ACCCount

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

1 April to 30 June 2015
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Overview

1. The Australian Competition and Consumer Commission (ACCC) works to enhance the welfare of Australians by promoting competition and fair trading, protecting consumers from unfair business practices and unsafe products, and regulating national infrastructure and other markets with limited competition or natural monopoly characteristics. This was achieved by engaging in a broad range of activities across the economy in the April to June 2015 quarter.

2. The ACCC provided a submission to the Commonwealth Treasury’s consultation on the recommendations of the Competition Policy Review Panel on 1 June 2015. The submission focused on a subset of the recommendations, particularly those that changed since the Harper Review Draft Report, and deals with some specific details as to how the recommendations can be implemented. The ACCC welcomes most of the recommendations in the Draft Report. The ACCC’s submission does however express concerns about some of the recommendations, including in relation to the proposed reform of the cartel provisions, the ACCC’s advocacy and market studies role and the proposal to separate infrastructure regulation from the ACCC’s competition and enforcement functions.

3. The June 2015 quarter saw strong enforcement outcomes, including judgment in six proceedings. Highlights for the quarter include:
   - responding to over 68 000 complaints and inquiries from businesses and consumers
   - securing over $4 million in penalties for breaches of the Competition and Consumer Act 2010 (CCA)
   - commencing two new civil proceedings in the Federal Court, and
   - receiving payment of five infringement notices, including penalties totaling $40 800 paid by Supabarn Supermarkets Pty Ltd and The Real Juice Company Pty Ltd focusing on consumer protection in respect to fruit juice products.

4. The ACCC continued its monitoring of the supermarket sector and issues raised by suppliers, including under the provisions of the Australian Consumer Law (ACL). In December 2014, the Federal Court made declarations in two proceedings brought by the ACCC in respect of conduct involving Coles Supermarkets Australia Pty Ltd (Coles) and over 200 of Coles’ suppliers. The Court held that Coles had engaged in unconscionable conduct in 2011 in its dealings with certain suppliers. As part of the resolution, Coles provided a court enforceable undertaking to the ACCC to establish a formal process to provide options for redress for over 200 suppliers. On 30 June 2015 the independent arbiter, the Hon. Jeff Kennett AC, announced that he had instructed Coles to refund over $12 million to suppliers and allow them to exit the Active Retail Collaboration program without penalty.


6. On 24 June 2015 The Hon. Bruce Billson MP, Minister for Small Business (Minister Billson) introduced into Parliament the Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Bill 2015, which is intended to extend the
The ACCC is working with industry to develop an extensive educational campaign in anticipation of the new law.

7. The ACCC instituted proceedings in the Federal Court against Clinica Internationale Pty Ltd (Clinica) in May 2015, alleging that Clinica made false or misleading representation and engaged in unconscionable conduct in relation to a program offering migrants training and employment that it represented would lead to permanent residency in Australia.

8. In consultation with the Consumer Consultative Committee (CCC), the ACCC released its report, Research into the Australian debt collection industry in May 2015. The report provides the ACCC and other stakeholders with a greater understanding of debt collection practices and identifies compliance challenges in the industry. The ACCC will be engaging with industry stakeholders to ensure they are aware of their obligations. The report is available at www.accc.gov.au/publications/research-into-the-australian-debt-collection-industry.

9. In May, as chair of the Australasian Consumer Fraud Taskforce, the ACCC coordinated the annual National Consumer Fraud Week (Fraud Week). This year’s theme, ‘Get smarter with your data’, focused on the importance of protecting personal information to prevent identity theft.

10. During Fraud Week the ACCC also released its annual Targeting Scams: Report of the ACCC on scams activity in 2014. This report highlights the cooperative work of the ACCC, other regulators and law enforcement agencies to disrupt scams and educate consumers.

11. The ACCC and Institute of Public Accountants hosted a Small Business Scams & Cybercrime Forum on 19 May 2015. Attendees heard from three experts about the risks small businesses face from scams and cybercrime and the steps they can take to protect themselves. A video of the event is now available.

12. The recall of Infinity electrical cable has recently been bolstered with a large scale multi-channel advertising being launched by the ACCC and an online awareness campaign. Other members of the Infinity Cables Recall Taskforce are also increasing consumer awareness of the issue with their own media releases. The heightened safety message is aimed at encouraging home owners to have their homes inspected and to come forward to request remediation if they have the defective cable.


14. With significant developments in competition law and policy for our ASEAN neighbours and the Australian Government’s consideration of the recommendations of the Harper Review, it was an optimal time for it to be held in the Asia Pacific Region.
1. Maintaining competition

Maintain and promote competition and remedy market failure.

Enforcing the CCA for businesses and consumers

**Competition enforcement**

1.1. Competitive markets lead to lower prices, better quality, greater efficiency and more choice, all of which enhance the welfare of consumers. As Australia’s competition regulator, the ACCC works to enhance the welfare of Australians by:
   - maintaining and promoting competition, and
   - addressing market failures.

1.2. The ACCC does this by taking action under Part IV of the CCA in relation to:
   - cartels and other anti-competitive agreements
   - misuse of market power, and
   - exclusive dealing and resale price maintenance.

1.3. The ACCC’s Compliance and Enforcement Policy for 2015 was released in February and sets out the principles adopted by the ACCC to achieve compliance with the law. The ACCC exercises its discretion to direct resources to the investigation and resolution of matters that provide the greatest overall benefit for competition and consumers.

1.4. Cartel conduct, anti-competitive agreements, secondary boycotts and misuse of market power are so detrimental to consumer welfare and the competitive process that the ACCC will always regard them as a priority.

**Administrative resolutions**

1.5. In June 2015, the ACCC accepted a court enforceable undertaking from Cabcharge Australia Limited (Cabcharge) which outlines a process under which rival payment processors (third parties) will be able to process Cabcharge cards on their own in-taxi payment terminals. The undertaking provided by Cabcharge arises from an investigation into allegations that, between 2011 and 2012, Cabcharge had refused to deal with a third party processor making requests pursuant to the Request Processing Policy. The undertaking provides a clear pathway to facilitate third parties processing Cabcharge cards. If third parties obtain access, this will allow them to better compete against Cabcharge for processing revenue, as Cabcharge will no longer be the only terminal in a taxi that can process all forms of commonly used non-cash payment.

**Proceedings**

1.6. In the June 2015 quarter the ACCC was involved in 17 proceedings relating to competition enforcement.
1.7. These proceedings relate to competition matters in a range of industries including pharmaceuticals, travel, fuel and financial services. A complete list of these proceedings is included in Appendix 1.

1.8. Of the 17 competition enforcement proceedings:
- 16 cases were carried over from the previous quarter
- One new case was commenced in the quarter, and
- 17 cases remained ongoing at the end of the quarter.

Proceedings commenced

1.9. The following first instance proceedings were commenced in the April 2014 quarter:

**Cartels**

**CASCADE COAL PTY LTD & Ors**
On 25 May 2015 the ACCC commenced Federal Court action against a number of respondents in relation to conduct involving the 2009 tender process conducted by the NSW Department of Trade and Investment (then the Department of Primary Industries) for exploration licences over the Mount Penny and Glendon Brook coal tenements in the Bylong Valley. The companies and individuals involved are Cascade Coal Pty Ltd, Loyal Coal Pty Ltd, Locaway Pty Ltd, Mincorp Investments Pty Ltd (formerly known as Voope Pty Ltd, Coal & Minerals Group Pty Ltd), Southeast Investment Group Pty Ltd, Mr Moses Edward Obeid, Mr Paul Edward Obeid, Mr Richard Jonathan Poole, Mr John Vern McGuigan and Mr James William McGuigan.

Proceedings concluded

1.10. No proceedings in relation to competition enforcement were completed during the June 2015 quarter.

Court enforceable undertakings

1.11. The ACCC also resolves contraventions of the CCA by accepting court enforceable, non-court based undertakings under section 87B of the CCA. In these undertakings, which are on the public record, companies or individuals generally agree to:
- remedy the conduct
- accept responsibility for their actions
- establish or review an improve their competition compliance programs and culture.

1.12. In the April quarter the ACCC accepted a section 87B undertaking from Cabcharge Australia Limited.

**Cartels**

**CABCHARGE AUSTRALIA LIMITED**
On 26 June 2015 the ACCC accepted a court enforceable undertaking from Cabcharge Australia Limited relating to alleged breaches of the competition provisions in the CCA.

The undertaking outlines a process under which rival payment
processors (third parties) will be able to process Cabcharge cards on their own in-taxi payment terminals. The undertaking provided by Cabcharge arises from an investigation into allegations that, between 2011 and 2012, Cabcharge had refused to deal with a third party processor making requests pursuant to the Request Processing Policy. The investigation also concerned allegations that Cabcharge had constructively refused to deal with third parties by establishing and implementing the Request Processing Policy in terms that would discourage or deter requests.

Under the terms of the undertaking, Cabcharge has undertaken, for a period of five years, to among other things:

- negotiate with third parties in good faith in relation to providing access to the system that will allow them to process Cabcharge cards;
- execute an agreement with third parties who apply for access in accordance with the provisions set out in the undertaking;
- provide to a third party which has executed an agreement any reasonable technological support requested by the third party to enable it to process Cabcharge cards; and
- provide access to third parties that have demonstrated they can provide processing services on the terms set out in the agreement.

**Cartels**

1.13. At the end of the June quarter the ACCC has more than 11 current cartel investigations under way.

**Maintaining competition in concentrated sectors**

**Mergers**

1.14. The ACCC assesses proposed and completed mergers and acquisitions on competition matters under section 50 of the CCA. This section prohibits transactions which would have the effect, or likely effect, of substantially lessening competition in a market. The ACCC does this by providing the merger parties with its view on whether a particular proposal is likely to breach section 50 of the CCA. This process is generally known as the 'informal clearance' process. Businesses may also apply to the ACCC for formal clearance of mergers.

1.15. The ACCC deals with matters expeditiously through pre-assessment when it determines that they do not require review because of the low risk that competition concerns will be raised. As indicated in Table 1, a significant proportion of the mergers assessed by the ACCC are pre-assessed, enabling the ACCC to respond quickly when there are no significant concerns.
Table 1.1: Matters assessed and reviews undertaken – April to June 2015

<table>
<thead>
<tr>
<th></th>
<th>Confidential</th>
<th>Public</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-assessed 1 April – 30 June 2015</td>
<td>87</td>
<td>0</td>
<td>87</td>
</tr>
<tr>
<td>Total reviews undertaken 1 April – 30 June 2015</td>
<td>0</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Total matters assessed and reviews undertaken</td>
<td>87</td>
<td>7</td>
<td>94</td>
</tr>
</tbody>
</table>

Total reviews can be broken down into the following categories:

<table>
<thead>
<tr>
<th>Category</th>
<th>Confidential</th>
<th>Public</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not opposed</td>
<td>0</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Finished—no decision (including withdrawn)</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Opposed outright</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Confidential review—ACCC concerns expressed</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Resolved through undertakings</td>
<td>0</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Variation to undertaking accepted</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Variation to undertaking rejected</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th></th>
<th>10-11</th>
<th>11-12</th>
<th>12-13</th>
<th>13-14</th>
<th>14-15</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total matters assessed and reviews undertaken</td>
<td>377</td>
<td>340</td>
<td>289</td>
<td>297</td>
<td>322</td>
</tr>
<tr>
<td>Matters assessed - no review required</td>
<td>236</td>
<td>250</td>
<td>213</td>
<td>242</td>
<td>278</td>
</tr>
<tr>
<td>Reviews undertaken</td>
<td>141</td>
<td>90</td>
<td>76</td>
<td>55</td>
<td>44</td>
</tr>
</tbody>
</table>

Total reviews can be broken down into the following categories:

<table>
<thead>
<tr>
<th>Category</th>
<th>10-11</th>
<th>11-12</th>
<th>12-13</th>
<th>13-14</th>
<th>14-15</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not opposed</td>
<td>110</td>
<td>60</td>
<td>55</td>
<td>36</td>
<td>35</td>
</tr>
<tr>
<td>Finished – no decision (incl. withdrawn)</td>
<td>14</td>
<td>17</td>
<td>4</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Publicly Opposed outright</td>
<td>3</td>
<td>1</td>
<td>6</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>Confidential review – Opposed or ACCC concerns expressed</td>
<td>4</td>
<td>6</td>
<td>5</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Resolved through undertakings</td>
<td>7</td>
<td>3</td>
<td>2</td>
<td>10</td>
<td>7</td>
</tr>
<tr>
<td>Variation to undertaking accepted</td>
<td>3</td>
<td>3</td>
<td>4</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Variation to undertaking rejected</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

*The year end table includes statistical corrections arising from year end reconciliation processes.*
**Significant merger decisions this quarter**

**Merger**

VICTORIA QUAY INTERNATIONAL RORO TERMINAL PTY LTD AND AUSTRALIAN AMALGAMATED TERMINALS PTY LTD – separate proposed acquisitions of the long-term lease of the new automotive and RoRo terminal at the Port of Fremantle

The ACCC assessed the separate proposed acquisitions of the long-term lease of the new automotive and RoRo terminal on Victoria Quay at the Port of Fremantle (the Terminal) by each of Victoria Quay International RoRo Terminal Pty Ltd (VQIRT) and Australian Amalgamated Terminals Pty Ltd (AAT). Both were bidding for the same lease. The ACCC made the following decisions:

On 2 April 2015 to not oppose VQIRT’s proposed acquisition of the long-term lease of the Terminal, subject to a court-enforceable undertaking accepted by the ACCC pursuant to section 87B of the CCA.

On 23 April 2015 to not oppose AAT’s proposed acquisition of the long term lease of the Terminal, subject to a court-enforceable undertaking accepted by the ACCC pursuant to section 87B of the CCA.

