipping year:
- reduced grain production led to reduced bulk grain exports
  - the reduction in production was due to adverse weather, with New South Wales and Queensland both declaring drought in August
  - reduced bulk exports generally resulted in an increase in the market share of vertically integrated exporters
  - exporters reported few concerns about securing port capacity, but had concerns about the fairness of access, with most supporting the retention of the Wheat Ports Code
  - exporters and growers expressed a range of concerns about upcountry access and outturn
  - exporters and growers expressed concerns about their ability to negotiate with service providers, both at port and upcountry.

## Water

### **Administrative resolution of Murray Irrigation Ltd's breaches of the *Water Charge (Infrastructure) Rules 2010***

- 3.74. The ACCC conducted an investigation into Murray Irrigation Limited (MIL) and formed a view it was breaching the Water Charge (Infrastructure) Rules (WCIR) by not including required information on its schedule of charges within the required timeframes.
- 3.75. We closed the investigation after MIL ceased the relevant conduct.

## Ports

### Port of Newcastle to reduce charge for Glencore

- 3.76. On 8 October 2018 the ACCC announced that it had finalised its arbitration of a dispute between Glencore Coal Assets Australia Pty Ltd (Glencore) and Port of Newcastle Operations Pty Ltd (PNO) about terms and conditions of access to the 'declared' shipping channel service at the Port of Newcastle.
- 3.77. The ACCC determined that PNO should reduce its charge for ships entering the port to carry Glencore's coal by around 20 per cent. The ACCC also determined appropriate mechanisms for future price changes and decided on certain non-price terms and conditions of access where the parties had been unable to reach an agreement.
- 3.78. PNO and Glencore subsequently applied to the Australian Competition Tribunal for a review of this decision. The matter is due to be heard in 2019.
- 3.79. In January 2015 PNO had increased the charge for coal ships entering the port by around 40 per cent. As a result of this increase, Glencore sought declaration of the shipping channel service at the port under Part IIIA of the CCA. The ACCC has a role in arbitrating access disputes for services which have been declared.
- 3.80. The Australian Competition Tribunal declared the service in 2016. Glencore subsequently notified the ACCC of the dispute and requested the ACCC to arbitrate.
- 3.81. Following the ACCC's determination, the ACCC also made a submission on 30 October 2018 to the National Competition Council (NCC) to consider whether to recommend that the Minister revoke the declaration of the shipping channel service at the Port of Newcastle. The submission addressed whether and how the arbitration determination was relevant to the NCC's considerations.
- 3.82. The NCC subsequently released a preliminary view on 19 December 2018 stating it proposed to recommend that the declaration should be revoked.

## 4. Market studies and research

### East coast gas market inquiry fifth interim report

- 4.1. On 18 December 2018 the ACCC released its fifth interim report on the gas inquiry. The ACCC maintained its focus on the operation of the east coast gas market, where there continue to be both immediate and longer-term concerns.
- 4.2. While there have been some minor revisions of gas supply forecasts by producers, the risk of a gas supply shortfall in 2019 remains largely unchanged. Sufficient gas is expected to be produced in the east coast gas market to meet expected export and domestic demand.
- 4.3. Despite this, domestic gas commodity prices have continued to increase in line with export parity prices. By August 2018, most offers were priced at or above the mid-\$10/GJ level. These prices are lower than those that were observed in 2017. However, following a significant upward shift in gas prices over the past few years, many commercial and industrial (C&I) gas users are now facing very challenging long-term investment decisions. It appears increasingly likely that some C&I gas users will relocate from the east coast or close their operations.
- 4.4. The ACCC also conducted a preliminary review of how the costs and margins of the three largest gas retailers (AGL, EnergyAustralia and Origin) are affecting the delivered price of gas paid by their customers. Preliminary results indicate that the retailers have earned material margins on gas sales over 2014-17. The ACCC will continue to conduct its review and will report on its findings in its 2019 interim reports.
- 4.5. To function more effectively, the east coast gas market requires a greater level and diversity of supply, greater transparency and a more efficient transportation network. For the remainder of the inquiry, the ACCC will continue to focus on these issues and monitor the actions of market participants across the entire supply chain.
- 4.6. The next six-monthly interim report is expected in April 2019. The ACCC is required to report six-monthly, with a final report due by 30 April 2020 pursuant to the Australian Government's direction issued to the ACCC on 19 April 2017.

### LNG netback price publication

- 4.7. On 2 October 2018 the ACCC commenced publication of gas export parity prices on its [website](#). An LNG netback price is an export parity price that a gas supplier can expect to receive for exporting its gas. It represents the price that a gas supplier would expect to receive from a domestic gas buyer to be indifferent between selling the gas to the domestic buyer and exporting it. The publication aims to improve transparency of LNG netback prices and reduce the information imbalance between gas buyers and sellers.
- 4.8. LNG netback prices are also set by other factors such as the terms and conditions of gas supply, any applicable transportation or retailer charges, and changes in demand and supply. The published LNG netback price series will assist east coast gas users to identify trends in LNG netback prices and to estimate an indicative reference price of gas for supply over the near term.
- 4.9. The ACCC will refine the LNG netback price series over time as appropriate and will seek industry views on the publication during 2019. The ACCC will make a recommendation at the end of the gas inquiry on whether the price series should continue.

