



ACCCount

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

1 July to 30 September 2017

Australian Competition and Consumer Commission
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Overview

1. The Australian Competition and Consumer Commission (ACCC) works to enhance the welfare of Australians by promoting competition, fair trading and regulating national infrastructure. This report highlights the range of activities engaged in by the ACCC to achieve its purpose in the June to September 2017 quarter, including:
 - enforcing competition laws in relation to cartel conduct, anti-competitive agreements, misuse of market power, and mergers which substantially lessen competition
 - protecting consumers from unfair business practices and unsafe products
 - regulating national services, infrastructure and markets with limited competition or natural monopoly characteristics
 - studying, monitoring and reporting on competition and consumer issues in specific markets and industries, and
 - advocacy and collaboration to promote competition and fair trading.
2. The ACCC announced its decision not to oppose Birketu's and Illyria's proposed acquisition of Ten Network. The ACCC considered the acquisition was not likely to substantially lessen competition.
3. The ACCC granted authorisation to Virgin Australia, HNA Group, Hong Kong Airlines and HK Express to coordinate international passenger transport services between Australia and mainland China, pursuant to an Alliance Framework Agreement. The ACCC considered that the Alliance would result in a number of public benefits.
4. In August 2017 the Federal Court convicted Japanese shipping company Nippon Yusen Kabushiki Kaisha of criminal cartel conduct and imposed a penalty of \$25 million, the second highest penalty imposed in ACCC history. The judgment marked the ACCC's first successful prosecution under the criminal cartel provisions of the *Competition and Consumer Act 2010*.
5. In August 2017 the Federal Court ordered Get Qualified to pay an \$8 million penalty after it found that Get Qualified made false or misleading representations and engaged in unconscionable conduct in its supply of services to consumers.
6. In July 2017 the Federal Court imposed penalties of \$3.5 million against Prysmian for engaging in cartel conduct in relation to the supply of high voltage land cables in Australia.
7. In July 2017 the Federal Court ordered Snowdale Holdings to pay penalties totalling \$750,000 for making false or misleading representations that its eggs were 'free range'. This is the highest penalty that a Court has ordered in relation to misleading 'free range' egg claims.
8. In August 2017 the Federal Court found that We Buy Houses made false or misleading representations in promoting a number of wealth creation strategies involving real estate.
9. In September 2017 the ACCC instituted proceedings in the Federal Court against JJ Richards & Sons alleging that eight clauses in its standard form small business contract are void because they are unfair under the Australian Consumer Law.

10. In August 2017 the ACCC instituted proceedings in the Federal Court against ticket reseller Viagogo, alleging it breached the Australian Consumer Law by making false or misleading representations and engaging in misleading or deceptive conduct in its reselling of entertainment, music and live sport tickets.
11. In August 2017 the ACCC released its draft report for the New Car Retailing Market Study. The report detailed its findings of nearly 12 months of investigation, consultation and research.
12. In August 2017 the ACCC accepted a court-enforceable undertaking from Holden, which commits Holden to comply with its consumer guarantee obligations under the Australian Consumer Law and adopt recommendations from the recent ACL review.
13. On 1 September 2017 the excessive payment surcharge ban was applied to all businesses across Australia. The ban restricts the amount a business can charge customers for using EFTPOS, Mastercard, Visa and American Express cards that are issued by Australian banks. The ACCC is responsible for enforcing the ban and investigates complaints related to excessive payment surcharges.
14. In July 2017 the ACCC advised the Minister for Small Business, the Hon Michael McCormack MP, on a mandatory safety standard for decorative alcohol fuelled devices and the Minister decided to implement the standard. In the quarter the ACCC commenced a national surveillance program in line with the mandatory standard.
15. In July 2017 the ACCC formed the Takata Taskforce and investigated the safety of motor vehicles containing Takata airbags. The investigation included serving section 133D disclosure notices to a number of vehicle manufacturers. The investigation is continuing.
16. In September 2017 the ACCC provided its first interim report to the Treasurer, the Hon Scott Morrison MP, as part of its new gas market inquiry role. The report focussed on likely supply and demand conditions for the east coast gas market in 2018 and predicted a likely supply shortfall.
17. The ACCC published guidance on the marketing of broadband services on next generation networks as part of its strategy to ensure consumers understand what they are purchasing when choosing fixed broadband plans.
18. The annual regulatory conference was held in Brisbane on 27-28 July and was attended by more than 400 delegates. The conference draws together international and local experts to discuss current and emerging issues affecting all regulated infrastructure sectors.

1. Maintaining and promoting competition

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

- 1.1. Competitive markets lead to lower prices, better quality products and services, greater efficiency and more choice, all of which benefit consumers. As Australia's only national competition regulator, the ACCC works to enhance the welfare of Australians by maintaining and promoting competition.
- 1.2. The ACCC does so by enforcing Part IV of the *Competition and Consumer Act 2010* (CCA) in relation to anti-competitive conduct and assessing whether mergers and acquisitions would substantially lessen competition.
- 1.3. In addition, the ACCC considers applications for authorisation and notifications, which enable some anti-competitive conduct to go ahead where the public benefit outweighs the public harm, including harm from reduced competition.
- 1.4. The ACCC's Compliance and Enforcement Policy sets out priorities for the year and the factors the ACCC takes into account when deciding whether to pursue matters. In 2017 a number of clear priorities have been established including enduring priorities covering cartel conduct causing detriment in Australia, anti-competitive agreements and practices, and the misuse of market power. In addition, the ACCC has prioritised anti-competitive conduct and competition issues in the agriculture and commercial construction sectors. More information is available at [ACCC Compliance & Enforcement Policy](#).
- 1.5. Outcomes are achieved through a variety of means. These include litigated proceedings, accepting court-enforceable undertakings¹, administrative resolutions and completing market studies.