VQIRT is a wholly owned subsidiary of Wallenius Wilhelmsen Terminals Holding AS (WW Terminals), a company which operates automotive terminals in Europe, the United States and Asia. WW Terminals is a wholly owned subsidiary of Wallenius Wilhelmsen Logistics AS (WW Logistics), a global shipping and logistics provider. WW Logistics’ vessels call at ports in Australia, including the Port of Fremantle.

AAT is equally owned by P&O Wharf Management Pty Ltd (a wholly owned subsidiary of Qube Holdings Ltd (Qube)) and Plzen Pty Ltd (a wholly owned subsidiary of Asciano Ltd (Asciano)). Qube and Asciano have interests in the provision of automotive stevedoring and vehicle pre-delivery inspection (PDI) services at the Port of Fremantle. In particular:

Qube and Patrick Stevedoring Pty Ltd (a wholly owned subsidiary of Asciano) have automotive stevedoring operations at the Port of Fremantle.

Prixcar Services Pty Limited (in which Qube has an indirect 25 per cent shareholding) and Patrick Autocare Pty Limited (in which Asciano has an 80 per cent interest) provide PDI services for motor vehicles at the Port of Fremantle.

The ACCC considered the effects of the separate proposed acquisitions in the markets for the supply of: (i) automotive terminal services, (ii) automotive shipping services, (iii) automotive stevedoring services and (iv) vehicle PDI services, in the Fremantle region.

The ACCC conducted market inquiries among original equipment manufacturers, motor vehicle importers, shipping lines, stevedores, PDI providers, transport carriers and relevant associations.

The ACCC’s analysis focused on the vertically integrated nature of VQIRT and AAT, as the successful bidder would become the sole terminal operator at the Port of Fremantle in each of the markets. The ACCC considered that:

VQIRT’s proposed acquisition would provide VQIRT with the ability and incentive to discriminate against rival shipping lines by charging higher prices for automotive terminal services or providing less favourable non-price terms and conditions to non VQIRT related entities.

AAT’s proposed acquisition would provide AAT with the ability and
On 21 May 2015 the ACCC announced its decision to not oppose the proposed merger of Federation Centres and Novion Property Group (Novion) after accepting an undertaking from the merger parties to divest one of their shopping centres in South East Melbourne.

Federation Centres and Novion own or co-own 65 and 27 shopping centres respectively in Australia and the merger would result in them jointly owning $22 billion of retail assets, making the combined entity the second largest owner of shopping centres in Australia.

The ACCC commenced market inquiries on 4 February 2015 and...
received written submissions from, and spoke to, a range of market participants including major national retailers, local retailers, national chains and other shopping centre owners.

In most areas where Federation Centres and Novion competed prior to the merger, the ACCC found that the proposed merger would not raise competition concerns as there would be sufficient alternative shopping centres managers in those areas.

However, the ACCC concluded that the proposed merger was likely to substantially lessen competition in South East Melbourne where Novion owns and operates Bayside Shopping Centre in Frankston’s regional business district and Federation Centres has a 50 per cent interest and manages the Karingal Hub Shopping Centre, located 4.4km from Bayside.

The ACCC found the merger parties to be each other’s closest competitors in this area and the only large multi-purpose shopping centres within 20km of the Frankston CBD. Other shopping centres in the area are markedly smaller in size and do not have the equivalent amenities or retailers that are valued by customers engaging in multi-purpose shopping. The ACCC was concerned that the proposed acquisition would substantially lessen competition for shoppers in that area and reduce competition for retail tenants, potentially resulting in less attractive retail offerings and amenities and higher rent to retailers. Therefore, the ACCC concluded that the proposed merger would be likely to substantially lessen competition in the South East Melbourne market.

In order to address the competition issues identified by the ACCC, the merger parties offered section 87B divestiture undertakings to divest either Karingal Hub Shopping Centre or Bayside to a purchaser approved by the ACCC. Taking into account the section 87B undertaking, the ACCC decided to not oppose the proposed merger.

On 5 June 2015 Federation Centres announced that it had completed the sale of its interest in Karingal Hub to ISPT, the co-owner of the centre, for $115 million.

**Statement of Issues**

1.16. 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 issues with varying degrees of competition concern, 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 ascertain and consider the primary issues identified by the ACCC. It is also intended to provide the merger parties and other interested parties with the basis for making further submissions should they consider it necessary.

1.17. In this quarter the ACCC issued two Statement of Issues in the following reviews:

- [Health Care Corporation Pty Ltd (Ramsay) - proposed acquisition of Wollongong Day Surgery](http://www.accc.gov.au), and
Remedy market failure

Authorisations and notifications

1.18. In circumstances where competitive markets do not work to deliver the most efficient outcomes it may be in the public interest to allow certain restrictions on competition. This is particularly true where there are features in a market that may lead to market failure – where the market left to itself does not achieve the most optimal outcomes. In many ways the authorisation and notification provisions of the CCA allow the ACCC to consider the benefits from allowing conduct that addresses a market failure but which nonetheless restricts competition.

Authorisations

1.19. The ACCC may ‘authorise’ businesses to engage in conduct that might otherwise amount to a breach of the CCA where it is satisfied that the public benefit outweighs any public detriment.

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

Table 2: Authorisations received and decisions issued

<table>
<thead>
<tr>
<th>Total authorisations received</th>
<th>Number of applications (number of forms$^1$)</th>
<th>1 April - 30 June 2015</th>
<th>2014 - 2015$^2$</th>
</tr>
</thead>
<tbody>
<tr>
<td>New</td>
<td></td>
<td>5 (8)</td>
<td>20 (36)</td>
</tr>
<tr>
<td>Revocation</td>
<td></td>
<td>0 (0)</td>
<td>1 (2)</td>
</tr>
<tr>
<td>Revocation and substitution</td>
<td></td>
<td>4 (7)</td>
<td>13 (29)</td>
</tr>
<tr>
<td>Minor variations</td>
<td></td>
<td>1 (1)</td>
<td>1 (1)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Decisions issued</th>
<th>Number of applications (number of forms$^1$)</th>
<th>1 April - 30 June 2015</th>
<th>2014 - 2015$^2$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Draft determinations</td>
<td></td>
<td>5 (8)</td>
<td>30 (62)</td>
</tr>
<tr>
<td>Final determinations</td>
<td></td>
<td>4 (10)</td>
<td>33 (62)</td>
</tr>
<tr>
<td>Interim decisions (prior to draft)</td>
<td></td>
<td>4 (8)</td>
<td>11 (31)</td>
</tr>
</tbody>
</table>

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

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

### Authorisation

**MAGAZINE PUBLISHERS OF AUSTRALIA -- A91472**

On 25 June 2015 the ACCC granted authorisation to the Association of Magazine Publishers of Australia (MPA) to enable a pilot program to test the effectiveness of a proposed approach to address an industry-wide problem of oversupply of magazines to newsagents. The pilot is to run with 40 newsagents who have chosen to participate, over a three to six-month period. Authorisation is granted until 17 July 2016 to enable information sharing between the parties after the pilot to conduct an evaluation.

The pilot program will involve an agreement between publisher members of the MPA, and distributors Gordon & Gotch Pty Ltd, and Network Services Ltd, to limit the supply of magazines to newsagents participating in the pilot in a number of ways. This will include minimum sales efficiencies, ceasing to distribute titles after an agreed number of consecutive nil sales, reducing requirements for full copy returns, and limiting redistributions.

The ACCC considers that the pilot is likely to result in benefits in the form of information to indicate whether the proposed arrangements may assist in addressing the oversupply problem. It may therefore assist with the development of an industry-wide code of conduct, and may also result in benefits by gathering the support of industry participants for industry reform. The ACCC considers any detriment in relation to this pilot is likely to be very limited given its short duration and limited scope, and hence that the benefits are likely to outweigh any public detriment.

The ACCC notes that authorisation of the pilot should not be taken as endorsement or approval of an industry-wide Code based on the same distribution arrangements. The ACCC will assess any future authorisation application for an industry code on its merits.

### Authorisation

**MEDICINES AUSTRALIA LIMITED -- REVOCATION AND SUBSTITUTION -- A91436 -- A91440**

On 24 April 2015 the ACCC granted conditional authorisation to Medicines Australia Ltd for edition 18 of its Code of Conduct (the Medicines Code), which sets the standards for the marketing and promotion of prescription pharmaceutical products in Australia by member companies. Authorisation was granted until 16 May 2020.

In edition 18, Medicines Australia proposed a new reporting regime which requires reporting of ‘transfers of value’ (such as speaking fees, advisory board fees, or sponsorships to attend a conference) made to individual healthcare professionals. Edition 18 of the Medicines Code also introduced a $120 per meal cap on food and beverages (plus GST and gratuities). Expenditure on food and beverage will not be included in the reporting of transfers of value.

The ACCC accepted that this new transparency regime was an important change to the Medicines Code and focuses upon some of the most significant transfers of value.

To ensure that the significant benefits of the regime are realised, the ACCC imposed a condition that requires reporting of all relevant transfers of value. This addresses the ACCC’s concern in its draft determination that if a doctor did not consent to the reporting then the individual payment would only be reported in aggregate. It also avoids healthcare professionals withdrawing their consent to reporting their
details after receiving a transfer of value.

Medicines Australia must amend the Medicines Code before 1 October 2016 to require the reporting of all transfers of value.

The ACCC also imposed conditions requiring the transparency reports compiled by Medicines Australia member companies to be published in a common accessible format and to be available for at least three years. Medicines Australia must also use reasonable endeavours to establish a central reporting system and provide six-monthly reports on its progress in doing so. This will ensure that the data collected is accessible to patients and third parties (such as healthcare professionals, consumer and healthcare professional bodies, researchers, academics, and the media).

The ACCC decided not to require Medicines Australia and its members to continue to report food and beverage expenditure. In reaching this view, the ACCC noted that food and beverage costs are secondary to the more direct transfers of value, a $120 per meal cap applies, and that ongoing reporting would impose a significant administrative burden on member companies.

However, the ACCC noted that if it becomes aware that the removal of this reporting has led to significant (and unreasonable) increases in food and beverage expenditure, it may on reauthorisation reconsider the need for the reporting of this expenditure.

**Notifications**

1.21. Notification is an alternative process to authorisation as a means for businesses to obtain protection from legal action for certain conduct including exclusive dealing and collective bargaining.

**Exclusive dealing notifications**

1.22. Exclusive dealing (where a business trading with another imposes restrictions on the other business’ freedom to choose with whom, in what, or where it deals) is prohibited under the CCA in certain circumstances. Third line forcing is a type of exclusive dealing conduct which involves the supply of goods or services subject to a condition that the buyer must also acquire certain goods or services from a third party. Third line forcing conduct is prohibited outright while other forms of exclusive dealing are only a breach of the CCA if they substantially lessen competition.

1.23. The exclusive dealing notification process provides protection from legal action for potential breaches of the exclusive dealing provisions of the CCA where the ACCC assesses there is sufficient public benefit. Lodging a notification with the ACCC provides protection from legal action automatically from the lodgement date (or soon after in the case of third line forcing conduct), which remains in force unless revoked by the ACCC. Notifications can be reviewed by the ACCC at any time.
Table 3: Exclusive dealing notification projects

<table>
<thead>
<tr>
<th>Exclusive Dealing Notifications</th>
<th>Number of notifications (number of forms)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1 April - 30 June 2015</td>
</tr>
<tr>
<td>Matters lodged in the quarter</td>
<td>98 (132)</td>
</tr>
<tr>
<td>Matters requiring a draft notice</td>
<td>0 (0)</td>
</tr>
<tr>
<td>Matters allowed to stand</td>
<td>103 (132)</td>
</tr>
<tr>
<td>Matters revoked</td>
<td>0 (0)</td>
</tr>
<tr>
<td>Matters withdrawn</td>
<td>0 (0)</td>
</tr>
</tbody>
</table>

1. The Competition & Consumer Act Regulations require notifiers to submit specific separate forms for different types of conduct.
2. The full year totals include statistical corrections arising from year-end reconciliation processes.

Collective bargaining notifications

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

1.25. 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.

1.26. There were no collective bargaining notifications received in the quarter.

Table 4: Collective bargaining notification projects

<table>
<thead>
<tr>
<th>Collective Bargaining Notifications</th>
<th>Number of notifications (number of forms)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1 April - 30 June 2015</td>
</tr>
<tr>
<td>Matters lodged in the quarter</td>
<td>0 (0)</td>
</tr>
<tr>
<td>Matters allowed to stand</td>
<td>0 (0)</td>
</tr>
</tbody>
</table>

1. The Competition & Consumer Act Regulations require notifiers to submit specific separate forms for different types of conduct.
2. Protecting consumers and fair trading

Protect the interests and safety of consumers and support fair trading in markets

Consumer protection outcomes

2.1. In 2015 the ACCC is prioritising work in the following areas:

- Truth in advertising, particularly where misleading claims are made by large businesses with the potential to result in significant consumer detriment, or where the conduct is likely to become widespread if the ACCC does not intervene.
- Competition and consumer issues in the health and medical sectors.
- Cartel conduct impacting on government procurement.
- Ensuring compliance with new or amended industry codes of conduct, including the Franchising Code and the proposed Food and Grocery Code.
- Working with industry to improve product safety through minimising the supply of unsafe goods, by focusing on goods and practice in the manufacture, sourcing and quality assurance of consumer products.
- Emerging systemic consumer issues in the online marketplace.
- Competition and consumer issues in highly concentrated sectors, such as supermarket and fuel sectors.
- In conjunction with other agencies, disruption of scams that rely on building deceptive relationships and which cause severe and widespread consumer or small business detriment.
- Final stages of the carbon tax price reduction obligation legislation and the ACCC’s role in ensuring that carbon tax cost savings have been passed through to consumers.
- Consumer protection issues impacting on Indigenous consumers.
- Consumer protection issues impacting on vulnerable and disadvantaged consumers with a particular focus on older consumers and consumers who are newly arrived in Australia.