## ACCC-GMRG joint recommendations to improve gas market transparency

- 4.10. On 20 December 2018 the ACCC and Gas Market Reform Group (GMRG) released a joint paper on measures to improve the transparency of the east coast gas market.
- 4.11. The joint paper follows an announcement by the then Prime Minister in March 2017 for the ACCC and GMRG to work together to advise on options to improve quickly transparency across the gas supply chain.
- 4.12. In keeping with the then Prime Minister's announcement, the ACCC and GMRG have worked together to identify the information deficiencies in the east coast gas market and the measures that could be taken to address these.
- 4.13. The east coast gas market has historically operated in a relatively opaque manner, with bilateral and confidential transactions between market participants resulting in limited publicly available information and considerable information asymmetry.
- 4.14. These information deficiencies are adversely affecting the efficient operation of the market and the efficiency with which gas, infrastructure services and other resources are allocated. The effect of these deficiencies on the market are even more acute at present, given current market conditions.
- 4.15. The joint paper sets out 18 recommendations to improve the transparency and quality of information on:
  - reserves and resources, contracted reserves and other indicators of upstream activities
  - infrastructure availability and developments
  - wholesale gas prices, retail gas prices and the prices payable for infrastructure services (i.e. pipeline, compression and storage services)
  - LNG shipments and prices.
- 4.16. If implemented, the proposed measures will improve the functioning of the gas market by ensuring that market participants have ready access to information they require to make informed decisions about gas consumption, production, transportation, investment and risk management in both the short and long run.

## Interim report on northern Australia insurance inquiry

- 4.17. On 18 December 2018 the ACCC released its first interim report for the northern Australia insurance inquiry. The report sets out the ACCC's findings about the operation of markets for home, contents and strata insurance in northern Australia. We made a number of recommendations and draft recommendations that we consider may improve market conditions and consumer outcomes.
- 4.18. The report found that premiums for all insurance products are, on average, considerably higher in northern Australia than the rest of Australia, have increased more in recent years, and that there are a number of factors contributing to this.
- 4.19. Unusual market dynamics are leading to soft competition in northern Australia insurance markets and these markets are concentrated. In some high risk parts of northern Australia, insurers are not actively trying to win market share. Instead, insurers are raising prices to limit exposure to markets that may be risky and/or volatile, adding to affordability concerns for consumers in the region.



- 4.20. Heavy losses and high and rising costs have also played a large part in rising premiums in northern Australia. The majority of insurers were operating at a loss in northern Australia over the past decade. Those that were profitable had lower returns in northern Australia than in the rest of the country.
- 4.21. Our analysis confirms that greater transparency is needed to improve market conditions for consumers. For example, insurance products are complex and difficult to compare, methods used by insurers to assess risk and calculate premiums (including how mitigation measures are accounted for) is opaque and conflicts of interest around broker remuneration are also a significant concern.
- 4.22. In the report, we have made 15 recommendations and 13 draft recommendations. We consider these will either improve, or have the potential to improve, the operation of these markets and achieve better outcomes for consumers. We have also identified five focus areas for the next stage of the inquiry. A particular focus will be to examine how issues of insurance affordability and availability have been considered and addressed around Australia and internationally, and in relation to other forms of insurance, and their potential to address the issues identified in northern Australia insurance markets.

## Electricity markets review

- 4.23. On 21 November 2018 the ACCC released a discussion paper on its new inquiry into the supply of electricity in the national electricity market.
- 4.24. The discussion paper seeks submissions from stakeholders in three key areas:
- the analytical framework for the ACCC's role, including the expectations of market outcomes and participant behaviour, and the measures we will use to monitor and analyse prices and behaviour
  - how the ACCC will monitor the impact of policy developments
  - the processes and timing for the collection of information, including what data will be required.
- 4.25. The Australian Government has directed the ACCC to monitor and report on the supply of retail and wholesale electricity until 2025 in Queensland, NSW, Victoria, South Australia, Tasmania and the ACT. The ACCC will have a focus on monitoring prices, profits and margins, including the effect of policy changes in the National Electricity Market. The ACCC's new role came following its recommendations made to the government in its July 2018 report on restoring electricity affordability and Australia's competitive advantage.
- 4.26. Submissions to the discussion paper were due by 19 December 2018 and the ACCC's first report to the Treasurer is due by 31 March 2019, with reporting to continue at least every six months until 2025. The first report will set out the ACCC's approach to monitoring, as well as expectations for how an effectively competitive market should be functioning and how market participants should be behaving.

## Monitoring of the removal of GST from menstrual products

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

- 4.28. The ACCC will monitor the price of menstrual products and provide a report to the Treasurer by 31 March 2019.

## Wine Grape Market Study

- 4.29. The ACCC continued work on the wine grape industry market study this quarter, including consultation with industry through grower forums in Griffith and Mildura and grower meetings in the Riverland of South Australia.
- 4.30. It is anticipated draft findings will be released in March and a final report in June 2019.