Proceedings

- 1.6. In the September quarter the ACCC was involved in 15 legal proceedings relating to competition enforcement in a range of industries including shipping, pharmaceuticals, construction, travel and financial services. A complete list of these proceedings is included in the Appendix.
- 1.7. Of the 15 competition enforcement proceedings:
 - 15 cases were carried over from the previous quarter
 - Nil new cases were commenced in the quarter
 - 2 cases were concluded, and
 - 13 cases remained ongoing at the end of the quarter.

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

Proceedings commenced

Nil

Proceedings appealed

PRYSMIAN

In July 2017 the Federal Court imposed penalties of \$3.5 million against an Italian company, Prysmian Cavi e Sistemi Energia S.R.L (Prysmian), for engaging in cartel conduct in relation to the supply of high voltage land cables in Australia.

The Court had previously found that Prysmian had entered into and given effect to agreements involving price guidance to competitors and project allocation. The contravening conduct related to an Australian project in 2003 to supply high voltage land cables and accessories to the Snowy Mountains Hydro Electric Scheme.

In handing down the penalty, the Court acknowledged that the conduct was serious and deliberate. However the Court also took into account that the conduct occurred over a relatively short period of time, Snowy Hydro did not suffer a loss as a result and Prysmian did not make a profit.

In August 2017 Prysmian appealed the penalty decision of the Federal Court and is seeking to set aside the court orders and have the case dismissed.

Proceedings concluded and judgments

NIPPON YUSEN KABUSHIKI KAISHA PTY LTD

In August 2017 the Federal Court convicted Japanese shipping company Nippon Yusen Kabushiki Kaisha Pty Ltd (NYK) of criminal cartel conduct and imposed a penalty of \$25 million, the second highest penalty imposed in ACCC history. The case also marks the first successful prosecution under the criminal cartel provisions of the CCA.

Following an extensive investigation by the ACCC, the Commonwealth Director of Public Prosecutions charged NYK with giving effect to cartel provisions in an arrangement or understanding with other shipping lines relating to the transportation of motor vehicles to Australia between 2009 and 2012.

The cartel operated from at least February 1997 and affected vehicles transported to Australia by NYK and other shipping lines from locations in Asia, the US and Europe on behalf of major car manufacturers including Nissan, Suzuki, Honda, Toyota and Mazda.

In July 2016 following an investigation by the ACCC, NYK pleaded guilty in the Federal Court to criminal cartel conduct.

In handing down his decision, Justice Wigney stated the fine “incorporates a global discount of 50 per cent for NYK’s early plea of guilty and past and future assistance and cooperation, together with the contrition inherent in the early plea and cooperation: meaning that but for the early plea and past and future cooperation, the fine would have been \$50 million”.

AUSTRALIAN EGG CORPORATION LIMITED & ORS

In September 2017 the Full Federal Court dismissed the ACCC's appeal in its matter against Australian Egg Corporation Limited (AECL), Farm Pride Foods Ltd (Farm Pride), Ironside Management Services Pty Ltd (trading as Twelve Oaks Poultry) and two executives, Mr James Kellaway and Mr Jeffrey Ironside.

In May 2014 the ACCC instituted proceedings against AECL and the other respondents. The ACCC alleged that at an 'Egg Oversupply Crisis Meeting', held by AECL and attended by egg producers, the AECL and the other respondents had attempted to induce egg producers to enter into a cartel arrangement to reduce the supply of eggs, in response to a perceived oversupply of eggs.

In February 2016 the Federal Court dismissed the ACCC's proceedings. The ACCC then appealed to the Full Federal Court to seek clarity about what conduct is sufficient to constitute an attempt to induce cartel conduct, particularly in the context of conduct by a trade association interacting with its members.

The case highlights the importance of the Federal Government's Competition Policy Reform Bill, which introduces a concerted practices prohibition into Australian competition law. The ACCC will carefully consider the judgment of the Full Court.

Undertakings accepted and administrative resolutions

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

Agriculture Unit

- 1.12. In the September quarter the ACCC continued its commitment to increased engagement and enforcement in the agriculture sector through its Agriculture Unit. This work included:
 - Continuing the inquiry into the competitiveness of prices, trading practices and the supply chain in the Australian dairy industry. The inquiry is being conducted under Part VII of the CCA, which provides the ACCC with compulsory information gathering powers to ensure we can access relevant business information and conduct hearings with businesses in the industry.

- Working with fruit and vegetable industry organisations to educate growers and traders of horticulture produce about their rights and obligations under the revised Horticulture Code. The ACCC provided organisations with a range of materials and made presentations at a series of grower workshops. The materials were also uploaded to our website.
 - Advocating for implementation of the 15 recommendations made in the ACCC's cattle and beef industry market study report, for improved transparency and efficiency in the industry.
 - Increasing the number of subscribers to the Unit's Agriculture Information Network of 71 individuals and organisations.
 - Attending and speaking at a number of agriculture industry conferences and meetings including: Queensland Dairy Organisation AGM, NSW Farmers Horticulture Conference, University of Western Australia Institute of Agriculture Industry Forum, NSW Farmers Annual Conference, Grain Traders Australia Advisory and Compliance Workshop, Growing SA 2017 and the 18th Australian Agronomy Conference.
- 1.13. The Unit works closely with ACCC enforcement and merger teams on agriculture matters. During the September quarter, the Unit assisted with the assessment of:
- the proposed acquisition of InterGrain Pty Ltd by Australian Grain Technologies Pty Ltd.
 - several possible contraventions of the CCA in agriculture markets during the period. These included matters in the horticulture, grains, poultry, dairy, sugar, cotton, viticulture, agricultural chemicals, and lamb, cattle and beef industries.
- 1.14. The ACCC continued to assess and investigate standard form contracts given to small businesses in the agriculture sector across a number of industries for potentially unfair contract terms.