Action to protect consumers

2.2. In the June 2015 quarter the ACCC was involved in 35 proceedings relating to consumer protection. Of those:

- 34 cases were carried over from the previous quarter
- One first instance case was commenced
- Six cases were concluded, and
- 29 cases remained ongoing at the end of the quarter.

2.3. Since the introduction of the new consumer law remedies and powers in the TPA in April 2010 and the introduction of the ACL on 1 January 2011, the total penalties awarded by the Federal Court under the ACL pecuniary penalty regime is over $44 million. As at 30 June 2015 this figure encompasses 18 ACCC cases where
penalties awarded by the Court have been at or above $1 million. These figures highlight the seriousness with which the Court views breaches of the ACL.

**Proceedings commenced**

**Vulnerable and disadvantaged consumers**

**CLINICA INTERNATIONALE PTY LTD**
In May 2015 the ACCC instituted proceedings against Clinica Internationale Pty Ltd (Clinica) alleging that Clinica made false or misleading representations and engaged in unconscionable conduct in relation to a program offering migrants training and employment that it represented would lead to permanent residency in Australia. The ACCC has also alleged that Clinica’s current sole director, Mr Radovan Montague Laski, was knowingly concerned in Clinica’s conduct.

**Proceedings concluded**

**False or misleading representations**

**AGL SOUTH AUSTRALIA PTY LTD**
On 16 December 2014 the Federal Court found that AGL South Australia Pty Ltd (AGL SA) made false or misleading representations and engaged in misleading or deceptive conduct concerning the level of discounts residential customers would receive under AGL SA’s energy plans.

On 29 April 2015 the Federal Court ordered AGL SA to pay penalties of $700,000 and to offer refunds totaling approximately $780,000 to 23,000 consumers. The Court also ordered payment of costs, publication orders and an extension of AGL SA’s current compliance program.

**SPREETS PTY LTD**
In April 2015 the Court ordered Spreets Pty Ltd (Spreets) to pay total penalties of $600,000 for making false or misleading representations to consumers about deals offered on its online group buying website in contravention of the ACL. The ACCC alleged that, in 2011 and 2012, Spreets engaged in misleading or deceptive conduct and made false or misleading representations about the price of certain deals, consumers’ ability to redeem vouchers, and consumers’ refund rights under the ACL.

**COLES SUPERMARKETS AUSTRALIA PTY LTD**
In April 2015 Coles Supermarkets Australia Pty Ltd (Coles) was ordered by the Federal Court to pay penalties of $2.5 million for making false or misleading representations and engaging in misleading conduct in relation to the promotion of its par baked bread products. The products were promoted as “Baked Today, Sold Today” and in some cases “Freshly Baked In-Store”, when they were in fact partially baked and frozen off site by a supplier, transported and ‘finished’ at in-store bakeries within Coles.

**ACTROL PARTS PTY LTD**
In April 2015 the Federal Court ordered that Actrol Parts Pty Ltd (Actrol), a supplier of refrigerant gas, pay a penalty of $520,000 for making false or misleading representations in proceedings brought by the ACCC in May 2014. The Court found Actrol had made false or misleading representations in a letter sent to approximately 8,000 of its customers and posted on its website concerning the reasons for Actrol implementing significant increases in the price of certain
Online consumer issues

hydrofluorocarbon (HFC) refrigerants (R134a, R410A, R404A, R407C and R507) which took effect from 1 July 2012.

ELECTRONIC BAZAAR

In May 2015 the Federal Court ordered Dhruv Chopra, the operator of the online electronics store Electronic Bazaar, to pay a penalty of $100,000 for making false or misleading representations about the availability of consumer refund rights and the extent of Electronic Bazaar’s liability for faulty goods.

Infringement notices

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

2.5. In the June 2015 quarter the ACCC received payment for five infringement notices.

False or misleading representations

SUPABARN SUPERMARKETS PTY LTD AND REAL JUICE COMPANY PTY LTD

In May 2015 Supabarn Supermarkets Pty Ltd (Supabarn) and The Real Juice Company Pty Ltd (The Real Juice Company) each paid penalties of $20,400, following the issue of two infringement notices to each company in relation to representations made about two juice products from the private label range of juices manufactured by The Real Juice Company and sold by Supabarn.

The ACCC considered the labelling of the apple juice product made the false or misleading representation that the product was made from fresh apples grown in Australia when the product was made from reconstituted apple juice concentrate imported from China. In relation to the cranberry juice product the ACCC viewed the labelling as making a false or misleading representation that the product did not contain added sugar or any other additives through the use of specific phrases when the product contained added sugar and other additives.

NIB HEALTH FUNDS LTD

In May 2015 NIB Health Funds Ltd (NIB) paid a penalty of $10,200 following the issue of an infringement notice in relation to advertising about the waiver of the waiting period for “Extras” cover. From December 2012 to November 2014, in promoting its combined Hospital and Extras cover, NIB offered to waive the waiting period on its Extras option which it represented as “usually” or “normally” requiring a two-month wait. The infringement notice was issued to NIB because the ACCC had reasonable grounds to believe that NIB had contravened the ACL by making a false or misleading representation that it usually or normally required a two-month waiting period for the Extras option, when in fact NIB had made this benefit available to all customers immediately for 23 months from December 2012.
Administrative resolutions

2.6. The ACCC may accept an administrative resolution in specific cases where the ACCC assesses the potential risk to consumers to be low. Depending on the circumstances, administrative resolutions can range from a commitment by a trader in a letter to a signed agreement between the ACCC and a trader setting out detailed conditions. Administrative resolutions generally involve the trader agreeing to stop the offending conduct, compensate those adversely affected, and take other measures necessary to ensure that the conduct does not recur. Where a trader re-offends after an administrative resolution, the ACCC is likely to resolve the new matter differently.

2.7. In April 2015 the ACCC investigated allegations of false or misleading representations by Samsung Electronics Australia Pty Ltd or its agents to consumers concerning their ACL rights in relation to Samsung branded products. In response to the ACCC’s concerns, Samsung undertook a number of actions to proactively address our concerns. These actions included a review of, and enhancements to, its training and complaints handling processes, as well as increased training and compliance engagement with employees and agents.

2.8. In April 2015 the ACCC undertook an investigation of AirAsia X Berhad after a significant number of consumer complaints were made to the ACCC and other state and territory consumer affairs agencies concerning services being cancelled or re-routed. AirAsia X Berhad had not obtained regulatory approval from Australia’s Civil Aviation Safety Authority in time to commence flights between Melbourne and Denpasar from December 26 2014 as advertised. Consumers were given the option of being re-routed which increased the duration of the flights, disrupted customers’ travel arrangements, and caused additional consequential costs to some passengers. AirAsia X Berhad has provided a commitment to the ACCC addressing these consumer concerns.

Other significant activities

Small business education and engagement


2.10. On 24 June Minister Billson introduced into Parliament the Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Bill 2015, which is intended to extend the existing unfair contract terms law to protect small businesses. The ACCC is developing an extensive educational campaign on the new law, and is working with industry to identify examples of unfair terms.

Scams

2.11. The Targeting Scams: Report of the ACCC on scams activity in 2014 was released in May and reveals that 91 637 scam complaints were made to the ACCC last year, with $81 832 793 reported lost. While scam reports were similar to 2013, reported losses fell by eight per cent.

2.12. The ACCC also operates SCAMwatch Twitter, which alerts the public to scams targeting Australian consumers and businesses, and how to recognise, avoid and report them. In this quarter a total of 75 tweets were posted. The SCAMwatch Twitter
continued to grow with over 8 795 followers by the end of the quarter, growing by 795 since the last quarter.

2.13. The ACCC continued its scam disruption project (commenced in August 2014) to stop potential scam victims from sending more money to scammers. The project uses financial intelligence to identify Australians sending funds to West African nations and advising them they may have been targeted by a scam. Approximately 3 146 letters have been sent to potential scam victims in NSW and the ACT. Approximately 70 per cent of those receiving the ACCC’s warning letters stopped sending money overseas for at least a six-week period, and rates of detection for money being sent to high risk jurisdictions have also fallen. Both of these indicators strongly suggest that the program is having a positive influence.

2.14. The ACCC’s [SCAMwatch website](#) provides consumers and small businesses with information about scams. SCAMwatch provides a free subscription service to alert the 39 500 subscribers to new scams. SCAMwatch radars issued during the quarter included:

- How small businesses are being targeted by scammers - June 2015: SCAMwatch invites small businesses to view a video of an ACCC public seminar on small business scams and cybercrime.
- Fake Debt Collectors - May 2015: SCAMwatch warns of phone calls from scammers claiming to collect debts.
- Immigration scam targets migrants - April 2015: SCAMwatch warns consumers to be aware of calls from scammers claiming to be from the 'Department of Immigration' threatening you with deportation and demanding money.
- Telephone calls alleging fake arrest warrants used to scam money - April 2015: SCAMwatch warns consumers to be aware of calls from scammers falsely claiming to be from the Commonwealth Director of Public Prosecutions (CDPP) or Australian Tax Office (ATO).

**Carbon Tax Repeal**

2.15. The ACCC’s role relating to the carbon tax repeal concluded on 30 June 2015. Over the course of its monitoring and enforcement role under the legislation, the ACCC has seen savings ranging from $153 to $269 for electricity and natural gas following the carbon tax repeal. Please refer to the ACCC’s quarterly report to Minister Billson for details.

2.16. Identifiable savings have also occurred in the synthetic greenhouse gas (SGG) sector, as well as in industries including landfill, rates, waste management and transport.

2.17. The carbon legislation will no longer be in force after 30 June 2015 however, the CCA may still apply to any misleading carbon related statements made during or after the carbon tax repeal transition period.

2.18. Complaints and inquiries (contacts) to the ACCC in relation to the carbon tax repeal totalled 692. During the period, contacts peaked at approximately 175 in September 2014 and then continued to decline. Energy was the largest category, constituting over 60 per cent of all contacts received.

2.19. In July 2015 the ACCC will provide its fifth and final quarterly report to Minister Billson. As well as providing a summary for the June 2015 Quarter, the report will also include an overview of the ACCC’s findings and activities related to the
carbon tax repeal transition period. Copies of all the carbon monitoring reports are available on the ACCC’s website.

**Parallel imports guidance**

2.20. Due to the increased sale of parallel imported goods and perceived lack of awareness around rights and obligations, the ACCC has published online guidance material for both *businesses* and *consumers*. The guidance provides an overview of a consumer’s rights when buying parallel imports and a business’s obligations when selling these goods.
3. Protecting consumer and fair trading

Protect the interests and safety of consumers and support fair trading in markets

Product safety

Recalls

Table 5: Recalls – 1 April to 30 June 2015

<table>
<thead>
<tr>
<th>Recalls by category</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>General consumer goods</td>
<td>53</td>
</tr>
<tr>
<td>Motor vehicles</td>
<td>75</td>
</tr>
<tr>
<td>Food</td>
<td>9</td>
</tr>
<tr>
<td>Therapeutic goods</td>
<td>2</td>
</tr>
<tr>
<td>Other</td>
<td>18</td>
</tr>
</tbody>
</table>

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

3.1. The ACCC worked with the Department of Infrastructure and Regional Development (DIRD) as the lead agency, to manage the expanded Takata airbag recalls. The total number of recalled vehicles is around 800,000. Replacement of affected units will commence in July 2015 but a reliably steady supply of replacement parts may not be in place until January 2016. Faulty Takata airbags have been linked to eight deaths and 50 serious injuries worldwide.

3.2. The ACCC worked with Dorel Australia to coordinate a voluntary recall for 5389 Maxi-Cosi A2 and A4 Euro convertible car seats due to a defect in the manufacture of the fabric around the harness adjustor. The safety issue was first identified by a consumer who posted footage of the defect online. It was also identified that Maxi-Cosi A4 Hera convertible car seat was incorrectly certified and had to be withdrawn from sales and a replacement offered to consumers.

3.3. The ACCC assisted NSW Fair Trading Energy and Utilities Unit with the re-announced Samsung washing machine recall campaign after several house fires occurred due to these machines catching fire. As of 30 June 2015 Samsung has reworked 63,000 out of 144,451 units. The ACCC and NSW Fair Trading have discussed improvements to the recall campaign with Samsung and new initiatives are being rolled out to improve the success rate.

Infinity electrical cable

3.4. Recalls of faulty Infinity electrical cable announced in August 2014 are making progress and more suppliers are increasingly carrying out remediation. However the overall rate of action by most of the 27 cable suppliers conducting recalls has been disappointing as after six months, only 15 per cent of the supplied cable has been recovered or remediated.
3.5. The ACCC and other members of the Infinity Cables Recall Taskforce are increasing recall advertising as well as encouraging consumers to have their homes inspected and come forward to request remediation.

Emerging hazards

Mandatory safety reports

3.6. The ACCC receives mandatory reports which it assesses or refers to a specialist regulatory agency for assessment. During the April to June quarter, the ACCC received 663 mandatory reports: 335 related to consumer products and were assessed by the ACCC and 301 were referred to other agencies. Of the referred reports, 271 related to food matters to be dealt with by FSANZ, with the remaining 30 referred to other regulators such as the electrical regulators, motor vehicle standards regulators and gas appliance regulators.