## Digital platforms inquiry

- 4.31. On 3 December 2018 the ACCC provided to the Treasurer its preliminary report on the inquiry into the impact of digital search engines, social media platforms and digital content aggregation platforms on competition in the media and advertising markets. The Treasurer published the report on 10 December 2018.
- 4.32. The report sets out the ACCC's preliminary findings in relation to the growth of the key digital platforms and their impact on news media, advertisers and consumers. In particular, the report identifies concerns with:
- the ability and incentive of key digital platforms to favour their own business interests, through their market power and presence across multiple markets
  - the lack of transparency in digital platforms' operations for advertisers, media businesses and consumers
  - the digital platforms' impact on the ability of content creators to monetise their content
  - consumers' awareness and understanding of the extensive amount of information collected by digital platforms and their concerns regarding the privacy of their data
  - the role of digital platforms in determining what news and information is accessed by Australians, how this information is provided and the impact of digital platforms on the quality and choice of news and journalistic content.
- 4.33. The report identifies 11 preliminary recommendations and nine areas for further analysis to address these concerns. These preliminary recommendations and areas for further analysis are intended to be a basis for engagement and discussion about potential approaches to deal with the issues identified in the report.
- 4.34. Submissions to the report are to be provided to the ACCC by 15 February 2019. The next quarter will involve further information gathering and consultation with stakeholders. A final report is due to the Treasurer by 3 June 2019.

## Private Health Insurance report

- 4.35. On 26 November 2018 the ACCC released the annual report to the Australian Senate on the private health insurance industry for the period 1 July 2017 to 30 June 2018. This report analyses key competition and consumer developments and trends in the private health insurance industry that have affected consumers' health cover and out-of-pocket expenses during the reporting period. This report also focuses on how private health insurers should communicate detrimental policy changes to consumers. This is particularly relevant in the context of changes to premiums and health insurance policies likely to take place ahead of private health insurance reforms coming into effect on 1 April 2019.

## 5. Advocacy, legislative and legal developments

### Australian Consumer Law Review

- 5.1. During the December quarter the ACCC worked closely with the Commonwealth Treasury and state and territory ACL regulators to progress many of the recommendations from the ACL Review Final Report. These actions included assisting in the drafting of the Decision 'Super RIS', which was considered by ministers at the Consumer Affairs Forum (CAF) in October 2018. Ministers agreed that certain amendments to the consumer guarantees framework in the ACL should be made and further work on options for other issues should be undertaken regarding five proposals arising from the ACL Review Final Report. The CAF communique on the ministers' decision is available [here](#).
- 5.2. The *Treasury Laws Amendment (Australian Consumer Law Review) Act 2018* commenced on 26 October 2018. The Act contained amendments to the ACL that were recommended by the ACL Review Final Report, but that did not require a RIS process. The amendments include banning pre-selection for online purchases, changes to clarify unsolicited consumer agreement provisions and allowing the ACCC to use its investigative powers for investigations of possible unfair contract terms.

### Product safety advocacy

#### ACL Review and Productivity Commission Study

- 5.3. On 25 October 2018 the Treasury Laws Amendment (Australian Consumer Law) Bill 2018 received royal assent. The Bill includes amendments that strengthen the ACCC's product safety information gathering powers.
- 5.4. The ACCC continues to work with CAANZ members on furthering the voluntary recall reforms, as well as other product safety-related proposals arising from the ACL Review and Productivity Commissions Study, including proposals to introduce a general safety provision and developing a product safety incidents database.

#### Proposed de-regulation of 'low-risk products'

- 5.5. The Therapeutic Goods Administration's (TGA) determination to de-regulate certain 'low risk' products came into effect on 1 October 2018. This includes the de-regulation of ear candles and antiperspirants, which will no longer be considered therapeutic goods.
- 5.6. The ACCC advocated against de-regulation of these goods, advising that the ACCC is unable to provide equivalent regulatory oversight for goods that the TGA determines to be 'low risk'.
- 5.7. This de-regulation is a partial conclusion to the TGA's inquiry into the future regulation of 'low risk' products, which commenced in March 2017. As part of the inquiry, the TGA is still considering the future regulation of aromatherapy and homeopathy products and Class I medical devices such as hospital furniture.
- 5.8. The ACCC continues to monitor the outcomes of the inquiry, and to advocate for appropriate mechanisms for regulating therapeutic goods that the TGA determines to be 'low risk'.

## **Voluntary recalls of agriculture and veterinary chemicals**

- 5.9. On 18 October 2018 the Agricultural and Veterinary Chemicals Legislation Amendment (Streamlining Regulation) Bill 2018 was introduced into parliament.
- 5.10. Among other things, the Bill seeks to require that suppliers give the Australian Pesticides and Veterinary Medicines Authority notice when conducting a voluntary recall of an agricultural or veterinary chemical.
- 5.11. The ACCC provided a submission to the Department of Agriculture and Water Resources in response to the draft exposure of the Bill, which noted that suppliers must already notify the ACCC of a voluntary recall for consumer goods. It also noted that the Bill may require suppliers to duplicate their notification requirements if an agricultural or veterinary product is considered a consumer good.