Assess mergers to prevent structural changes that substantially lessen competition

- 1.15. The ACCC reviews mergers and acquisitions to assess whether they would be likely to substantially lessen competition.
- 1.16. 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.
- 1.17. The ACCC deals with matters expeditiously when it determines that they do not require a detailed review because of the low risk that competition concerns will be raised. As indicated in Table 1.1, a significant proportion of the mergers considered by the ACCC are 'pre-assessed', enabling the ACCC to respond quickly when there are no significant concerns.

Table 1.1: Matters pre-assessed and reviews undertaken – July to September 2017

	Confidential	Public	Total
Pre-assessed 1 July – 30 September 2017	64	0	64
Total reviews undertaken 1 July – 30 September 2017	0	5	5

Total matters assessed and reviews undertaken	64	5	69
Total reviews by category:			
Not opposed	0	3	3
Finished—no decision (including withdrawn)	0	2	2
Opposed outright	0	0	0
Confidential review—ACCC concerns expressed	0	0	0
Resolved through undertakings	0	0	0
Variation to undertaking accepted	0	0	0
Variation to undertaking rejected	0	0	0

Significant merger decisions

[Birketu Pty Ltd and Illyria Nominees Television Pty Limited - proposed joint bid for interests in Ten Network Holdings Limited](#)

On 24 August 2017 the ACCC announced its decision not to oppose Birketu Pty Ltd (Birketu) and Illyria Nominees Television Pty Limited's (Illyria) proposed acquisition of Ten Network Holdings Limited (Ten). Birketu is owned by Bruce Gordon whose family interests also own WIN Corporation (WIN). Illyria is owned by Lachlan Murdoch who also owns Nova radio and is Executive Chair of Twenty First Century Fox and Co-chair of News Corporation which owns 50% of Foxtel.

The ACCC considered the effects of the proposed acquisition on:

- a national market for the acquisition of broadcast rights for general audio-visual content; and
- a national market for the acquisition of broadcast rights for sporting content;
- markets for advertising opportunities; and
- the supply of news and current affairs.

The ACCC considered that while the proposed acquisition would lead to greater alignment of Ten's interests with WIN, Nova, News Corporation, Foxtel and Twenty First Century Fox, it was not likely to substantially lessen competition in any of these markets.

In relation to the acquisition of broadcast rights for content the ACCC considered that bundling strategies were unlikely to foreclose other TV networks because:

- the increasing scope of multi-channels has decreased the importance of free to air networks partnering with pay TV in acquiring sports rights
- different platforms have different preferences for general content meaning there was limited advantage in acquiring content across platforms, and
- the emergence of streaming services may provide future partnership opportunities for acquiring sports rights and producing general content.

The ACCC considered the acquisition was unlikely to foreclose advertising opportunities due to the range of firms offering advertising services, including other TV channels.

The ACCC considered that while an alignment of Ten with existing Murdoch interests could see a reduction in the number of independent television news voices, Seven, Nine, ABC and SBS would continue to act as constraints. More broadly, in considering the supply of news across multiple platforms the ACCC concluded that there is a range of news and current affairs choices open to consumers, including online news sites, which will continue to offer some constraint.

[Proposed merger of Camp Australia and Junior Adventures Group](#)

On 27 September 2017 the ACCC announced that Camp Australia Pty Ltd (Camp Australia) and Junior Adventures Group (JAG) had withdrawn their request for merger clearance by the ACCC.

Camp Australia and JAG are the two largest commercial providers of before and after school care in Australia. Camp Australia operates under the brand Camp Australia at about 780 sites throughout Australia. JAG operates in about 380 schools in Australia under its two brands, OSHClub and Helping Hands.

The ACCC commenced an informal merger review on 1 June 2017. Following extensive feedback from interested parties, including schools and parents, the ACCC expressed preliminary concerns with the proposed acquisition in a Statement of Issues published on 10 August 2017.

The ACCC's preliminary view was that the proposed merger would have substantially lessened competition in markets for the supply of before and after school care in Victoria, Western Australia, New South Wales and Queensland. The ACCC was also further considering impacts in the Australian Capital Territory and South Australia.

The ACCC's main concerns were that:

- The proposed merger involved the consolidation of the two largest providers of before and after-school care, eliminating the competitive tension between them.
- A merged Camp Australia-JAG may not have been effectively constrained by other existing competitors, the threat of entry or by the threat of schools supplying before and after-school care themselves.
- The loss of competition between Camp Australia and JAG could have resulted in higher prices for parents and lower quality care for students in some states.

The ACCC discontinued its review of the proposed merger on 27 September 2017 after being notified by the parties that the transaction had been abandoned.

Merger review consultation

- 1.18. During the course of a public review, the ACCC may reach a preliminary view that a proposed merger raises competition concerns that require further investigation. In this circumstance, the ACCC will publicly release a Statement of Issues. A Statement of Issues provides the ACCC's preliminary views, drawing attention to particular

competition issues, as well as identifying further lines of inquiry that the ACCC wishes to undertake. It provides an opportunity for all interested parties (including customers, competitors, shareholders and other stakeholders) to understand and consider the primary issues identified by the ACCC. It also has the purpose of assisting the merger parties and other interested parties to frame further submissions should they consider it necessary.