Table 6: Mandatory reports - assessment by jurisdiction April - June 2015

<table>
<thead>
<tr>
<th></th>
<th>April</th>
<th>May</th>
<th>June</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessed</td>
<td>90</td>
<td>116</td>
<td>129</td>
<td>335</td>
</tr>
<tr>
<td>Other Regulators</td>
<td>11</td>
<td>9</td>
<td>10</td>
<td>30</td>
</tr>
<tr>
<td>FSANZ</td>
<td>94</td>
<td>87</td>
<td>90</td>
<td>271</td>
</tr>
<tr>
<td>To be assessed</td>
<td>1</td>
<td>2</td>
<td>24</td>
<td>27</td>
</tr>
<tr>
<td>Total Received</td>
<td>196</td>
<td>214</td>
<td>253</td>
<td>663</td>
</tr>
</tbody>
</table>

Action on emerging safety hazards

3.7. The total number of mandatory reports (365), complaints and other reports (157) assessed for the quarter totals 522. Paragraph 3.8 and 3.9 below indicates that 593 reports have been assessed and states the risk assessment for each report. The difference of 71 comes from changed counting practices during a data clean-up project.

3.8. A number of reports assessed by the ACCC led to recalls. A standard plastic fuel can retailed by Super Cheap Auto Pty Ltd was recalled because the screw cap could split when tightened, causing contents to leak or spill, exposing consumers to hazardous fumes and posing a potential fire hazard. The Techtronic Industries’ Ryobi cordless brush cutter was also recalled when the ACCC assessment revealed that the blade may detach during use if the nut securing the blade is not correctly tightened, posing a serious laceration hazard to consumers.

3.9. In June the ACCC launched a consumer education campaign to address the issue of unstable furniture that may topple on to small children (see section on consumer engagement for further information). This campaign was prompted by a 2014 investigation into the death of a young child where the Victorian Coroner recommended that the ACCC develop and implement consumer education activities aimed at communicating the hazard.

3.10. The ACCC also conducts hazard assessments of product reports obtained from various sources. The ACCC received 198 reports and assessed 157 (including referrals to other jurisdictions) during the quarter and 41 are yet to be assessed.
**Product Safety Risk Assessments**

3.11. The ACCC uses a risk-based approach to assess reports as representing extremely low, very low, low, moderate, significant, high and very high safety hazards.

3.12. Table 7 illustrates reports received in the quarter by hazard severity. Moderate, low, very low and extremely low risk reports amounted to 499. These are commonly allergic reactions to cosmetics, household cleaning products, baby products, chemicals in clothing and other injuries such as burns, lacerations, fractures and electric shock. The most common types of injuries occur from products such as cosmetics and toiletries, glass breaking, sharp kitchen utensils, bikes, electrical tools, furniture and toys.

3.13. Risks assessed as significant, high or very high causing serious injuries or death came to 56. The ACCC's current priorities, projects and campaigns aim to improve safety outcomes associated with these products. Also during the quarter, 25 were referred to other jurisdictions and 13 involved insufficient information.

3.14. A project relating to ethanol burners / fireplaces has been initiated. Ethanol burners are flue less and ventless burners, fuelled by liquid or gel ethanol. They can be used as a fireplace / heater or can be used for decorative purposes. The ACCC has received reports of incidents resulting in injuries from their use and is working with suppliers of these products to ascertain the extent of the hazard and to address the safety issues.

**Table 7: Product safety risk assessments April – June 2015**

<table>
<thead>
<tr>
<th></th>
<th>April</th>
<th>May</th>
<th>June</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extremely Low/Remote</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Very Low</td>
<td>54</td>
<td>19</td>
<td>1</td>
<td>74</td>
</tr>
<tr>
<td>Low</td>
<td>68</td>
<td>159</td>
<td>156</td>
<td>383</td>
</tr>
<tr>
<td>Moderate</td>
<td>6</td>
<td>5</td>
<td>30</td>
<td>41</td>
</tr>
<tr>
<td>Significant</td>
<td>9</td>
<td>7</td>
<td>1</td>
<td>17</td>
</tr>
<tr>
<td>High</td>
<td>6</td>
<td>6</td>
<td>24</td>
<td>36</td>
</tr>
<tr>
<td>Very High</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Insufficient Information</td>
<td>5</td>
<td>2</td>
<td>6</td>
<td>13</td>
</tr>
<tr>
<td>Referred – Regulated Products</td>
<td>9</td>
<td>4</td>
<td>12</td>
<td>25</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td>593</td>
</tr>
</tbody>
</table>

**Hazards associated with chemicals in consumer goods**

3.15. The ACCC completed two surveys of cosmetics products in the quarter. One involved testing of false eyelash glue to determine whether unsafe levels of formaldehyde were present. Fourteen different samples of false eyelash glues were purchased from mainstream Australian retailers. All samples tested were found to comply with the respective safety limits.
3.16. The second survey investigated microbiological contamination of cosmetics designed to be used around the eyes. Thirty-one samples of cosmetics such as mascara and liquid eyeliner were purchased from mainstream retailers and tested for microbiological activity. All were found to be free of microbiological contamination. This result is an improvement on the 2013 survey results which found microbiological contamination in six of the 112 products surveyed.

3.17. The ACCC received further analytical results in relation to chemicals found in the vapour of e-cigarettes and continued to discuss the inherent safety issues with a number of other agencies including the Department of Health, the Australian Medical Association and the Cancer Council.

**Compliance campaigns – high lift jacks**

3.18. Many injuries and deaths have been associated with the use of vehicle jacks in Australia. Vehicle jacks supplied in Australia must therefore comply with various labelling, performance, design and construction requirements to ensure they are capable of safely raising and lowering a vehicle.

3.19. High lift jacks are those used to remove four wheel drive vehicles from a bogged situation, and are captured by a mandatory standard. As part of a targeted compliance campaign, the ACCC purchased a number of random samples of high lift jacks from online and bricks and mortar suppliers for assessment against the mandatory standard.

3.20. The ACCC identified nine high lift jacks that failed to comply with various labelling and performance requirements of the mandatory standard. The suppliers of these vehicle jacks then recalled the products due to the associated safety hazards.
4. Effective Regulation

Promote the economically efficient operation use and investment in monopoly infrastructure

Telecommunications

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

4.2. As the competition regulator, the ACCC’s key goals in the communications sector are to:

- maintain and promote competition and remedy market failure where it arises
- protect the interests of consumers and fair trading, and
- support the economically efficient investment in, and use of, infrastructure.

Decisions and determinations

**Draft decision on MTAS primary price terms and extension of inquiry period for MTAS and DTCS**

4.3. The mobile terminating access service (MTAS) is a wholesale service provided by mobile network operators (MNOs) to other network operators such as MNOs and fixed-line network operators to terminate calls or SMS messages on their networks. It enables calls and SMS to be received by people using a mobile phone.

4.4. The ACCC released a draft decision for the primary price terms for the MTAS final access determination (FAD) on 6 May 2015. The draft decision sets a price for mobile voice termination of 1.61 cents per minute, reduced from the current rate of 3.6 cents per minute. For SMS, the ACCC has proposed a price of 0.03 cents per SMS.

4.5. If the proposed rates are implemented in the FAD it is likely to lead to reductions in the retail cost of calling or sending an SMS to an Australian mobile phone. The proposed rates would apply from 1 January 2016 until 30 June 2019.

4.6. The proposed mobile voice termination rate reflects the costs of terminating calls on Australian networks and was determined using an international benchmarking approach conducted by WIK-Consult. The SMS termination rate has been determined by adding together two cost parts: a conveyance cost, calculated with reference to the relative network capacity used by SMS and mobile voice termination; and SMS-specific costs based on the investment costs for SMS centres.

4.7. The ACCC has indicated that it may review the rates should voiceover 4G technology become widely deployed in Australia over the regulatory period. This would likely affect the costs of connecting calls on Australian networks.

4.8. On 20 May 2015 the ACCC further extended the period for conducting the FAD inquiry for MTAS for six months until 23 November 2015. The ACCC considered the extension was required in order to provide sufficient time to consider submissions in response to the draft decision and make a final decision. The current MTAS FAD will apply until the new FAD is made. On the same day, the ACCC also further extended the period for making a FAD for the domestic transmission capacity service (DTCS).
The ACCC considered that it will be unable to complete its inquiry sooner due to the amount of time and consultation required to develop a draft DTCS pricing model. The ACCC anticipates releasing a draft FAD for the DTCS in August 2015 before releasing a final decision in October 2015.

**Final determination on NBN’s LTRCM**

4.9. On 11 June 2015 the ACCC issued its final determination on NBN Co’s (NBN) Long Term Revenue Constraint Methodology (LTRCM) and price compliance assessment for the 2013-14 financial year. The ACCC accepted NBN’s LTRCM proposal after considering submissions made by Singtel Optus Pty Ltd (Optus) and NBN in response to the ACCC’s draft determination.

4.10. NBN submitted its LTRCM proposal as required under NBN’s special access undertaking (SAU) on 31 October 2014. The values required for the LTRCM proposal include NBN’s actual capital and operating expenditures, the net value of NBN’s regulated assets and NBN’s accumulated losses. The ACCC’s role in the LTRCM process is to determine whether it is satisfied that the expenditure and other values in NBN's LTRCM proposal accords with the requirements in the SAU.

4.11. The SAU forms a key component of the regulatory framework for the NBN. The SAU sets out a mechanism for determining the amount of revenue NBN is allowed to earn via its prices over the term of the SAU. The LTRCM allows NBN to include any shortfalls between the allowable revenue and revenue received into its initial cost recovery account. NBN will then have the opportunity to recover its accumulated losses over time as the take-up of NBN services increases.

**ACCC accepts Telstra’s revised Migration Plan**

4.12. On 26 June 2015 the ACCC announced that it had approved Telstra Corporation Ltd.’s (Telstra) revised Migration Plan, which outlines how Telstra will progressively migrate voice and broadband services from its copper and hybrid fibre coaxial (HFC) networks to the NBN as the new network is rolled out.

4.13. Telstra has made extensive changes to the migration plan to reflect the recently revised definitive agreements between Telstra, NBN and the Government to implement the multi-technology mix NBN. The revised plan also includes modified migration and disconnection arrangements that are intended to promote service continuity.

4.14. The ACCC’s role in approving the revised Migration Plan was limited to assessing whether it is consistent with the legislative requirements, meaning the ACCC did not have discretion to seek improvements that went beyond these requirements.

4.15. The need for further amendments to the migration and disconnection arrangements may become apparent as operational experience is gained.

4.16. Telstra submitted its revised Migration Plan to the ACCC for consultation on 20 March 2015. On 5 June 2015 Telstra resubmitted its revised Migration Plan to the ACCC for approval.

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1 The domestic transmission capacity service is a high-capacity transmission service used to carry large volumes of voice, data and video traffic. It is an essential input into the provision of services over mobile, legacy and the national broadband networks.
4.17. The main change in the resubmitted version was to extend, on a temporary basis, the timeframes within which fire alarms and lift phones can be switched to the NBN before the lines over which they are supplied would become subject to managed disconnection.

4.18. The original Migration Plan was accepted by the ACCC in February 2012 as part of Telstra’s Structural Separation Undertaking.

**Further draft decision on primary price terms for the fixed line services FAD**

4.19. On 29 June 2015 the ACCC released a further draft decision as part of the public inquiry into making a FAD for the seven declared fixed line services supplied by Telstra over the legacy copper network. The further draft decision supplements the draft decision released on 11 March 2015 which addresses the FAD primary price terms to apply for the next regulatory period.

4.20. The ACCC used a draft of its updated Fixed Line Services Model (FLSM) to estimate draft prices based on information and forecasts provided by Telstra. The ACCC indicated at the time of making the draft decision that further adjustments may need to be made following the receipt and consideration of further information from Telstra and other submitters.

4.21. The further draft decision addresses a number of outstanding issues from the draft decision key to which is the increase in unit costs caused by migration to the NBN. The draft decision is that as assets become redundant and under-utilised as a result of migration they will be removed from the asset base so that remaining users of the copper network will not pay the higher prices resulting from loss of scale efficiencies and the smaller number of services remaining on copper. Other outstanding issues addressed include the prudency and efficiency of Telstra’s expenditure forecasts and an independent assessment of the fully allocated cost framework.

4.22. The draft decision, which covers 1 October 2015 to 30 June 2019 is for a one-off uniform reduction in access prices of 9.6 per cent for the seven access services.

4.23. The ACCC has invited submissions to the further draft decision by 17 July 2015 and expects to release a final decision on the primary price terms in the fixed line services FAD in September 2015.

**Other significant events**

**ACCC advice on spectrum limits**

4.24. In May 2015 the ACCC provided advice to the Hon. Malcolm Turnbull MP, Minister for Communications (Minister Turnbull) on competition limits for the allocation of spectrum licenses to use 1800 MHz spectrum in regional Australia. On 26 May 2015 Minister Turnbull made a reallocation declaration for the regional 1800 MHz band spectrum and a direction on competition limits which was consistent with the ACCC’s advice.

4.25. Spectrum in this band is highly sought after because it is internationally standardised for 4G services which increasingly provide mobile broadband services via mobile handsets and other connected devices.

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2 The declared fixed line services include the unconditioned local loop, the line sharing service, wholesale line rental, local carriage service, fixed originating access service, fixed terminating access service and wholesale ADSL.
4.26. This advice followed a request in March 2015 from the Department of Communications asking the ACCC to provide advice on the effect that competition limits would have on competition in downstream markets. In April 2015 the ACCC published a letter inviting submissions on a range of relevant issues including the need for, and likely impact of, competition limits.

4.27. Following its consultation, the ACCC advised Minister Turnbull that the imposition of competition limits would facilitate more vigorous competition in downstream retail markets.

**Superfast broadband access service discussion paper**

4.28. In September 2014 the ACCC commenced an inquiry into whether a superfast broadband access service (SBAS), such as the very-high-bit-rate digital subscriber line (VDSL) service, should be regulated.

4.29. On 6 May 2015 the ACCC released a discussion paper regarding the SBAS declaration inquiry. The discussion paper seeks industry views on whether the SBAS should be declared and the scope of any service description.

4.30. The ACCC commenced this inquiry in response to specific competition concerns that may arise as a result of the technical limitations of VDSL services. In particular, the ACCC was concerned about the potential for local monopolies to be created with no obligation to provide wholesale services on competitive pricing.