## **Product safety priorities**

- 5.12. The ACCC is finalising the development of its 2019 Product Safety Priorities, which sets out the principles adopted by the ACCC for prioritising and addressing product safety risks.
- 5.13. As part of the development process, the ACCC conducted targeted stakeholder engagement to assist in identifying new and emerging product safety risks.
- 5.14. The 2019 Product Safety Priorities will be announced in the first quarter of 2019.

## **Pet food safety**

- 5.15. On 16 October 2018 the Senate Standing Committee on Rural and Regional Affairs and Transport released its final inquiry report into regulatory approaches to ensure the safety of pet food.
- 5.16. The report made several recommendations calling for action by the ACCC to ensure the safety of pet food, including that the ACCC develop a mandatory safety standard for pet food; improve data capture of pet food safety incidents; and establish a system for consumers to make complaints about pet food on the Product Safety Australia website.
- 5.17. The ACCC made a submission to a working group led by the Department of Agriculture and Water Resources considering and developing workable solutions to address the inquiry's recommendations. The ACCC's submission affirms that the ACL is not the appropriate framework to achieve the inquiry's objectives and that the recommendations fall outside of the ACCC's regulatory remit.
- 5.18. The ACCC will participate in the working group as an observer to provide commentary and input on any matters pertaining to the ACL and the operation of the ACCC.

## **Road vehicles**

- 5.19. The new *Road Vehicle Standards Act 2018* will take effect on 11 December 2019. The Department of Infrastructure, Regional Development and Cities currently monitors voluntary recalls of road vehicles in accordance with a Memorandum of Understanding between our agencies. The new Act provides the Department with the necessary powers for end-to-end management of vehicle recalls. The ACCC is continuing to assist the Department in preparing for its implementation.

## Free range egg safe harbour

- 5.20. On 31 August 2018 royal assent was given to legislation that provides egg producers with a defence against allegations of misleading or deceptive conduct and false representations under the ACL in relation to use of the words 'free range', as long as the egg producer was complying with the National Information Standard. The ACCC is currently updating its guidance on the National Information Standard to reflect the new safe harbour defence.

## Senate Select Committee on Charity Fundraising in the 21st Century

- 5.21. On 7 November 2018 the ACCC appeared before the Senate Committee and gave our view that the ACL should not be amended to cover all charitable activities. We stated that while the ACCC was in favour of harmonisation of laws governing charitable fundraising generally, the ACL should not be further extended to charities as this was a departure from the key policy objectives of the ACL and would result in regulatory gaps. This was the position the ACCC advocated in its submission to the Committee in August 2018.
- 5.22. A transcript of the ACCC's appearance is available [here](#).

## Franchising Code of Conduct and Oil Code of Conduct review

- 5.23. On 14 February 2019 the Parliamentary Joint Committee on Corporations and Financial Services is due to report its findings from the inquiry into the operation and effectiveness of the Franchising and Oil Codes of Conduct.
- 5.24. The ACCC made written recommendations to the inquiry, which included that:
- Civil pecuniary penalties and infringement notices should be made available for all breaches of the Franchising and Oil Codes and that the quantum of penalties currently available should be increased.
  - Civil pecuniary penalties should be available for breaches of unfair contract term legislation and the threshold to be considered a small business should be reviewed.

## Food and Grocery Code of Conduct review

- 5.25. On 28 November 2018 the ACCC made its submission to the Final Report of the Food and Grocery Code of Conduct Review. While the ACCC's submission to the Final Report supported, or conditionally supported, some of the 14 recommendations that were made by the Review, the ACCC remained concerned that the recommendations did not go far enough to improve the Code. Our submission supported changes to the Code that would provide meaningful protection to all suppliers, including by making the Code mandatory and making civil pecuniary penalties and infringement notices available for Code breaches. The submission also advocated an improved model for dispute resolution and the removal of opt-out clauses regarding Code provisions. The submissions can be found [here](#) and [here](#).
- 5.26. The final report of the [Food and Grocery Code of Conduct Review](#) was released on 30 October 2018, with the recommendation that the Code remain voluntary.

## Review of Unfair Contract Term Protections for Small Business

- 5.27. On 23 October 2018 the Australian Government announced that it would review the extension of unfair contract term (UCT) protections to small business. The review was a requirement of the 2016 enacting UCT legislation.
- 5.28. On 22 November 2018 the Government commenced the review and sought stakeholder views on the impact of the extension of UCT protections to small business, whether the objective set for the original reform has been met, and whether any changes are required to improve the current framework.
- 5.29. On 21 December 2018 the ACCC made a submission supporting UCTs in standard form contracts becoming a contravention of the CCA and subject to civil pecuniary penalties, along with other remedial orders commonly available to the court for contraventions of the ACL. The ACCC's submission will be available on the ACCC's website once Treasury publishes the submissions.