1.19. In the September quarter the ACCC issued a Statement of Issues for the following reviews:

- [Platinum Equity proposed acquisition of OfficeMax Australia](#)
- [Camp Australia Pty Ltd and Junior Adventures Group Pty Ltd](#)
- [BP - proposed acquisition of Woolworths' retail service station sites](#)

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

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

Authorisations

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

Table 2: Authorisations received and decisions issued

Total authorisations received	Number of applications (number of forms ¹)
	1 July – 30 September 2017
New	5 (8)
Revocation	0 (0)
Revocation and substitution	4 (6)
Minor variations	1 (2)

Decisions issued	Number of applications (number of forms ¹)
	1 July – 30 September 2017
Draft determinations	6 (7)
Final determinations	4 (6)

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

Significant authorisations

[Virgin Australia Airlines Pty Ltd & Ors – Authorisations – A91575 & A91576](#)

On 10 August 2017 the ACCC issued a determination granting authorisation to Virgin Australia, HNA Group, Hong Kong Airlines and HK Express to coordinate international passenger transport services between Australia and mainland China, and Australia and Hong Kong, pursuant to an Alliance Framework Agreement.

The Alliance involves coordination and agreement between the airlines in respect of the joint activities including:

- reciprocal codeshare agreements
- interlining (allowing passengers travelling on, for example, a Hong Kong Airlines flight with an onward connection on a Virgin Australia flight to have the convenience of travelling under a single ticket for the whole journey)
- frequent flyer benefits and lounge access
- joint route planning and scheduling, and
- pricing, sales and marketing.

Prior to agreeing to enter into the Alliance Virgin Australia did not operate any direct services between Australia and mainland China or between Australia and Hong Kong.

In July 2017 (following the ACCC's decision to grant interim authorisation) Virgin Australia commenced services between Melbourne and Hong Kong. Virgin Australia was also exploring other opportunities to commence new services between Australia and Hong Kong and Australia and mainland China and argued that the Alliance is important to supporting these new services.

The other Alliance airlines only operate limited direct services to and from Australia and none of these routes overlap with routes that Virgin Australia indicated confidentially to the ACCC that it was proposing to operate direct services on.

The ACCC considered that the Alliance would result in public benefits, primarily in the form of:

- new and enhanced products and services – in particular, supporting the introduction of new services by Virgin Australia between Australia and Hong Kong and mainland China
- in relation to both new and existing services, optimising the Alliance partners' joint service offering in relation to connectivity, scheduling and access to value added services (frequent flyer and lounge access)
- increased competition in international air passenger transport markets, and
- stimulation of tourism through increased passenger traffic.

The ACCC considered that the Alliance was likely to result in little public detriment due to the lack of overlap between the participating airlines' current, and likely future, operations.

For these reasons the ACCC considered that the Alliance was likely to result in a public benefit that would outweigh the likely public detriment and decided to grant authorisation.

Notifications

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

Exclusive dealing notifications

- 1.23. 'Exclusive dealing' describes a business trading with another business imposing restrictions on the other business' freedom to choose with whom, in what, or where it deals, and is prohibited under the CCA in certain circumstances. Third line forcing is a type of exclusive dealing conduct involving 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.
- 1.24. Lodging a notification with the ACCC provides automatic protection from legal action from the lodgement date, or soon after, in the case of third line forcing conduct which remains in force unless revoked by the ACCC. Notifications can be reviewed by the ACCC at any time to assess whether the conduct results in a net public benefit.

Table 3: Exclusive dealing notifications

Exclusive Dealing Notifications	Number of notifications (number of forms ¹)
	1 July – 30 September 2017
Matters lodged in the quarter	148 (189)
Matters requiring a draft notice	0 (0)
Matters allowed to stand	152 (180)
Matters revoked	0 (0)
Matters withdrawn	1 (1)

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

Collective bargaining notifications

- 1.25. Groups of small businesses can lodge a collective bargaining notification to obtain protection from legal action for a collective bargaining activity. The protection provided by a collective bargaining notification comes into force automatically 14 days after the notification is validly lodged and continues for three years unless the ACCC objects to it. Notifications can be reviewed at any time.
- 1.26. 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.

1.27. There were no collective bargaining notifications lodged in the quarter.

Certification trademarks

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

1.29. The ACCC assesses rules for the use of certification trademarks including:

- requirements that goods, services or persons must meet to be eligible to use a certification trade mark, and
- proposed processes for assessing compliance with certification requirements.

Table 5: Certification Trademarks

Certification Trademarks (CTMs)	Number of related applications (number of CTMs ¹)
	1 July – 30 September 2017
CTMs received in the quarter	9 (23)
Final assessments issued	11 (13)

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

Assist the Australian Competition Tribunal

1.30. Merger parties may seek legal protection from court action under section 50 of the CCA by applying to the Australian Competition Tribunal (the Tribunal) for authorisation of the merger proposal. In merger authorisation determinations, the Tribunal must apply a public benefits test. This differs from reviews under section 50 where a substantial lessening of competition test is applied.

1.31. The role of the ACCC in the Tribunal process is to assist the Tribunal's decision-making, by making inquiries, calling and examining witnesses and preparing a report.

Tabcorp Holdings Limited

On 13 March 2017 Tabcorp Holdings Limited (Tabcorp) applied to the Tribunal for merger authorisation to acquire all of the shares in Tatts Group Limited (Tatts).

On 22 June 2017 the Tribunal made a determination granting Tabcorp authorisation to acquire shares in Tatts subject to the condition that Tabcorp give the ACCC an undertaking pursuant to section 87B of the CCA in the same form as the undertaking filed with the Tribunal dated 29 May 2017.

The ACCC applied to the Federal Court of Australia on 10 July 2017 for judicial review of the Tribunal's determination granting authorisation for Tabcorp's proposed acquisition of Tatts.