4.31. The ACCC subsequently delayed the release of the discussion paper following the Government’s announcement in October 2014 that it would consult on a carrier licence condition for superfast carriage services. This development removed the urgent requirement for a declaration of the SBAS. The carrier licence condition was finalised on 12 December 2014.

4.32. On 7 April 2015 the ACCC also commenced an inquiry into making a FAD for the local bit stream access service (LBAS) to replace the current LBAS FAD which expires on 5 October 2015.

4.33. The ACCC expects to conduct the LBAS FAD concurrently with any SBAS FAD, given their similar characteristics. The FAD inquiry for both services will begin upon conclusion of the SBAS declaration inquiry.

**ACCC submission to Bureau of Communications Research consultation paper on NBN non-commercial services funding options**

4.34. The Australian Government has asked the Bureau of Communications Research (BCR) to assess the non-commercial losses expected to be incurred from building and operating satellite and fixed wireless services in regional areas and to consider

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3 Vectored VDSL is typically used in fibre to the basement/building networks to provide data rates of up to 120 Mbps by eliminating cross-talk. Where two or more carriers utilised vectoring technology to supply different premises over the same cable the vectoring systems effectively cancel each other out.

4 The Vertigan Committee also made a number of recommendations in relation to VDSL networks in June and August 2014 including that the ACCC commence a public inquiry into declaring vectored VDSL services.
funding these losses via contributions from owners of high-speed broadband access networks.

4.35. In June 2015 the ACCC made a submission to the BCR consultation paper on NBN non-commercial funding options.

4.36. The ACCC anticipates further engagement with the BCR as part of the process of developing an appropriate funding model and preparing advice to the Government.

Reports released

**ACCC reports on Telstra’s compliance with its structural separation undertaking**

4.37. Under the *Telecommunications Act 1997* the ACCC is required to monitor and report each financial year on breaches by Telstra of its Structural Separation Undertaking (SSU). On 12 May 2015 the ACCC’s report on Telstra’s compliance with its SSU was tabled in Parliament.

4.38. The report observed that Telstra was generally compliant with its commitments under the SSU during the 2013-14 financial year but failed to meet its obligations on a number of occasions. Breaches included:

- Ensuring equivalence between its retail and wholesale operations in the rectification of basic telephone service (BTS) faults and the ADSL/LSS service qualification process.
- Properly ring-fencing confidential or commercially sensitive wholesale customer information, provided to Telstra in its capacity as access provider of regulated services, from being disclosed to Retail Business Units.

4.39. Telstra’s SSU, accepted by the ACCC in February 2012 specifies Telstra’s commitments to progressively migrate its fixed line voice and broadband customers to the NBN and promote equivalence and transparency during the transition period. The SSU obligations are in place to safeguard competition until the rollout of the NBN is complete and fixed line customers have been migrated from Telstra’s copper and HFC networks.

4.40. The ACCC’s response to the SSU breaches has been to work with Telstra to focus upon stopping the conduct, reducing its effect, and ensuring steps are taken to prevent recurrence. The ACCC has also encouraged Telstra to keep its wholesale customers informed of SSU equivalence and migration issues as they arise.

**ACCC publishes a report on a proposed NBN carrier licence condition on information disclosure**

4.41. On 30 June 2015 following a request from Minister Turnbull, the ACCC published a report on a proposed NBN carrier licence condition (CLC) about information disclosure requirements for the NBN. The proposed CLC is designed to address any real or perceived competitive advantage Telstra may gain from the shift to a multi-technology model (MTM) NBN. Under the MTM model, Telstra will have access to significant information flows not available to rival retail service providers.

4.42. Following stakeholder consultation, the ACCC’s report recommends that NBN make available more information about the rollout of the NBN to interested stakeholders. The report also recommends that NBN maintain a list of the documents it supplies to Telstra and make them available to relevant stakeholders on request, and that NBN
not disclose information about a customer’s choice of NBN service provider to Telstra except where necessary to resolve migration issues. These measures are designed to ensure that interested stakeholders receive relevant information to assist planning and investment decisions and that they are in an equivalent position to Telstra during the transition to the NBN.

Fuel price monitoring

4.43. The ACCC closely follows developments in the petroleum industry and monitors the retail prices of petrol, diesel and automotive LPG in all capital cities and around 180 regional locations.

4.44. Minister Billson issued a new direction on 9 December 2014 for the ACCC to undertake monitoring of the prices, costs and profits of unleaded petroleum products commencing on 17 December 2014. Under these arrangements the ACCC will produce two types of reports in 2015: quarterly ‘macro’ reports, which will look at petrol price movements and what drives them overall; and market studies, which will look at ‘micro’ issues in considerable depth, including analysing the price drivers of petrol in three regional markets. The second quarterly report, which covered the March quarter of 2015, was released on 11 May 2015. The key messages in the report were:

- Retail petrol prices in the five largest cities (i.e. Sydney, Melbourne, Brisbane, Adelaide and Perth) fell to their lowest price in real terms in over 15 years, following large falls in international crude oil and refined petrol prices.
- Seven-day rolling average prices fell from a high of around 158 cents per litre (cpl) in July 2014 to a low of around 103 cpl in early February 2015. In real terms, this was the lowest price since June 1999.
- These historically low prices were short-lived as crude oil and refined petrol prices rebounded in February and March 2015. Retail prices in the five largest cities increased by around 30 per cent from early February to end the March quarter at around 133 cpl.
- As a result, around half of the fall in prices between July 2014 and early February 2015 was reversed in less than two months.
- The increase in retail prices was lower in regional locations. In December 2014 the differential between regional retail petrol prices in aggregate and prices in the five largest cities was 17.5 cpl. By March 2015 the city-country differential had decreased to 1.9 cpl.
- The ‘micro’ reports will be delivered progressively to Minister Billson throughout the second half of the year. On 10 March 2015 the ACCC announced Darwin as the first regional location to be studied under the new petrol monitoring arrangements, and on 8 May 2015 the ACCC announced Launceston as the second study location.

4.45. The ACCC announced that Armidale will be the third regional location to be studied on 3 August 2015. Armidale petrol prices are among the highest in New South Wales. The average retail price of unleaded petrol in Armidale was 144.7 cpl in 2014-15, which was 10.6 cpl higher than the five largest cities. Furthermore, prices in Armidale have been noticeably higher than nearby cities in recent years.

4.46. The studies aim to ascertain why prices are higher in specific locations and to identify and explain each component of the prices paid by consumers at the bowser. The ACCC is using its compulsory information gathering powers under section 95ZK of
the CCA to acquire information from fuel companies at every level of the supply chain.

**Airports and aviation**

4.47. The ACCC monitors and publishes information relating to prices, costs, profits and service quality of aeronautical and car parking services and facilities at Brisbane, Melbourne (Tullamarine), Perth and Sydney (Kingsford Smith) airports. The Australian Government has directed the ACCC to monitor these airports until June 2020 owing to concerns that airports could use their position to earn monopoly profits to the detriment of consumers. The Productivity Commission will review these monitoring functions in June 2018.

4.48. The ACCC’s airport monitoring program aims to increase the transparency of airport performance and discourage airport operators from increasing prices excessively and/or offering low quality services. The ACCC does not set prices for airport services.

4.49. The ACCC also assesses notifications of proposed price increases by Airservices Australia (Airservices), which provides air traffic control and aviation fire-fighting and rescue services to airports and airlines. This also includes notifications from Sydney Airport in relation to regional air services.

**Airport monitoring report 2013-14**

**Key findings**

4.50. The report found that despite relatively low passenger growth, monitored airports have continued to report substantial increases in aeronautical revenues and margins. Growth in international passenger numbers, which attract higher aeronautical charges, contributed to the increases in margins in 2013-14.

4.51. Aeronautical revenue increased at each monitored airport in 2013-14 due to a combination of increased passenger numbers and higher aeronautical charges. Total aeronautical operating margin at the airports increased by 8.0 per cent, in real terms $634.2 million.

4.52. Although aeronautical revenue and margins have continued to grow, there has been no considerable change to the overall average quality of service ratings for the airports. Brisbane Airport remained the only airport to receive an overall average rating of ‘good’. Both Melbourne and Perth airports received the equal lowest overall average ratings of the airports during the year, and were both rated as ‘satisfactory’.

4.53. Car parking also continued to be a significant source of revenue for the airports during 2013-14, with all airports reporting increased car parking revenue during the year. Each airport, apart from Melbourne Airport, increased their car parking operating margin. Sydney Airport earned the highest car parking operating margin of the monitored airports.

**Airline-Airport Negotiations and Competition**

4.54. The report also suggested that there is evidence that at some of the monitored airports, airlines do not possess enough bargaining power to ensure appropriate commercial outcomes. The airports have continued to earn relatively substantial increases in aeronautical revenues and operating margins with declining quality outcomes over the past 11 years.
4.55. Airlines may have some bargaining power through their ability to initiate an application to the National Competition Council for an airport to be declared under Part IIIA of the CCA. In the case of a declared airport, the ACCC would act as an arbitrator in a situation where negotiations between airports and airlines were unsuccessful. However, there is considerable time and uncertainty involved for airlines in going through the declaration process.

4.56. A potential option to address these imbalances could include deemed declaration. This would require the Australian Government to amend the Airports Act 1996 to deem all aeronautical services as open to arbitration by the ACCC if commercial negotiations break down.

Proposed Second Sydney Airport at Badgerys Creek

4.57. Bargaining power imbalances are better addressed through competition, such as alternative choices to the monopoly airport operators. However, in the case of the second airport to be built in the Sydney region, competition was potentially removed when the Australian Government provided the acquirer of Sydney Airport with the right of first refusal to develop and operate any second airport within 100 kilometres of the Sydney CBD.

4.58. The report noted the ACCC’s view that this is an example of the tension between short-term budgetary considerations and long-term competition goals. The ACCC believes that having separate owners of the two Sydney airports would encourage each airport to lower prices and increase capacity and quality in order to capture market share from the other airport.

Airservices Australia 2015 price notification

4.59. On 4 June 2015 Airservices submitted a formal price notification to the ACCC proposing increased charges for terminal navigation and aviation rescue and fire-fighting services, effective from 1 July 2015.

4.60. The prices are consistent with those that were outlined in Airservices’ long-term pricing agreement (LTPA) and a draft price notification submitted to the ACCC on 1 May 2015.

4.61. The LTPA outlined a path of prices for en route, terminal navigation and aviation rescue and fire-fighting services for a five-year period from 2011-12 to 2015-16 and was accepted by the ACCC in 2011 following detailed assessment and public consultation.

4.62. The ACCC released its decision to not object to Airservices' price notification on 22 June 2015.

Rail access

4.63. The Australian Rail Track Corporation (ARTC) manages Australia’s interstate rail network and the Hunter Valley coal rail network in New South Wales. ARTC is subject to two access undertakings—one for each of the rail networks it manages—provided to the ACCC pursuant to Australia’s National Access Regime (set out in Part IIIA of the CCA). The National Access Regime aims to promote competition in markets that need access to infrastructure which has the potential to create bottlenecks (such as ARTC’s railway networks). The ACCC has an ongoing role in monitoring compliance with these access undertakings.
Decisions and determinations

Hunter Valley Coal Network Access Undertaking

4.64. The Hunter Valley Coal Network Access Undertaking (HVAU), accepted by the ACCC in 2011, regulates access to the rail network in the Hunter Valley region leased by ARTC. The network is predominantly used to transport export coal from the region’s mines to the Port of Newcastle in the world’s largest coal export operation. It is also used for non-coal freight and domestic coal.

4.65. The HVAU requires ARTC to annually submit documentation to the ACCC for the purpose of a compliance assessment. The ACCC is currently assessing ARTC’s compliance documentation for both the 2013 and 2014 calendar years.

4.66. In May 2014, ARTC submitted its compliance documentation for the 2013 calendar year. In November 2014, the ACCC released a position paper setting out its preliminary views on issues such as the prudency and efficiency of ARTC’s costs and its compliance with the revenue cap. Submissions were due at the end of January 2015. ACCC staff held meetings with stakeholders in February 2015 to discuss the issues raised by stakeholders in relation to ARTC’s compliance for the 2013 calendar year.

4.67. To aid in the assessment of ARTC’s 2013 compliance documentation, the ACCC engaged consultants to assess the costs of the Hunter Valley coal rail network. The ACCC intends to release a draft determination after receiving the consultant’s report.

4.68. ARTC submitted its compliance documentation for the 2014 calendar year in May 2015 and the ACCC commenced its assessment.

Bulk wheat export – access to port terminal services

Mandatory Code

4.69. The ACCC regulates port access in accordance with the mandatory Port Terminal Access (Bulk Wheat) Code of Conduct (the Code).

4.70. The Code regulates bulk wheat port terminal operators to ensure that exporters have fair and transparent access to terminal facilities. It replaced the previous undertaking regime.

4.71. The Code contains a range of obligations on port operators including a non-discrimination requirement, dispute resolution processes, ACCC approval of capacity allocation systems, and certain reporting requirements.

Exemption processes under the Code

4.72. The Code provides for processes whereby the ACCC or the Minister for Agriculture may exempt a port terminal service provider from certain obligations in relation to a specified port terminal facility.

4.73. There are two distinct avenues for exemption provided for under the Code. The first is that the Minister for Agriculture may determine a port terminal service provider to be exempt if it is a cooperative that meets certain criteria. The Minister for Agriculture exempted Co-operative Bulk Handling Ltd.’s (CBH) port terminal facilities located at Albany, Esperance, Geraldton and Kwinana under this provision on 17 November 2014.
4.74. The second is that the ACCC may make a determination to exempt a port terminal service provider in relation to a specific port terminal facility, having regard to a series of matters including the public interest, the legitimate business interests of the port operator and the interests of exporters.