## Review of National Arrangements for the Protection and Management of Identify Information

- 5.30. On 26 September 2018 the Australian Government announced a review of national arrangements for the protection and management of identity information led by Mr Roger Wilkins AO and supported by Professor David Lacey. On 14 November 2018 the ACCC provided a submission to the Department of Home Affairs seeking better protection for Australians from misuse or theft of their identity information. The ACCC provided examples and data based on reports to its Scamwatch service.

## 6. International collaboration

- 6.1. The ACCC engages closely with competition and consumer protection counterparts around the world. International cooperation with our partner agencies has become increasingly important as new business models emerge that can affect consumers across multiple jurisdictions.
- 6.2. This applies particularly to trade with Australia's neighbours in the Asian region, with the growth in trade and investment between Australia and Asia expected to result in an increase in Australian competition matters (such as merger and cartel investigations) that have an Asian nexus. The ACCC recognises the value of effective competition and consumer protection regulation and regional cooperation and continues to commit efforts to relationship and capacity building in the Asia Pacific region.
- 6.3. During the September quarter competition agency leaders and officials from ASEAN, Japan, Australia, China, Korea, Mongolia, Chinese Taipei and New Zealand came together for three events held on 28-30 August in Sydney, specifically the:
  - ASEAN Australia New Zealand Free Trade Area (AANZFTA) Heads of Agency Roundtable
  - East Asia Top Level Officials Meeting on Competition Law (EATOP), an annual conference sponsored by the Japan Fair Trade Commission and Asian Development Bank. Competition agencies at different stages of development discussed topics including national competition law and policy across the region, cross-border enforcement and cooperation, advocacy and the inter-agency provision of technical assistance
  - East Asia Conference on Competition Policy and Law (EAC), which served as a broader forum in which the academic and legal community had the opportunity to participate in discussion alongside the competition agencies.

### Cooperation and assistance

- 6.4. We facilitate delivery of our organisational goals by effective cooperation with our international counterparts, including on joint and parallel investigations on cross-border matters and through the sharing of information.
- 6.5. During the December quarter the ACCC engaged with counterparts on a range of product safety, consumer, competition and regulatory matters including:
  - receiving and responding to requests for information from international agencies, including Canada, Chile, European Commission, France, Japan, Indonesia, Israel, Kenya, New Zealand, Mexico, Poland, Russia, Saudi Arabia, Seychelles, Singapore, Taiwan, the UK and the USA
  - requesting information from international agencies including Canada, the European Commission, Germany, Italy, Japan, the Netherlands, New Zealand, Norway, Singapore, South Africa, Sweden, the UK and the USA
  - engaging with international counterparts on developing best practices across a variety of areas including consumer protection, competition policy, enforcement and investigative practices
  - continuing a one year secondment to the UK Office of Gas and Electricity Markets
  - continuing a 13 month secondment to the OECD working on a product recalls effectiveness project

- working with the OECD to prepare for the 2018 Global Awareness Campaign on the safety of products sold online. The campaign was launched during International Product Safety Week (12-16 November)
- attending regular OECD teleconferences including preparation for the Internet of Things / Artificial Intelligence product safety teleconference, which was held in Brussels in November as part of International Product Safety Week.
- completing a three month secondment to the New Zealand Commerce Commission (NZCC)
- participating in regular bilateral enforcement teleconferences with NZCC officials
- participating in regular bilateral product safety teleconferences with New Zealand Trading Standards and Commerce Commission officials
- participating in the delivery of three consumer protection workshops and Business Roundtable in New Delhi, India under an Australia-India Collaborative Consumer Protection Project organised by the University of Sydney
- providing in-house training to staff at the Competition and Consumer Protection Commission of Singapore to assist with their new role in enforcing consumer protection legislation in Singapore.

## Participation in international forums

- 6.6. Participation in international forums supports the ACCC's capability by strengthening cooperative relationships and informing staff on international practices to assist them in their daily work. Our participation in these forums also benefits Australian consumers and business, as we contribute to developing international best practice on competition and consumer policy and regulatory frameworks and practices.
- 6.7. In the December quarter the ACCC attended several important international events including:
- the International Competition Network (ICN) Cartel workshop in Tel Aviv, Israel
  - the ICN Unilateral Conduct workshop in Stellenbosch, South Africa
  - the ICN Merger workshop in Tokyo, Japan
  - meetings of the OECD Competition Committee, Regulatory Policy Committee, Network of Economic Regulators, Inaugural Joint Meeting of Consumer and Competition Committee and Global Forum on Competition in Paris, France
  - the OECD Working Party on Consumer Product Safety and International Product Safety Week 2018 hosted by the European Commission in Brussels, Belgium
  - the International Consumer Protection Enforcement Network (ICPEN) Best Practice Workshop and African Consumer Protection Agencies Training workshop on investigations in Lusaka, Zambia
  - International Product Safety Week in Brussels, Belgium, including the OECD Working Party on Consumer Product Safety and Committee for Consumer Policy.
- 6.8. In the December quarter the ACCC delivered a number of capacity building activities under the ASEAN-Australia New Zealand Free Trade Area Competition Law Implementation Program (CLIP), including:
- placing an ACCC expert at Cambodia's Ministry of Commerce for five weeks. The key focus was assisting with the draft sub-decree (similar to a regulation) required



to establish the Cambodia Competition Commission. The ACCC expert also delivered several training sessions