On 20 September 2017 the Full Court of the Federal Court set aside the decision of the Australian Competition Tribunal to grant authorisation for Tabcorp Holdings Limited to acquire Tatts Group Limited, referring the decision back to the Tribunal for further consideration.

2. Protecting consumers and supporting fair trading

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

- 2.1. The ACCC enforces the ACL to prevent and redress harm to consumers and small businesses. Another key role of the ACCC is to inform businesses and consumers of their rights and obligations under the CCA through engagement, education and the provision of specialised information. This function also includes actions taken to ensure Australian consumers are not harmed by unsafe products.
- 2.2. Each year the ACCC reviews its compliance and enforcement priorities to determine where to focus its efforts to maximise impact, including by preventing and redressing harm to consumers and small businesses. The ACCC consults both internally and externally with ACL regulators, consumer advocacy groups, external dispute resolution and ombudsman schemes and other government departments on current and emerging issues; and also analyses data from thousands of people who contact the ACCC Infocentre.
- 2.3. In 2017 the ACCC's Compliance and Enforcement priorities for consumer protection include:
 - consumer issues in the agriculture sector and private health insurance
 - consumer issues in new car retailing, including responses by retailers and manufacturers to consumer guarantee claims
 - issues arising from the ACCC's monitoring of broadband speed and performance claims
 - consumer guarantees, including in relation to services such as those provided by the airline industry
 - providing education to business and consumers in relation to new country of origin labelling laws
 - ensuring compliance by business with new excessive payment surcharge laws
 - consumer issues arising from commission based sales business models
 - working with internet platform providers to prevent the supply of unsafe products into Australia
 - ensuring small business receives the protections of:
 - industry codes of conduct, including the Franchising Code, the Food and Grocery Code and the Horticulture Code, and
 - the new unfair contract terms law.
 - Informing the public of emerging scams in a variety of ways including public warning notices or other media engagement, and
 - consumer protection issues impacting on vulnerable and disadvantaged consumers.
- 2.4. In 2016 the ACCC made Indigenous consumer protection an enduring priority. This recognised that Indigenous consumers, particularly in remote areas, continue to face challenges in asserting their consumer rights. Indigenous consumer protection will always be a priority whilst these challenges remain.

- 2.5. The ACCC has commenced reviewing its 2017 compliance and enforcement priorities to determine where it will focus its efforts in 2018.

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

Proceedings

- 2.6. Total penalties awarded by the Federal Court under the ACL pecuniary penalty regime are over \$98 million since the introduction of the new consumer law remedies and powers in the CCA in April 2010, together with the introduction of the ACL on 1 January 2011. As at 30 September 2017 this figure encompasses 28 ACCC cases where penalties awarded by the Court have been at or above \$1 million.
- 2.7. In the September quarter the ACCC was involved in 35 legal proceedings relating to consumer protection. Of these:
- 29 cases were carried over from the previous quarter*
 - 6 cases were commenced
 - 3 cases were concluded, and
 - 32 cases remain ongoing at the end of the quarter.

** Valve Corporation Pty Ltd was omitted from the April-June 2017 ACCCount but is included in this quarter.*

Proceedings commenced

FORD MOTOR COMPANY OF AUSTRALIA LIMITED

In July 2017 the ACCC instituted proceedings against Ford Motor Company of Australia Limited (Ford) alleging that it engaged in unconscionable and misleading or deceptive conduct, and made false or misleading representations in its response to customer complaints.

The customer complaints were about Ford's Focus, Fiesta and EcoSport vehicles supplied in Australia between 2011 and 2016, which featured a type of transmission known as PowerShift Transmission (PST).

The ACCC alleges that about half of the 70,000 vehicles sold had at least one repair relating to the PST. Customers made complaints to Ford and its dealers about their car's excessive shuddering and jerking when accelerating, loss of gear selection and sudden loss of power and/or excessive noisiness from the PST.

From 2011 to May 2015, Ford allegedly refused to provide a refund or replacement vehicle to consumers, even after vehicles had undergone multiple repairs that had not fixed the issue. In most cases, Ford only provided replacement vehicles in accordance with its "PowerShift Ownership Loyalty Program", which required consumers to make a significant payment towards a replacement vehicle.

It is also alleged that in most cases Ford refused to provide a refund or a replacement vehicle unless customers participated in the Powershift Ownership Loyalty Program by making a substantial payment for a replacement vehicle, which was on average \$7,000. As a result customers who could not afford to make these payments felt that they had no option but to continue to use their vehicles.

The ACCC alleges that Ford's conduct towards customers who had complained of issues with their vehicles was unconscionable. It is also alleged that Ford then on-sold vehicles surrendered as part of the Powershift Ownership Loyalty Program to wholesalers and customers, without disclosing the systemic or specific issues experienced with those vehicles.

The ACCC is seeking relief including declarations, injunctions, pecuniary penalties, consumer redress orders, corrective advertising, and compliance program obligations.

The ACCC has expressed concerns about the level of non-compliance with the ACL in the new car industry. These issues are detailed in the ACCC's [new car retailing market study draft report](#) released in August 2017.

DOMAIN NAME CORP & ORS

In August 2017 the ACCC instituted proceedings against Domain Name Corp Pty Ltd and Domain Name Agency Pty Ltd (also trading as Domain Name Register) (the Domain companies) alleging that they engaged in misleading or deceptive conduct and made false or misleading representations to Australian businesses about the domain name services they offered.

From November 2015 to at least April this year, the Domain Companies sent out approximately 300,000 unsolicited notices to businesses, which the ACCC alleges looked like a renewal invoice for the business's existing domain name. Instead, these notices were for the registration of a new domain name, at a cost ranging from \$249 to \$275.