4.75. Exempt service providers face a lower level of regulation as contained in Part 2 of the Code, which contains general obligations on port terminal service providers to deal in good faith and publish certain information including a daily loading statement.

4.76. Following consultation, the ACCC released draft exemptions determinations on 10 April 2015 which proposed to exempt the GrainCorp facility in Melbourne and the Emerald facility in Melbourne, due to the competition between the two facilities. The draft decision proposed not to exempt GrainCorp's facility in Portland due to the lack of a clear competitive restraint. Final determinations were released on 25 June 2015 and affirmed the draft determinations.

4.77. On 7 May 2015 the ACCC released draft determinations proposing to grant exemptions to the Newcastle Agri Terminal and Qube’s operations at Newcastle. As at 30 June 2015 the ACCC’s assessment was continuing.

4.78. Also on 7 May 2015 the ACCC released an issues paper seeking views on whether to grant exemptions to GrainCorp and Quattro at Port Kembla. On 23 June the ACCC released an issues paper seeking views on whether to grant exemptions at the Port of Brisbane. As at 30 June 2015 both assessments were continuing.

Capacity allocation approvals

4.79. The ACCC also has a role under the Code to approve changes to the capacity allocation systems used by port terminal service providers to allocate their port capacity.

4.80. On 12 March 2015 Viterra Operations Ltd (Viterra) submitted a proposal to introduce a long-term capacity allocation system at its six grain ports in South Australia. This was proposed to replace the existing auction system, and would allow capacity to be allocated for up to five years.

4.81. On 2 April 2015 the ACCC released an issues paper seeking views from interested parties on Viterra’s proposal. Following consultation and discussions with the ACCC, Viterra revised its proposal on 12 June 2015. As at 30 June 2015 the ACCC’s assessment was continuing.

Water

Water monitoring report 2013-14

4.82. Under the Water Act 2007 (Water Act) the ACCC is responsible for monitoring and reporting on certain water market and charging arrangements in the Murray-Darling Basin (MDB). The ACCC monitors regulated charges, transformation arrangements and compliance with the water market rules and water charge rules. The ACCC reports annually to the Commonwealth minister responsible for water on the results of its monitoring and this report is subsequently made public.

4.83. The ACCC published its water monitoring report for 2013-14 on 21 May 2015. The report observed that the Water Act and associated rules had resulted in significant improvements to the scope and functionality of water markets in the MDB. It noted however that there remained significant differences in the water charging regimes
applied across the MDB and this had resulted in significant variations in estimated irrigator bills across the MDB.

4.84. Under the water market rules, irrigators are able to “transform” their irrigation rights and trade their water free from any operator restrictions. The water charge rules set out disclosure requirements for the imposition of water charges, limit the fee that can be charged when an irrigator wants to change or “terminate” their water delivery arrangements, and directly regulate the charges of certain large infrastructure operators. The report observed that 2013-14 saw the lowest volume of irrigation rights transformed into water access entitlements since 2009-10. It also noted that most irrigation network and bulk water charges increased only modestly in 2013-14. The report also noted in 2013-14 there were fewer compliance concerns identified by the ACCC compared with previous years.

Water NSW: annual price review 2015-16

4.85. The ACCC released its final decision on the charges that Water NSW is able to levy for infrastructure services in the New South Wales valleys of the MDB during 2015-16 on 5 June 2015. This is the first annual review of charges conducted by the ACCC.

4.86. The charges approved in the annual review were set in accordance with a 2014 decision which established a methodology for setting charges over the 2014-17 period. The methodology adjusts charges for changes in demand so that Water NSW can recover any under-recovery of revenue resulting from below-forecast demand over time. Similarly, Water NSW has to return any over-recovery through reductions in charges in subsequent years.

4.87. Consistent with the methodology in the 2014 decision, charges in some valleys will increase in 2015-16. This is due primarily to the impact of low water availability in 2014-15.

Review of the Water Charge Rules issues paper

4.88. Under the Water Act, the ACCC is required to provide advice to Parliamentary Secretary to the Minister for the Environment, the Hon. Bob Baldwin MP (Parliamentary Secretary) on the making or amending of water charge rules and water market rules. To date, the Parliamentary Secretary has made three sets of water charge rules. On 17 December 2014 the then Parliamentary Secretary to the Minister for the Environment Senator the Hon. Simon Birmingham wrote to the ACCC requesting a review of the water charge rules and asked the ACCC to provide advice on possible amendments to these rules. This review flows from one of the recommendations of a review of the Water Act completed in 2014.

4.89. The ACCC released an issues paper on 4 May 2015 to facilitate stakeholder input to the review and advice. The issues paper sought submissions on a range of issues, including:

- the consistency of water charging regimes across the MDB
- the appropriateness of the tiered regulatory approach for infrastructure charges
- how the water charge rules could apply to any charges imposed by intergovernmental entities such as the Murray-Darling Basin Authority
- opportunities to improve regulatory clarity and efficiency, and
- opportunities to reduce costs to industry and governments.
4.90. The ACCC sought input from irrigators, infrastructure operators, Basin States, and other interested parties. The deadline for submissions was 29 June 2015.

4.91. During the review, the ACCC will provide multiple opportunities for stakeholder comment including face-to-face consultation with key stakeholders as well as public forums in irrigation communities across the MDB. The ACCC expects to release draft advice in September or October 2015 and final advice (including proposed rule amendments) in December 2015.
5. Increasing engagement

Increase our engagement with the broad range of groups affected by what we do

Outcomes from international forums and conferences

International partnerships and collaboration

5.1. The ACCC continued to engage closely with competition and consumer protection counterparts around the world. The need for international cooperation has grown as trading across jurisdictional borders has become more frequent and consumers are exposed to more complex transactions occurring across multiple jurisdictions. This particularly applies to trade with Australia’s Asian neighbours, with the growth in trade and investment between Australia and Asia expected to result in an increase in Australian competition matters (such as merger and cartel investigations) that have an Asian nexus. Recognising the value of effective competition and consumer protection regulation and regional cooperation, the ACCC continues to commit efforts to relationship and capacity building in the Asia Pacific region and beyond.

5.2. The Annual Meeting of the International Competition Network (ICN) was hosted by the ACCC in Sydney from 28 April to 1 May 2015. With significant developments in competition law and policy for our ASEAN neighbours and the Australian Government’s consideration of the recommendations of the Harper Review, it was an optimal time for it to be held in the Asia Pacific Region.

5.3. The event was attended by more than 400 international delegates from over 70 countries, including staff from competition agencies, academics, and legal and economic representatives. The program covered a range of competition issues including how to regulate unilateral conduct without stifling innovation, how international cooperation can improve merger review and cartel enforcement, and how competition agencies should contribute as advocates for competition.

5.4. The ACCC regularly engages and exchanges information with other regulators internationally on a range of matters, including product safety, consumer and competition investigations and regulatory developments.

This quarter the ACCC:

- Received and responded to 23 requests for information from international agencies including in Armenia, Botswana, Canada, the European Union, France, Georgia, Hong Kong, Japan, Malaysia, Mexico, New Zealand, South Africa, Swaziland, Uganda and the USA.
- Made 26 requests for information to agencies in Brazil, Canada, the European Union, Germany, Italy, New Zealand, Norway, Sweden, UK and the USA.
- Seconded an official to the Competition Commission of Singapore.
- Hosted two officials on secondment from the Hong Kong Competition Commission and two from the Competition Commission of Singapore.

5.5. The ACCC continued to expand its capacity building assistance to countries in South East Asia through the Competition Law Implementation Program (CLIP). Funded under the Association of Southeast Asian Nations (ASEAN)-Australia and New Zealand FTA Economic Cooperation Work Program (ECWP), CLIP aims to
strengthen competition regulation and enforcement in the region. To date, CLIP has delivered in-country and ASEAN-wide activities, including:

- On 8 April the ACCC seconded a second expert to the Malaysia Competition Commission for two months.
- The ACCC hosted a study visit by 24 competition experts from nine ASEAN Member States from 4 - 6 May 2015. The study visit provided ASEAN delegates with opportunities to discuss experiences with Australian and New Zealand representatives regarding the development, promotion and enforcement of competition policy and law.

5.6. The ACCC attended and presented at the Spring International Consumer Protection Enforcement Network (ICPEN) Conference in Åre, Sweden between 13 and 17 April.

5.7. The ACCC participated in the Organisation for Economic Cooperation and Development (OECD) Regulatory Policy Committee (RPC) and Network of Economic Regulators Forum (NER) meetings in Paris between 15 and 17 April. Major issues discussed in the RPC meetings included: major policy outlook, regulatory initiatives and inclusive growth, developments in good regulatory practices in ASEAN and launch of the review of water regulators governance. The focus of the NER meeting was a roundtable discussion on the independence of economic regulators.

5.8. The ACCC attended a conference in Singapore on 23 April on the topic of ‘Future of Competition Law and Policy in the ASEAN countries: issues and challenges’. The conference focussed on divergence and convergence within competition law in the ASEAN context.

5.9. Three events held in Sydney prior to the ICN Annual Meeting on 27 and 28 April hosted respectively by the World Bank/International Bar Association, the United Nations Conference on Trade and Development and the International Chamber of Commerce.

5.10. The ACCC participated and presented at the New Zealand Commerce Commission (NZCC) cartel workshop held in Wellington between 4 and 6 May. The workshop brought together representatives of the US Department of Justice, Canadian Competition Bureau, Hong Kong Competition Commission, ACCC and NZCC. It focussed on building on existing international cooperation and how to implement and run a successful criminal cartel program.

5.11. The ACCC attended and co-chaired an APEC symposium on the topic of ‘Competition Law, Regulation and SMEs in APEC’ held in Singapore on 4 and 5 May. The symposium explored the experiences of SMEs in countries where competition laws have only just been introduced or are proposed to be legislated for in the near future and the tools to engage with, and educate, the SME sector.

5.12. The ACCC participated in the OECD consumer products safety working party held in Paris on 18 and 19 May. The working party is chaired by the ACCC and is a key mechanism through which the ACCC identifies product safety issues, progresses collaborative approaches and implements activities at the international level.

5.13. The ACCC participated in the sixth world forum on energy regulation in Turkey between 25 and 28 May, presenting on making markets more effective and on consumer engagement. The ACCC also participated in a panel discussion on capacity building.

5.14. An APEC symposium on ‘Sharing Good Experiences and Practices in Developing Franchising Regulations’ held in Vietnam was attended by the ACCC between 3 and
5 June. The ACCC presented on the topic of franchising regulation and enforcement in Australia.

5.15. The ACCC attended the fifth ASEAN Competition Conference in Vietnam on 4 and 5 June. The ACCC participated on the panel in the session on ‘The Emerging Competition Landscape in ASEAN’ and the ACCC also attended a coordination meeting with other agencies.

5.16. The International Council for Small Business world conference held in Dubai was attended by the ACCC between 5 and 9 June.

5.17. As part of the Australian delegation, the ACCC participated in the eighth round of negotiations for the regional comprehensive economic partnership held in Kyoto between 8 and 12 June in relation to the proposed competition chapter of that agreement.

5.18. The ACCC participated in a series of OECD Competition Committee (OECD CC) meetings in Paris between 15 and 19 June. The meetings provide an important forum for discussion and debate on current competition regulation and enforcement activities. Australia contributed papers to the following roundtable discussions:
   - relationship between public and private antitrust enforcement
   - hearing on oligopoly markets
   - competitive neutrality in competition enforcement, and
   - competition issues in liner shipping.

5.19. The ACCC attended the seventh OECD expert meeting on measuring regulatory performance held in Reykjavik, Iceland on 18 and 19 June.

5.20. The ACCC currently chairs the OECD consumer product safety working party (the working party). The working party is a mechanism through which the ACCC identifies and builds a collaborative approach to product safety issues. A meeting was held on 18 and 19 May 2015 in Paris and key topics covered included upgrades to the global recalls portal, product risk assessment practices and developments in member jurisdictions.

**International cooperation**


5.22. The ACCC hosted a delegation study visit on 29 May for the Ministry of Commerce and Industry of Saudi Arabia. The Ministry of Commerce and Industry has responsibility for four broad areas: industry, foreign trade, internal trade and consumer affairs, and sought to understand how these matters are responded to by Australian authorities.

5.23. The ACCC led an OECD online product safety sweep during the week 27 April to 1 May 2015. This is the first international online sweep to be conducted, with 25 countries participating. The objective is to identify and record products that have been banned/ recalled, have unsafe design features or deficient product labelling. The results will be available in September 2015 and be presented to the OECD ministerial meeting on the digital economy in June 2016 in Cancun, Mexico.
Consumer engagement

National Consumer Fraud Week – ‘Get smarter with your data’

5.24. The ACCC and Australasian Consumer Fraud Taskforce ran the 2015 National Consumer Fraud Week campaign from 18 to 24 June. The ‘Get smarter with your data’ campaign focused on the importance of protecting personal information to prevent identity theft.

5.25. The ACCC’s 2014 targeting scams annual report was released during fraud week. The report revealed that almost 92 000 complaints were made to the ACCC in 2014 and over $81 million was reported lost.

Consumer Consultative Committee

5.26. The Consumer Consultative Committee (CCC) provides a forum to address consumer protection issues and concerns with consumer representatives. The first CCC meeting was held in March, with the remaining three meetings for 2015 scheduled in the second half of the year.

Product safety awareness raising

5.27. The ACCC commissioned consumer research in April to help inform the toppling furniture safety campaign. The research focused on consumer awareness of furniture stability risks and prevention, and involved surveying Australian parents with children under the age of five. The research showed that of parents who had experienced a dangerous toppling incident (27 per cent) injuries to the child occurred in a quarter of these instances.