- the launch of Judicial Primers at the 8th OECD/Korea Policy Centre Competition Seminar in Jakarta. The ACCC partnered with the Federal Court of Australia and the OECD to develop four judicial primers: *Economics for judges in the competition law context*; *Expert evidence in the context of competition law*; *Circumstantial evidence in the context of competition law*; and *Abuse of dominant position: what it is and how is it assessed?*
- a workshop in Brunei Darussalam in October on Construction and Competition Regulation, focussing on combating anti-competitive practices in the construction sector across the ASEAN region. Workshop topics included the detection of cartel conduct, bid-rigging, hypothetical scenarios and the role of governments in competitive markets
- a workshop in Vietnam in November on abuse of dominance investigations, delivered to experienced staff from Indonesia, Vietnam, the Philippines and Malaysia
- placing an ACCC expert at Laos PDR's Ministry of Industry and Commerce for four weeks. The ACCC expert provided support with the following: drafting guidelines and regulations required under the Laos Competition Law; guidance for establishing a Laos Competition Commission Activity Plan; drafting a Code of Conduct for the Laos Competition Commission (LCC); training for Competition Division staff about market studies; and helping to facilitate a workshop held in partnership with German international development agency Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) for the newly appointed Laos Commissioners and government officials. Topics considered at the workshop included the role of commissioners, their rights and duties, recommendations for the establishment of the LCC, and updates on the draft rules and regulations.

# Appendices

## A Reports and enquiries

During the December quarter the ACCC served or received reports from 91 434 businesses and consumers (13 022 phone calls, 78 250 web forms and emails and 162 letters). Of these, 100 were escalated for assessment. The ACCC also collects information via other channels that can lead to assessments and investigations.

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

Category	December 2018 quarter
Infocentre contacts received (phone, email and letters)	91 434
Contacts recorded in the database	84 166
Under assessments commenced	128
Initial investigations commenced	67
In-depth investigations commenced	27
First instance litigation commenced	8

**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	5 607	18 202	23 809	86	29	1 416	25 253
QLD	4 190	11 565	15 755	56	27	836	16 598
VIC	4 804	13 451	18 255	69	25	1 104	19 351
WA	1 956	6 749	8 705	28	13	394	9 096
SA	1 419	4 402	5 821	16	5	343	6 149
ACT	527	1 974	2 501	11	4	150	2 649
TAS	436	1 027	1 463	13	1	73	1 543
NT	145	762	907	5	2	32	943
Overseas	156	1 863	2 019	2	1	64	2 073
Not specified	178	123	301	13	1	203	512

*Note: The 'Total' column reflects the number of contacts made. A single contact may involve multiple issues.*

**Table 3: Reports about trader conduct and inquiries – top ten by industry**

<b>Industry</b>	<b>Contacts</b>
Non-store retailing	1 960
Car retailing	1 657
Electrical, electronic & gas appliance retailing	1 615
Other personal services	1 470
Other administrative services	1 065
Cafes & restaurants	624
Internet service providers & web search portals	544
Clothing retailers	533
Other telecommunications services	477
Furniture retailing	473

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

<b>Scam category</b>	<b>Contacts</b>
Threats and extortion	15 623
Buying or selling	8 601
Unexpected winnings	2 519
Attempts to gain your personal information	1 600
Unexpected money	1 550
Dating & romance	1 080
Investment scams	959
Jobs & employment	866

## B Enforcement outcomes and matters in court as at 31 December 2018

### Proceedings commenced

<b>Competition</b>		
Anti-competitive conduct	<b>NSW Ports Operations Hold Co Pty Ltd &amp; Ors</b>	
	commenced jurisdiction	10 December 2018 Federal Court Sydney
<b>Consumer protection</b>		
False or misleading representations	<b>Australian Private Networks Pty Ltd (t/a Activ8me)</b>	
	commenced jurisdiction	5 December 2018 Federal Court Melbourne
False or misleading representations – small business	<b>Employsure Pty Ltd</b>	
	commenced jurisdiction	21 December 2018 Federal Court Sydney
False or misleading representations	<b>Jetstar Airways Pty Ltd</b>	
	commenced jurisdiction	17 December 2018 Federal Court Sydney
False or misleading representations	<b>Optus Mobile Pty Limited</b>	
	commenced jurisdiction	17 October 2018 Federal Court Melbourne
Unconscionable conduct – vulnerable consumers	<b>Productivity Partners Pty Ltd (t/a Captain Cook College)</b>	
	commenced jurisdiction	9 November 2018 Federal Court Sydney
Misleading and deceptive conduct	<b>Service Seeking Pty Ltd</b>	
	commenced jurisdiction	14 December 2018 Federal Court Perth
Misleading and deceptive conduct	<b>TPG Internet Pty Ltd</b>	
	commenced jurisdiction	4 December 2018 Federal Court Melbourne