The ACCC alleges that because these notices looked like they were renewal invoices, many businesses paid them thinking they were simply renewing the domain name for their business. The ACCC is alleging that the businesses were instead unwittingly signing up for a new domain name ending in either a net.au or .com suffix that the business might not have needed or wanted, and that the fine print disclaimer was easily missed.

The ACCC is also alleging that the sole director of both the Domain companies was involved in the conduct.

The ACCC is seeking declarations, injunctions, pecuniary penalties, corrective advertising, disqualifying orders against the director and costs.

MR TUAN NGUYEN

In August 2017 the ACCC commenced proceedings in the Federal Court against Mr Tuan Nguyen to enforce payment of a \$50,000 penalty previously ordered for breaches of consumer law.

In 2013 the Court found that Mr Nguyen was knowingly engaged in conduct that was misleading or deceptive and made false or misleading representations to five small businesses that:

- the business had agreed to purchase printer cartridges from Artorios Ink, when in fact there was no such agreement;
- Artorios Ink was an approved, regular or current supplier of the business, when in fact it was not; and
- Artorios Ink had instituted proceedings in the Magistrates' Court of Victoria

against the business to obtain payment for printer cartridges, when in fact Artorios Ink had not instituted any such proceedings.

Artorios Ink was deregistered in January 2015. The Court ordered Mr Nguyen to pay a penalty of \$50,000 but he made no payments and filed for bankruptcy.

As Mr Nguyen has now been discharged from bankruptcy, the ACCC is seeking a garnishee order requiring Mr Nguyen's employer to withhold part of his wages in order to pay the penalty previously ordered.

viagogo AG

In August 2017 the ACCC instituted proceedings in the Federal Court against ticket reseller viagogo AG (Viagogo), alleging it breached the ACL when reselling entertainment, music and live sport tickets from 1 May to 26 June 2017.

The ACCC alleges that Viagogo made false or misleading representations, and engaged in misleading or deceptive conduct, regarding the price of tickets on its online platform by failing to disclose substantial fees.

In particular, the ACCC alleges that Viagogo:

- failed to disclose significant and unavoidable fees upfront in the ticket price, including a 27.6 per cent booking fee for most events and a handling fee,
- made misleading representations on its website that tickets to certain events were scarce and likely to run out soon, without disclosing that this 'scarcity' referred to tickets on its website only, and
- misled consumers by promoting itself as an authorised ticket seller through the use of the word 'official' in search engine advertisements such as Google.

The ACCC is seeking declarations, injunctions, pecuniary penalties, corrective publication orders, orders for a compliance program and costs.

JJ RICHARDS & SONS PTY LTD

In September 2017 the ACCC instituted proceedings in the Federal Court against JJ Richards & Sons Pty Ltd (JJ Richards) alleging that eight clauses in its standard form small business contract are void because they are unfair under the ACL. JJ Richards is one of the largest privately-owned waste management companies in Australia and provides recycling, sanitary, and green waste collection services.

From 12 November 2016 the unfair contract terms provisions of the ACL were extended to cover standard form contracts involving small businesses.

The ACCC alleges that until at least April this year, JJ Richards entered into standard form contracts containing terms the ACCC alleges are unfair because they:

- create a significant imbalance in the rights and obligations of JJ Richards and small businesses
- are not reasonably necessary to protect JJ Richard's legitimate interests, and
- would, if relied on, cause significant financial detriment to small

businesses.

The ACCC alleges JJ Richards's standard form small business contracts contain eight unfair contract terms:

- binding customers to subsequent contracts unless they cancel the contract within 30 days before the end of the term;
- allowing JJ Richards to unilaterally increase its prices;
- removing any liability for JJ Richards where its performance is "prevented or hindered in any way";
- allowing JJ Richards to charge customers for services not rendered for reasons that are beyond the customer's control;
- granting JJ Richards exclusive rights to remove waste from a customer's premises;
- allowing JJ Richards to suspend its service but continue to charge the customer if payment is not made after seven days;
- creating an unlimited indemnity in favour of JJ Richards; and
- preventing customers from terminating their contracts if they have payments outstanding and entitles JJ Richards to continue charging customers equipment rental after the termination of the contract.

The ACCC is seeking declarations that the terms are unfair and consequently void, and injunctions to prevent JJ Richards from relying on those terms or entering into future contracts with small businesses that contain them.

SERVCORP LTD & ORS

In September 2017 the ACCC instituted proceedings against Servcorp Ltd and two of its subsidiaries (Servcorp) alleging that a number of terms in Servcorp's standard form contracts with small businesses are unfair and should be declared void.

Servcorp supplies serviced office space and virtual office services such as office suites, secretarial services, IT, communications and personal assistants to its clients, many of whom are Australian small businesses.

The contract terms which the ACCC alleges are unfair include terms that:

- automatically renew a customer's contract and allow Servcorp to unilaterally increase the contract price after the renewal and without prior notice to the customer
- permit Servcorp to unilaterally terminate the contract and to impose penalty-type consequences on the customer
- unreasonably limit Servcorp's liability or which impose unreasonable liability on the customer
- permit Servcorp to unilaterally determine whether the contract has been breached, and
- permit Servcorp to unilaterally acquire the customer's property without any notice.

The ACCC alleges that these terms in Servcorp's standard Service Agreement are contrary to the unfair contract term provisions of the ACL. It also considers

that these terms are not reasonably necessary to protect Servcorp's legitimate interests.

The ACCC is seeking declarations that these clauses are unfair and void, injunctions, publication orders, compliance program orders and costs.