5.28. The ACCC launched a campaign to raise national awareness of the toppling risks that unstable furniture poses to small children on 24 June. The campaign includes a web page on the product safety Australia website www.productsafety.gov.au/anchorfurniture, social media messages targeting parents boosted by online advertising, and an electronic fact card. The ACCC Product Safety Facebook page during the campaign was shared almost 100 times, gaining a total reach of over 355 000.

5.29. The ACCC ran a Google search advertising campaign to help raise awareness of the consumer safety warning notice for the wooden baby sleigh cot bed supplied by Frank Masons Pty Ltd in May. The product does not comply with the mandatory safety standard for children’s cots and presents safety risks to children. The advertising campaign generated 73 240 impressions and 590 clicks to the safety warning notice alert page on the product safety Australia website.

5.30. The ACCC conducted an intensive social media awareness campaign about potentially dangerous portable “lunchbox” gas cookers in April. Promotion of the safety warning on Google Adwords achieved over 107 000 impressions, while Facebook achieved almost 190 000 impressions.

5.31. An external stakeholder survey was conducted during March and April to assist in the amalgamation of the Product Safety and Recalls Australia websites. The ACCC received more than 100 responses from stakeholders across government, consumer and business networks.
Business engagement

Small Business Consultative Committee

5.32. The Small Business Consultative Committee (SBCC) was established to inform the ACCC on emerging competition and consumer law issues relating to small businesses. SBCC members are drawn from a range of sectors and include industry associations, business advisers and academics. The ACCC held a SBCC meeting on 8 May where ACCC enforcement activity, the Harper Competition Policy Review recommendations and product safety were discussed.

Educating small business

5.33. ACCC Commissioners and staff delivered presentations to various business groups and participated in several events. Highlights include Deputy Chair Dr Michael Schaper’s speeches at the International Chamber of Commerce seventh Annual Roundtable on Competition Policy, the Institute of Public Accountants Conferences in South Australia and Tasmania, and participation in the APEC franchising seminar on sharing good practices and experiences on developing franchise regulations held in Vietnam.

5.34. As part of National Consumer Fraud Week, in partnership with the Institute of Public Accountants, the ACCC hosted a small business scams and cybercrime forum. The forum was held on 19 May 2015 and aimed to raise awareness of the prevalence of small business scams and cybercrime, and to educate stakeholders about how to minimise their risk of falling victim. A video is available on the ACCC YouTube channel and it has had more than 900 views to date.

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

- A program for small businesses, more than 17,500 users have accessed the program since its launch in April 2013, including more than 3300 this quarter.
- A program for tertiary students, more than 14,000 users have accessed this program since November 2013, including more than 3700 this quarter.
- A franchising pre-entry education program, administered by Griffith University. More than 8000 people have enrolled in this program since July 2010, including around 400 this quarter.

Industry research


5.37. The report provides the ACCC, other regulators, consumer advocates and industry with a greater understanding of debt collection practices and identifies compliance challenges.

5.38. While the report noted a number of improvements in the debt collection industry, it highlighted a number of remaining concerns, including:

- Some in the sector not abiding by the ACCC and ASIC Debt Collection Guideline for Creditors and Collectors, resulting in considerable detriment to vulnerable and disadvantaged consumers.
• Problems that can be traced back to the retailer or service provider. Consumer advocates are particularly concerned about debt collection practices within the energy sector. Billing issues, management of hardship, disconnections and the referral of debt to multiple debt collectors were cited as concerns.

• Widespread concerns about the practices of credit repair businesses. While not considered part of the debt collection industry these businesses can charge consumers large fees, sometimes larger than the debts involved, for support that is freely available to them from other agencies.

• Debt collection processes that impose additional costs can add to the detriment for consumers already in financial distress.

5.39. The ACCC will be engaging with a range of industries referred to in the report to ensure they are aware of their obligations, both when collecting debts themselves, and when engaging collectors or selling debts.

5.40. The ACCC has also commenced research on competition and consumer issues that might arise from the rise of the ‘sharing economy’.

5.41. The ACCC continued preparation of its annual report to the Australian Senate on anti-competitive and other practices by health funds and providers in relation to private health insurance for the period 1 July 2013 to 30 June 2014. The ACCC is interested in understanding whether there are particular problems relating to information provided to consumers in this industry. It is expected the report will be issued in the September 2015 quarter.

5.42. The ACCC conducted stakeholder consultation on draft criteria for accepting international standards and risk assessments for product safety standards and bans. The criteria were developed in response to a government announcement that if a system, service or product has been approved under a trusted international standard or risk assessment, then Australian regulators should not impose any additional requirements unless there is a good and demonstrable reason to do so.

5.43. The ACCC received 84 submissions which will be considered in the development of final criteria. The development and review of standards and bans is done according to regulatory best practice and the criteria will be applied accordingly.

Raising product safety awareness

5.44. The ACCC held a free interactive one-hour webinar titled ‘Sourcing safe products under the Australian Consumer Law’ on 12 May. The webinar was aimed at businesses that supply products within the Australian marketplace, at any stage of the supply chain and attracted 450 registrations. Industry guest speakers also participated in the webinar, presenting on responsible sourcing concepts from an industry perspective.

Legislative developments

Extending unfair contract term protections to small business

5.45. Minister Billson tabled the Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Bill (the Bill) in Parliament on 24 June 2015. The Bill seeks to extend the consumer unfair contract terms provisions in the ACL to cover small business standard form contracts.
5.46. The proposed extension will be available for enterprises of less than 20 employees and for transactions valued under $100,000 or for multi-year contracts totalling less than $250,000. If enacted into law, the Bill provides for a transition period of six months, with the ACCC tasked with engaging with industry and producing guidance materials to assist compliance with the new laws.

Voluntary Prescribed Food and Grocery Code Regulation 2015

5.47. The *Competition and Consumer (Industry Codes—Food and Grocery) Regulation 2015* (the Code) came into effect on 3 March 2015. The Code governs certain conduct by grocery retailers and wholesalers in their dealings with suppliers. It requires these parties to act in good faith and for supply agreements to be in writing. It also regulates unilateral or retrospective variations of grocery supply agreements, payments, termination of agreements and dispute resolution.

5.48. The ACCC appeared before the Senate Economics Legislation Committee, which tabled a report recommending that the Regulation stand as promulgated in April 2015.

5.49. About Life Pty Ltd and ALDI Foods Pty Ltd agreed to be bound by the Code prior to 30 June 2015 and Coles and Woolworths agreed to be bound from 1 July 2015.

Competition and Consumer Amendment (Deregulatory and Other Measures) Bill 2015

5.50. Minister Billson tabled the *Competition and Consumer Amendment (Deregulatory and Other Measures) Bill 2015* (the Bill) in Parliament in March 2015. The Bill includes red tape reduction reforms to improve and clarify the administration of the CCA, and to correct minor drafting errors in the ACL.

5.51. The ACCC responded to queries from the Senate Standing Economics Legislation Committee on 3 May 2015, and recommended the Bill be passed.

Major speeches

5.52. During the June quarter, the ACCC took part in 36 major speaking events, including:

- **Launch of debt collection research**
  ACCC Deputy Chair Delia Rickard
  Institute of Mercantile Agents National Conference, Melbourne
  22 May 2015

- **Section 46: The great divide**
  ACCC Chairman Rod Sims
  Hodgekiss Competition Law Conference, Sydney
  30 May 2015

- **Keynote Address: Inquiry into Australia’s East Coast Gas Market**
  ACCC Chairman Rod Sims
  Energy Networks Association Seminar, Melbourne
  12 June 2015
6. Appendices

Complaints and inquiries

6.1. During the June 2015 quarter the ACCC received 68 024 complaints and enquiries from businesses and consumers (21 687 emails, 46 090 phone calls and 247 letters).

6.2. Of these, 244 were escalated for assessment.

Table 8: ACCC complaints, investigations and litigation funnel

<table>
<thead>
<tr>
<th>Category</th>
<th>June 2015 quarter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contacts received (phone, email and letters)</td>
<td>68 024</td>
</tr>
<tr>
<td>Contacts recorded in the database</td>
<td>49 158</td>
</tr>
<tr>
<td>Under assessments commenced</td>
<td>244</td>
</tr>
<tr>
<td>Initial investigations commenced</td>
<td>205</td>
</tr>
<tr>
<td>In-depth investigations commenced</td>
<td>23</td>
</tr>
<tr>
<td>First instance litigation commenced</td>
<td>4</td>
</tr>
</tbody>
</table>

Table 9: Geographic location of inquirers and complainants recorded in the national database

<table>
<thead>
<tr>
<th>State</th>
<th>ACL</th>
<th>Scams</th>
<th>(ACL + Scams)</th>
<th>Anti-competitive Practices</th>
<th>Industry Codes</th>
<th>Other</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>4144</td>
<td>7848</td>
<td>11992</td>
<td>202</td>
<td>49</td>
<td>1816</td>
<td>14059</td>
</tr>
<tr>
<td>QLD</td>
<td>3375</td>
<td>6144</td>
<td>9519</td>
<td>141</td>
<td>40</td>
<td>1265</td>
<td>10965</td>
</tr>
<tr>
<td>VIC</td>
<td>4007</td>
<td>4656</td>
<td>8663</td>
<td>158</td>
<td>50</td>
<td>1568</td>
<td>10439</td>
</tr>
<tr>
<td>WA</td>
<td>1466</td>
<td>2745</td>
<td>4211</td>
<td>56</td>
<td>22</td>
<td>529</td>
<td>4818</td>
</tr>
<tr>
<td>SA</td>
<td>1198</td>
<td>1933</td>
<td>3131</td>
<td>52</td>
<td>18</td>
<td>469</td>
<td>3670</td>
</tr>
<tr>
<td>ACT</td>
<td>607</td>
<td>804</td>
<td>1411</td>
<td>28</td>
<td>3</td>
<td>230</td>
<td>1672</td>
</tr>
<tr>
<td>TAS</td>
<td>287</td>
<td>615</td>
<td>902</td>
<td>13</td>
<td>5</td>
<td>112</td>
<td>1032</td>
</tr>
<tr>
<td>NT</td>
<td>160</td>
<td>212</td>
<td>372</td>
<td>6</td>
<td>5</td>
<td>51</td>
<td>434</td>
</tr>
<tr>
<td>Overseas</td>
<td>156</td>
<td>328</td>
<td>484</td>
<td>1</td>
<td>94</td>
<td>579</td>
<td></td>
</tr>
<tr>
<td>Not specified</td>
<td>105</td>
<td>42</td>
<td>147</td>
<td>9</td>
<td>6</td>
<td>66</td>
<td>228</td>
</tr>
</tbody>
</table>

Note: single contacts may involve multiple issues
### Table 10: Complaints and inquiries – top ten by industry

<table>
<thead>
<tr>
<th>Industry</th>
<th>Contacts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Store retailing (primarily online retailing)</td>
<td>853</td>
</tr>
<tr>
<td>Motor vehicle manufacturing</td>
<td>617</td>
</tr>
<tr>
<td>Wired telecommunications network operation</td>
<td>481</td>
</tr>
<tr>
<td>Car retailing</td>
<td>419</td>
</tr>
<tr>
<td>Department stores</td>
<td>403</td>
</tr>
<tr>
<td>On selling electricity and electricity market operation</td>
<td>380</td>
</tr>
<tr>
<td>Supermarket and grocery stores</td>
<td>370</td>
</tr>
<tr>
<td>Misc. electrical and electronic goods retailing</td>
<td>336</td>
</tr>
<tr>
<td>Misc. store-based retailing</td>
<td>334</td>
</tr>
<tr>
<td>Electrical, electronic and gas appliance retailing</td>
<td>313</td>
</tr>
</tbody>
</table>

*Note: single contacts may involve multiple industries*

### Table 11: Top scam categories reported to the ACCC

<table>
<thead>
<tr>
<th>Scam category</th>
<th>Contacts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attempts to gain your personal information (fake bank or telco, computer hacking, ID theft)</td>
<td>7716</td>
</tr>
<tr>
<td>Unexpected money (inheritance, helping a foreigner, fake government or bank, loan opportunity)</td>
<td>7366</td>
</tr>
<tr>
<td>Buying, selling or donating (classifieds, business listings, auction, health, fake business)</td>
<td>5598</td>
</tr>
<tr>
<td>Threats &amp; extortion (malware and software by email, malware and software by phone, hitman)</td>
<td>1492</td>
</tr>
<tr>
<td>Jobs &amp; investment (sport, high return, pyramid scheme, employment)</td>
<td>1251</td>
</tr>
<tr>
<td>Unexpected Prizes (lottery, travel, scratchie)</td>
<td>845</td>
</tr>
<tr>
<td>Dating and Romance (Including Adult Services)</td>
<td>531</td>
</tr>
</tbody>
</table>
### Enforcement outcomes & matters in court

#### Litigation commenced

**Consumer protection**

<table>
<thead>
<tr>
<th>Unconscionable conduct</th>
<th>Clinica Internationale Pty Ltd</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>commenced jurisdiction 15 May 2015 Federal Court Melbourne</td>
</tr>
</tbody>
</table>