## Proceedings ongoing

Competition		
Cartel	<b>Australia and New Zealand Banking Group Ltd (ANZ) &amp; Ors</b>	
	commenced jurisdiction	5 June 2018 Downing Centre Local Court Sydney
Cartel	<b>Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) &amp; Anor</b>	
	commenced jurisdiction	16 August 2018 ACT Magistrates Court
Cartel	<b>Citigroup Global Markets Australia Pty Limited &amp; Ors</b>	
	commenced jurisdiction	5 June 2018 Downing Centre Local Court Sydney
Cartel	<b>Cascade Coal Pty Ltd &amp; Ors</b>	
	commenced jurisdiction	25 May 2015 Federal Court Sydney
Cartel	<b>Country Care Pty Ltd &amp; Ors</b>	
	commenced jurisdiction	14 February 2018 Magistrate's Court of Victoria
Cartel	<b>Cryosite Limited</b>	
	commenced jurisdiction	16 July 2018 Federal Court Melbourne
Cartel	<b>Deutsche Bank Aktiengesellschaft (Deutsche Bank) &amp; Ors</b>	
	commenced jurisdiction	5 June 2018 Downing Centre Local Court Sydney
Cartel	<b>Kawasaki Kisen Kaisha Ltd</b>	
	commenced jurisdiction	November 2016 Federal Court Sydney
Anti-competitive conduct	<b>Pacific National Pty Limited &amp; Ors</b>	
	commenced jurisdiction	19 July 2018 Federal Court Melbourne
Cartel	<b>P.T. Garuda Indonesia Ltd</b>	

	commenced jurisdiction	18 April 2016 High Court of Australia
Cartel	<b>PZ Cussons Australia Pty Ltd (appeal)</b>	
	commenced jurisdiction	20 February 2018 Full Federal Court Sydney
Health	<b>Ramsay Health Care Australia Pty Limited</b>	
	commenced jurisdiction	1 May 2017 Federal Court Sydney
<b>Consumer protection</b>		
False or misleading representations	<b>Australian Private Networks Pty Ltd (t/a Activ8me)</b>	
	commenced jurisdiction	<b>5 December</b> <b>Federal Court Melbourne</b>
Energy - Misleading or deceptive conduct	<b>Amaysim Energy Pty Ltd</b>	
	commenced jurisdiction	9 July 2018 Federal Court Melbourne
Consumer - health	<b>Ashley &amp; Martin Pty Ltd</b>	
	commenced jurisdiction	29 November 2017 Federal Court Perth
Unconscionable conduct vulnerable consumers	<b>Australian Institute of Professional Education Pty Ltd</b>	
	commenced jurisdiction	31 March 2016 Federal Court Sydney
Indigenous Australians	<b>Birubi Art Pty Ltd</b>	
	commenced jurisdiction	21 March 2018 Federal Court Sydney
Unconscionable conduct vulnerable consumers	<b>Cornerstone Investment Australia Pty Ltd t/a Empower Institute</b>	
	commenced jurisdiction	9 December 2015 Federal Court Sydney
Excess surcharging	<b>CLA Trading Pty Ltd (t/a Europcar)</b>	
	commenced jurisdiction	25 July 2018 Federal Court Melbourne

False or misleading representations – small business	<b>Employsure Pty Ltd</b>	
	commenced jurisdiction	<b>21 December 2018</b> <b>Federal Court Sydney</b>
Industry Codes Franchising	<b>Geowash Pty Ltd</b>	
	commenced jurisdiction	26 May 2017 Federal Court Perth
False or misleading representation - health	<b>GlaxoSmithKline Consumer Healthcare Australia Pty Ltd &amp; Novartis Consumer Health Australasia Pty Ltd</b>	
	commenced jurisdiction	5 December 2017 Federal Court Sydney
Consumer guarantees	<b>Jayco Corporation Pty Ltd</b>	
	commenced jurisdiction	29 November 2017 Federal Court Melbourne
False or misleading representations	<b>Jetstar Airways Pty Ltd</b>	
	commenced jurisdiction	17 December 2018 Federal Court Sydney
Truth in advertising	<b>Kimberly-Clark Australia Pty Ltd</b>	
	commenced jurisdiction	12 December 2016 Federal Court Sydney
Consumer guarantees	<b>LG Electronics Australia Pty Ltd (appeal)</b>	
	commenced jurisdiction	25 September 2017 Full Federal Court Sydney
Small business – unfair contract terms	<b>Mitolo Group Pty Ltd &amp; Anor</b>	
	commenced jurisdiction	25 June 2018 Federal Court Melbourne
Vulnerable consumers - health	<b>NIB Health Funds Limited</b>	
	commenced jurisdiction	30 May 2017 Federal Court Melbourne
False or misleading representations	<b>Optus Mobile Pty Limited</b>	
	commenced jurisdiction	17 October 2017 Federal Court Melbourne