Proceedings appealed

MEDIBANK PRIVATE LIMITED

In September 2017 the ACCC lodged a Notice of Appeal from the Federal Court's decision on 30 August 2017 dismissing the ACCC's proceedings against Medibank Private Limited (Medibank).

In June 2016 the ACCC had instituted proceedings against Medibank alleging it contravened the ACL by engaging in misleading conduct, making false or misleading representations and engaging in unconscionable conduct. The allegations related to Medibank's failure to notify Medibank members and members of its subsidiary brand, ahm, of its decision to limit benefits for in-hospital pathology and radiology services, despite representing across a number of its communication and marketing materials that it would.

The ACCC also alleged that a reasonable consumer would have understood Medibank's statements to mean they would be covered for in-hospital pathology and radiology services and not incur out-of-pocket expenses for those services.

Justice O'Callaghan dismissed all allegations, finding that:

- Medibank's use of the word "cover" cannot be read to mean "entirely cover" or "indemnify" and is therefore not misleading
- Medibank did not represent to consumers that it would notify them in advance of detrimental changes to their benefits, and
- because Medibank did not engage in misleading or deceptive conduct, it cannot have been unconscionable to its customers.

The appeal will be heard on a date to be fixed by the Full Federal Court.

LG ELECTRONICS AUSTRALIA PTY LTD

In September 2017, the ACCC lodged a Notice of Appeal from the Federal Court's decision on 1 September 2017 dismissing the ACCC's proceedings against LG Electronics Australia Pty Ltd (LG).

The ACCC had alleged that LG made false or misleading representations to consumers about their rights in relation to faulty LG products.

In relation to complaints about defects with its televisions, the ACCC alleged LG misrepresented to consumers, retailers, or repairers that:

- the remedies available to consumers were limited to the LG manufacturer's warranty;
- where the defect occurred after the LG manufacturer's warranty had expired:
 - the consumer was only entitled to a remedy if the consumer paid for the costs of assessing the failure; and/or
 - LG had no further obligations, and any step it took in relation to the television was an act of goodwill; and/or

- the consumer was only entitled to have the television repaired (and not to a refund or replacement); and/or
- the consumer was liable for the labour costs of the repair.

The Court dismissed the ACCC's allegations, finding that LG was under no obligation to inform these consumers of the existence of the ACL remedies available to them because the enquiry made by consumers related only to the manufacturer's warranty.

Proceedings concluded

SNOWDALE HOLDINGS PTY LTD

In July 2017 the Federal Court ordered Snowdale Holdings Pty Ltd (Snowdale) to pay penalties totalling \$750,000 for making false or misleading representations that its eggs were 'free range', in proceedings brought by the ACCC.

This is the highest penalty that a Court has ordered in relation to misleading 'free range' egg claims.

Snowdale supplied eggs labelled as 'free range' in Western Australia under brands including Eggs by Allah, Swan Valley Free Range and Wanneroo Free Range. Snowdale also promoted its eggs as 'free range' on the Eggs by Allah website from May 2013.

In May 2016 the Federal Court found that Snowdale's labelling of its eggs as 'free range' between April 2011 and December 2013 was misleading or deceptive, and amounted to false or misleading representations. The Court found that most of the hens from Snowdale's sheds did not go outside as the farming conditions significantly inhibited them from doing so. These conditions included the number of pop holes, the number of birds per metre of pop hole, the flock size inside the shed and the shed size.

The Court has also made an order preventing Snowdale from using the words 'free range' in connection with its eggs unless the eggs are produced by hens that are able to go outside on ordinary days, and most of which actually go outside on most days.

Snowdale was also ordered to implement a consumer law compliance program and pay a contribution towards the ACCC's costs.

This case forms part of the ACCC's broader work in the area of free range claims made by egg producers.

In April 2017 Commonwealth, State and Territory Consumer Affairs Ministers introduced a national information standard under the Australian Consumer Law. The standard requires eggs labelled as 'free range' to have been laid by hens with meaningful and regular access to the outdoors and with a maximum outdoor stocking density of 10,000 hens.

GET QUALIFIED AUSTRALIA PTY LTD

In August 2017 the Federal Court ordered Get Qualified Australia Pty Ltd (Get Qualified) to pay an \$8 million penalty and its sole director, Mr Adam Wadi, to pay a penalty of \$500,000.

This is one of the highest penalties ever awarded for breaches of the ACL. The

Federal Court found that Get Qualified made false or misleading representations and engaged in unconscionable conduct in its supply of services to consumers seeking recognition of their prior learning to gain qualifications.

Justice Beach stated that the “education sector has been infected by the parasitic practices of operators preying upon the vulnerable and the unwary” and that Get Qualified’s conduct was “serious, extensive and deliberate”.

The Court also made declarations that Get Qualified:

- made false or misleading representations and engaged in unconscionable conduct in its supply of services to consumers seeking recognition of their prior learning to gain qualifications
- imposed an unfair contract term and entered into unsolicited consumer agreements by making uninvited sales phone calls to people, failing to disclose the full terms of the agreement and requiring payment within ten business days.

Mr Wadi was found to be knowingly concerned in this conduct. In addition to ordering Mr Wadi to pay a penalty of \$500,000, the Court made an order disqualifying Mr Wadi from managing a corporation for seven years.

Get Qualified was placed into liquidation in March 2017 and did not defend the case at trial.

Judgments

WE BUY HOUSES PTY LTD & RICK OTTON

In August 2017 the Federal Court found that We Buy Houses Pty Ltd (We Buy Houses) and its sole director, Rick Otton, made false or misleading representations in promoting a number of wealth creation strategies involving real estate.

We Buy Houses promoted these strategies throughout Australia via published material, seminars, boot camps and mentoring programs. Consumers were enticed by these false or misleading representations to attend training programs, including paid boot camps and mentoring.