#### Litigation ongoing

**Competition**

<table>
<thead>
<tr>
<th>Cartel</th>
<th>Air New Zealand Ltd</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>commenced jurisdiction 12 May 2010 Federal Court Sydney awaiting judgment</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Cartel</th>
<th>Australian Egg Corporation Limited &amp; Ors</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>commenced jurisdiction 26 May 2014 Federal Court Adelaide awaiting judgment</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Misuse of market power</th>
<th>Australia and New Zealand Banking Group Ltd (appeal)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>commenced jurisdiction 9 December 2013 Federal Court Brisbane awaiting judgment</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Cartels</th>
<th>Cascade Coal Pty Ltd &amp; Ors</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>commenced jurisdiction 25 May 2015 Federal Court Sydney</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Cartels</th>
<th>Cement Australia Pty Ltd &amp; Ors</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>commenced jurisdiction 12 September 2008 Federal Court Brisbane awaiting hearing on penalties</td>
</tr>
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<table>
<thead>
<tr>
<th>Cartels</th>
<th>Colgate-Palmolive Pty Ltd &amp; Ors</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>commenced jurisdiction 12 December 2013 Federal Court Sydney</td>
</tr>
<tr>
<td>Category</td>
<td>Description</td>
</tr>
<tr>
<td>----------------------------------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td>Secondary boycotts</td>
<td>Construction Forestry Mining and Energy Union (CFMEU)</td>
</tr>
<tr>
<td>Cartels</td>
<td>Flight Centre Ltd (appeal)</td>
</tr>
<tr>
<td>Highly concentrated sectors</td>
<td>Informed Sources (Australia) Pty Ltd &amp; Ors</td>
</tr>
<tr>
<td>Exclusionary conduct</td>
<td>Little Company of Mary Health Care Ltd</td>
</tr>
<tr>
<td>Cartels</td>
<td>OLEX Australia Pty Limited &amp; Ors</td>
</tr>
<tr>
<td>Cartel</td>
<td>Omniblend Australia Pty Ltd</td>
</tr>
<tr>
<td>Misuse of market power and exclusive dealing</td>
<td>Pfizer Australia Pty Ltd (appeal)</td>
</tr>
<tr>
<td>Cartels</td>
<td>Prysmian Cavi e Sistemi</td>
</tr>
<tr>
<td>Cartels</td>
<td>P.T. Garuda Indonesia Ltd</td>
</tr>
<tr>
<td>Misuse of market power</td>
<td>Visa (Inc) &amp; Ors</td>
</tr>
<tr>
<td>------------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>commenced</td>
<td>4 February 2013</td>
</tr>
<tr>
<td>jurisdiction</td>
<td>Federal Court Sydney</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Cartels</th>
<th>Yazaki Corporation &amp; Australian Arrow Pty Ltd</th>
</tr>
</thead>
<tbody>
<tr>
<td>commenced</td>
<td>13 December 2012</td>
</tr>
<tr>
<td>jurisdiction</td>
<td>Federal Court Sydney</td>
</tr>
</tbody>
</table>

### Consumer protection

#### Indigenous consumer protection / unsolicited consumer agreements

<table>
<thead>
<tr>
<th>Adata Pty Ltd</th>
</tr>
</thead>
<tbody>
<tr>
<td>commenced</td>
</tr>
<tr>
<td>jurisdiction</td>
</tr>
</tbody>
</table>

#### Unconscionable conduct and unfair contract terms

<table>
<thead>
<tr>
<th>Advanced Medical Institute Pty Ltd &amp; Ors (appeal)</th>
</tr>
</thead>
<tbody>
<tr>
<td>commenced</td>
</tr>
<tr>
<td>jurisdiction</td>
</tr>
</tbody>
</table>

#### Fake testimonials

<table>
<thead>
<tr>
<th>A Whistle (1979) Pty Ltd t/as Electrodry</th>
</tr>
</thead>
<tbody>
<tr>
<td>commenced</td>
</tr>
<tr>
<td>jurisdiction</td>
</tr>
</tbody>
</table>

#### Consumer Guarantees

<table>
<thead>
<tr>
<th>Bunavit Pty Ltd (trading as Harvey Norman AV/IT Superstore Bundall)</th>
</tr>
</thead>
<tbody>
<tr>
<td>commenced</td>
</tr>
<tr>
<td>jurisdiction</td>
</tr>
<tr>
<td>awaited judgment</td>
</tr>
</tbody>
</table>

#### Unfair contract terms

<table>
<thead>
<tr>
<th>Chrisco Hampers Australia Ltd</th>
</tr>
</thead>
<tbody>
<tr>
<td>commenced</td>
</tr>
<tr>
<td>jurisdiction</td>
</tr>
</tbody>
</table>

#### False or misleading representations

<table>
<thead>
<tr>
<th>CLA Trading Pty Ltd, t/a Europcar</th>
</tr>
</thead>
<tbody>
<tr>
<td>commenced</td>
</tr>
<tr>
<td>jurisdiction</td>
</tr>
</tbody>
</table>

#### Vulnerable and disadvantaged consumers

<table>
<thead>
<tr>
<th>Clinica Internationale Pty Ltd &amp; Anor</th>
</tr>
</thead>
<tbody>
<tr>
<td>commenced</td>
</tr>
<tr>
<td>jurisdiction</td>
</tr>
<tr>
<td>Category</td>
</tr>
<tr>
<td>-----------------------------------------</td>
</tr>
<tr>
<td>Product safety</td>
</tr>
<tr>
<td>Credence claims</td>
</tr>
<tr>
<td>Credence claims</td>
</tr>
<tr>
<td>False or misleading representations</td>
</tr>
<tr>
<td>False or misleading representations</td>
</tr>
<tr>
<td>Drip pricing</td>
</tr>
<tr>
<td>Vulnerable and disadvantaged consumers</td>
</tr>
<tr>
<td>Pyramid selling</td>
</tr>
<tr>
<td>Product safety</td>
</tr>
<tr>
<td>False or misleading representations</td>
</tr>
<tr>
<td>Credence claims</td>
</tr>
<tr>
<td>-----------------------------------------</td>
</tr>
<tr>
<td>commenced jurisdiction</td>
</tr>
<tr>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>Small business</th>
<th>Safety Compliance Pty Ltd &amp; Ors</th>
</tr>
</thead>
<tbody>
<tr>
<td>commenced jurisdiction</td>
<td>16 April 2012</td>
</tr>
<tr>
<td></td>
<td>Federal Court Sydney</td>
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<table>
<thead>
<tr>
<th>Scam</th>
<th>Sensaslim Australia Pty Ltd &amp; Ors</th>
</tr>
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<tbody>
<tr>
<td>commenced jurisdiction</td>
<td>15 July 2011</td>
</tr>
<tr>
<td></td>
<td>Federal Court Sydney</td>
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<table>
<thead>
<tr>
<th>Credence claims</th>
<th>Snowdale Holdings Pty Ltd</th>
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</thead>
<tbody>
<tr>
<td>commenced jurisdiction</td>
<td>9 December 2013</td>
</tr>
<tr>
<td></td>
<td>Federal Court Perth</td>
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<table>
<thead>
<tr>
<th>Consumer guarantees</th>
<th>Valve Corporation Pty Ltd</th>
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<tbody>
<tr>
<td>commenced jurisdiction</td>
<td>28 August 2014</td>
</tr>
<tr>
<td></td>
<td>Federal Court Sydney</td>
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<table>
<thead>
<tr>
<th>Drip pricing</th>
<th>Virgin Australia Airlines Pty Ltd</th>
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</thead>
<tbody>
<tr>
<td>commenced jurisdiction</td>
<td>19 June 2014</td>
</tr>
<tr>
<td></td>
<td>Federal Court Sydney</td>
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<table>
<thead>
<tr>
<th>False or misleading representations</th>
<th>We Buy Houses Pty Ltd and Rick Otton</th>
</tr>
</thead>
<tbody>
<tr>
<td>commenced jurisdiction</td>
<td>2 March 2015</td>
</tr>
<tr>
<td></td>
<td>Federal Court Sydney</td>
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<table>
<thead>
<tr>
<th>Product safety</th>
<th>Woolworths Ltd</th>
</tr>
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<tbody>
<tr>
<td>commenced jurisdiction</td>
<td>17 September 2014</td>
</tr>
<tr>
<td></td>
<td>Federal Court Sydney</td>
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<table>
<thead>
<tr>
<th>Other</th>
<th>Michael Anthony Boyle</th>
</tr>
</thead>
<tbody>
<tr>
<td>commenced jurisdiction</td>
<td>16 September 2014</td>
</tr>
<tr>
<td></td>
<td>Federal Court Brisbane</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Non-compliance with statutory notice</th>
<th>Robert Paul Davies</th>
</tr>
</thead>
<tbody>
<tr>
<td>commenced jurisdiction</td>
<td>2 October 2014</td>
</tr>
<tr>
<td></td>
<td>Federal Court Brisbane</td>
</tr>
</tbody>
</table>
## Litigation concluded

### Consumer Protection

#### Carbon price representations
- **Actrol Parts Pty Ltd**
  - Commenced: 30 April 2014
  - Concluded: 2 April 2015
  - Jurisdiction: Federal Court Adelaide
  - Outcome: Penalty totalling $520 000, corrective notice, compliance program, injunction and costs

#### False or misleading representations
- **AGL South Australia Pty Ltd**
  - Commenced: 5 December 2013
  - Concluded: 29 April 2015
  - Jurisdiction: Federal Court Adelaide
  - Outcome: Penalty totalling $700 000, consumer redress of approx. $782 000, publication orders, extension of AGL SA’s compliance program, and costs

#### Credence claims
- **Coles Supermarkets Australia Pty Ltd**
  - Commenced: 12 June 2013
  - Concluded: 10 April 2015
  - Jurisdiction: Federal Court Melbourne
  - Outcome: Penalty of $2.5 million, corrective notice, injunction and costs

#### False or misleading representations
- **Dhruv Chopra (operator of Electronic Bazaar)**
  - Commenced: 3 December 2014
  - Concluded: 29 May 2015
  - Jurisdiction: Federal Court Melbourne
  - Outcome: Declarations, penalties totalling $100 000, injunction, ACL training for Chopra and costs

#### False or misleading representations
- **EnergyAustralia Pty Ltd and Bright Choice Australia Pty Ltd**
  - Commenced: 21 November 2014
  - Concluded: 27 March 2015
  - Jurisdiction: Federal Court Melbourne
  - Outcome: Penalties totalling $1 000 000, declarations, injunction, compliance program and costs
<table>
<thead>
<tr>
<th>Online consumer issues</th>
<th>Spreets Pty Ltd</th>
</tr>
</thead>
<tbody>
<tr>
<td>commenced</td>
<td>30 June 2014</td>
</tr>
<tr>
<td>concluded</td>
<td>24 April 2015</td>
</tr>
<tr>
<td>jurisdiction</td>
<td>Federal Court Brisbane</td>
</tr>
<tr>
<td>outcome</td>
<td>Penalty of $600 000 declaration, compliance program maintained and contribution to ACCC costs</td>
</tr>
</tbody>
</table>

**Undertakings accepted and infringement notices paid**

**87B undertakings**

**Australian Consumer Law**

‘To encourage fair trading, protection of consumers and product safety’

<table>
<thead>
<tr>
<th>Consumer guarantees</th>
<th>Electronic Arts Inc. (Central Index Key 0000712515)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Section 87B undertaking dated 23 April 2015</td>
</tr>
<tr>
<td></td>
<td>Electronic Arts Inc. (Central Index Key 0000712515), Swiss based EA Swiss Sarl (CH-660-2328005-8) and Australian based Electronic Arts Pty Ltd (ACN 003 367 824) (together, EA), have undertaken to:</td>
</tr>
<tr>
<td></td>
<td>for a period of three years, not make any representations to Australian consumers that EA has a no refunds policy that excludes any right to a refund under the ACL, or Australian consumers are not entitled to a refund under any circumstances</td>
</tr>
<tr>
<td></td>
<td>amend various contracts and documents on or related to its online store ‘Origin’</td>
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<tr>
<td></td>
<td>publish a Consumer Rights Notice on Origin</td>
</tr>
<tr>
<td></td>
<td>establish and implement a Consumer Redress Program over the next three months to reassess and assess consumer complaints in accordance with the Australian Consumer Law; and</td>
</tr>
<tr>
<td></td>
<td>establish and implement a consumer law Compliance Program, which includes formal staff training, risk assessment and complaints handling.</td>
</tr>
<tr>
<td>Competition and Consumer Act</td>
<td></td>
</tr>
<tr>
<td>------------------------------</td>
<td></td>
</tr>
<tr>
<td>‘To promote vigorous lawful competition and informed markets’</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Refusal to deal</th>
<th>Cabcharge Australia Limited</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 87B undertaking dated 26 June 2015</td>
<td></td>
</tr>
</tbody>
</table>

The ACCC has accepted an undertaking from Cabcharge Australia Limited (Cabcharge) which outlines a process under which rival payment processors (third parties) will be able to process Cabcharge cards on their own in-taxi payment terminals. Cabcharge is a major participant in the taxi industry, providing products to its account holders for use in transactions in connection with services supplied by operators of taxis and hire cars, including Cabcharge branded cards. It also supplies technology and systems to merchants throughout Australia that allow acceptance and processing of transactions for paying taxi fares by Cabcharge cards and bank issued credit, charge and debit cards (such as Visa, MasterCard and American Express).

The undertaking provided by Cabcharge arises from an investigation into allegations that, between 2011 and 2012, Cabcharge had refused to deal with a third party processor making requests pursuant to the Request Processing Policy. The investigation also concerned allegations that Cabcharge had constructively refused to deal with third parties by establishing and implementing the Request Processing Policy in terms that would discourage or deter requests.

Under the terms of the undertaking, Cabcharge has undertaken, for a period of five years, to among other things:

- negotiate with third parties in good faith in relation to providing access to the system that will allow them to process Cabcharge cards
- execute an agreement with third parties who apply for access in accordance with the provisions set out in the undertaking
- provide to a third party which has executed an agreement any reasonable technological support requested by the third party to enable it to process Cabcharge cards, and
- provide access to third parties that have demonstrated they can provide processing services on the terms set out in the agreement.
### Infringement notices

<table>
<thead>
<tr>
<th>Trader</th>
<th>Date paid and amount</th>
</tr>
</thead>
</table>
| NIB Health Funds Ltd               | 29 April 2015  
  1 notice totalling $10 200           |
| Supabarn Supermarkets Pty Ltd      | 21 May 2015  
  2 notices totalling $20 400          |
| The Real Juice Company Pty Ltd     | 25 May 2015  
  2 notice totalling $20 400           |