Unconscionable conduct - vulnerable consumers	<b>Phoenix Institute of Australia Pty Ltd &amp; Anor</b>	
	commenced jurisdiction	24 November 2015 Federal Court Sydney
Unconscionable conduct – vulnerable consumers	<b>Productivity Partners Pty Ltd (t/a Captain Cook College)</b>	
	commenced jurisdiction	9 November 2018 Federal Court Sydney
Misleading and deceptive conduct	<b>Service Seeking Pty Ltd</b>	
	commenced jurisdiction	14 December 2018 Federal Court Perth
Misleading and deceptive conduct	<b>TPG Internet Pty Ltd</b>	
	commenced jurisdiction	4 December 2018 Federal Court Melbourne
Misleading or deceptive conduct	<b>Trivago N.V.</b>	
	commenced jurisdiction	23 August 2018 Federal Court Melbourne
Industry Codes Franchising	<b>Ultra Tune Australia Pty Ltd</b>	
	commenced jurisdiction	19 May 2017 Federal Court Sydney
Unconscionable conduct - vulnerable consumers	<b>Unique International College Pty Ltd (appeal)</b>	
	commenced jurisdiction	13 December 2017 Federal Court Sydney
Consumer - Online	<b>Viagogo</b>	
	commenced jurisdiction	28 August 2017 Federal Court Sydney
False or misleading representations – car retailing	<b>Volkswagen Aktiengesellschaft and Volkswagen Group Australia Pty Ltd</b>	
	commenced jurisdiction	31 August 2016 Federal Court Sydney
False or misleading representations	<b>Woolworths Limited</b>	
	commenced jurisdiction	2 March 2018 Federal Court Melbourne



## Proceedings concluded

<b>Competition</b>		
Misuse of market power and exclusive dealing	<b>Pfizer Australia Pty Ltd (appeal)</b>	
	commenced jurisdiction	18 March 2015 Full Federal Court Sydney
Cartel	<b>Yazaki Corporation &amp; Australian Arrow Pty Ltd (appeal)</b>	
	commenced jurisdiction	30 May 2017 Full Federal Court Adelaide
<b>Consumer Protection</b>		
Unconscionable conduct, vulnerable consumers	<b>ACM Group Ltd</b>	
	commenced jurisdiction	2 June 2016 Federal Court Sydney
Unconscionable conduct - vulnerable consumers	<b>Equifax Pty Ltd</b>	
	commenced jurisdiction	16 March 2018 Federal Court Sydney
Misleading or deceptive conduct – vulnerable consumers	<b>Oticon Australia Pty Ltd &amp; Sonic Innovations Pty Ltd</b>	
	commenced jurisdiction	6 September 2018 Federal Court Sydney
False or misleading representations and unconscionable conduct – health	<b>Medibank Private Ltd (appeal)</b>	
	commenced jurisdiction	21 September 2017 Full Federal Court Melbourne
Agriculture sector	<b>Murray Goulburn Cooperative Co. Limited &amp; Ors</b>	
	commenced jurisdiction	28 April 2017 Federal Court Melbourne
Agriculture – misleading or deceptive conduct	<b>Landmark Operations Ltd (t/a Seednet)</b>	
	commenced jurisdiction	7 August 2018 Federal Court Melbourne
False or misleading representations	<b>We Buy Houses Pty Ltd and Rick Otton</b>	
	commenced jurisdiction	2 March 2015 Federal Court Sydney

## Section 87B undertakings

Competition		
Nil		
Consumer Protection		
False and misleading representations	Jetstar Airways Pty Ltd	14 December 2018
False and misleading representations	Qantas Airways Limited	14 December 2018
False and misleading representations	Tiger Airways Australia Pty Ltd	14 December 2018
False and misleading representations	Virgin Australia Airlines Pty Ltd	14 December 2018
False and misleading representations	Wiggle Limited	11 December 2018

## C Use of compulsory information gathering powers

During the December 2018 quarter the ACCC issued:

- 41 notices and 17 variations pursuant to sections 155(1)(a) and (b)
- 2 notices and 0 variations pursuant to section 155(1)(a)
- 11 notices and 6 variations pursuant to section 155(1)(b)
- 8 notices and 0 variations pursuant to section 155(1)(c)
- 1 notices pursuant to section 155AAA
- 10 notices and 5 variations pursuant to section 95ZK
- 0 notices pursuant to section 51ADD
- 0 notices issued pursuant to sections 60H or 133D

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

Under section 95ZK 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 section 51ADD 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 December 2018 quarter, the ACCC took part in numerous speaking events and panel discussions, including:

### [Address to the 2018 Annual RBB Economics Conference](#)

Chair Rod Sims  
RBB Economics Conference  
29 November 2018

### [Competition & the 5G spectrum](#)

Chair Rod Sims  
ACMA RadComms 2018  
30 October 2018

### [Gilbert & Tobin seminar: the data economy](#)

Chair Rod Sims  
Gilbert & Tobin seminar  
15 October 2018

### [Franchising and the ACCC](#)

Deputy Chair Mick Keogh  
Franchise Council of Australia Law Symposium  
14 October 2018