The Court found that We Buy Houses did not have a reasonable basis for representing that, by following its strategies, consumers could:

- buy a house for \$1, without needing a deposit, bank loan or real estate experience, or using little or none of their own money
- create passive income streams through property and quit their jobs
- build a property portfolio without their own money invested, new bank loans or any real estate experience, and
- start making profits immediately and create or generate wealth.

The Court found that We Buy Houses failed to sufficiently inform consumers that the strategies could only realistically be successfully implemented by a consumer who already owned real estate, or who was able to finance a bank loan.

The Court also found that Mr Otton had made false or misleading representations that he had successfully implemented the wealth creation strategies he taught. In addition, a book authored by Mr Otton, and websites operated by We Buy Houses

and Mr Otton, included testimonials from ‘students’ claiming they were able to buy a house for \$1 which the court found were false or misleading.

The Court held that Mr Otton knew and approved of all the materials published by We Buy Houses, and was both knowingly concerned in and a party to the conduct of We Buy Houses.

A relief hearing will be held on a date to be fixed and the ACCC is seeking relief including penalties and a disqualification order against Mr Otton.

Infringement notices

- 2.8. 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.
- 2.9. In the September quarter the ACCC received payment for three infringement notices arising from one matter.

LULULEMON ATHLETICA AUSTRALIA PTY LTD

In July 2017 Lululemon Athletica Australia Pty Ltd (Lululemon) paid penalties totalling \$32,400 following the ACCC issuing three infringement notices for alleged false or misleading representations about consumer guarantee rights.

The ACCC alleged that Lululemon had listed sale items on its website from 1 May to 24 May 2017 with statements that represented that consumers were not entitled to return and obtain a refund for, or exchange, these items under any circumstances.

It was also alleged that the return policy published on Lululemon’s website represented that consumers were not entitled to a remedy for final sale items under any circumstances.

In November 2016, a customer contacted Lululemon requesting a refund for products she considered were faulty but received an email from a Lululemon representative that said “We do not offer refunds for quality garments”. The ACCC considers that this statement represented that the consumer was not entitled to a refund if the products were faulty.

Undertakings accepted

- 2.10. The ACCC also resolves alleged contraventions of the ACL by accepting court-enforceable, non-court based undertakings under s.87B of the CCA, or via an administrative resolution.
- 2.11. In the September quarter, there was one s.87B undertaking given relating to consumer protection.

GM HOLDEN LTD

In August 2017 the ACCC accepted a court-enforceable undertaking from GM Holden Ltd (Holden), which commits Holden to comply with its consumer guarantee obligations under the ACL and adopt recommendations from the recent ACL review.

The ACCC investigated Holden following consumer complaints about its response to a manufacturing fault.

Holden acknowledged the concerns expressed by the ACCC and has committed to, among other things:

- clarify its internal compliance training program so that multiple minor failures of a vehicle may constitute a major failure
- for new vehicles, offering consumers a refund or replacement without the need for them to demonstrate a major failure, if a defect prevents a vehicle from being driveable within 60 days of the date of purchase
- engage an external reviewer to consider complaints since 1 January 2016, and provide a remedy to consumers where appropriate
- amend its dealer policies and procedures to ensure they comply with the ACL in relation to consumer guarantees, and
- provide consumers with the ability to obtain information about any issues with their vehicle by contacting Holden and giving their vehicle identification number.

The ACCC's [new car retailing study draft report](#) was released in August and elaborated on the widespread compliance issues the ACCC has encountered across this industry.

Administrative resolutions and other compliance and enforcement tools

- 2.12. The ACCC will sometimes resolve matters administratively often involving agreements to stop or change conduct and provide appropriate redress to the conduct in question. In some cases, we will publicly announce these administrative resolutions. We also use a range of other compliance and enforcement tools to draw attention to consumer protection issues and to improve compliance.
- 2.13. In the September quarter administrative resolutions were agreed with ALDI, and Davantage Group Pty Ltd (trading as National Warranty Company).

ALDI

In July 2017 the ACCC raised concerns with ALDI regarding its promotion of ALDI Green Action Flushable Bathroom Cleaning Wipes (100pk) in its Special Buys Catalogue. The ACCC's concerns stemmed from the use of the term 'flushable', in particular the concern that such a claim may mislead consumers if the claim cannot be substantiated.

The ACCC is already pursuing alleged misleading 'flushable' claims more generally, with [two proceedings currently before the Federal Court](#) against Pentel and Kimberly-Clark Australia Pty Ltd.

Part of the ACCC allegations around those two proceedings are the products do not, for example, disintegrate like toilet paper when flushed. The ACCC says Australian water authorities face significant problems when non-suitable products are flushed down the toilet as they contribute to blockages in household and municipal sewerage systems.

ALDI has been responsive to the ACCC's concerns, and it is understood that it has since withdrawn the product from its Special Buys promotion.

The ACCC is also speaking with other industry players regarding similar products sold in Australia which make a 'flushable' claim.

DAVANTAGE GROUP PTY LTD

In September 2017 the ACCC raised concerns with Davantage Group Pty Ltd trading as National Warranty Company (NWC) in relation to its 'Extension to Manufacturer's Warranty', which is primarily sold through used-vehicle dealerships.

NWC's extended warranties are available nationally through dealers for new and used vehicles. The ACCC investigated following concerns that NWC's extended warranties had the potential to mislead consumers about the benefits, and need for, purchasing an extended warranty.

In particular, the ACCC was concerned that:

- the product name, 'Extension to Manufacturer's Warranty', had the potential to mislead consumers into thinking they received cover on the same terms as the vehicle manufacturer's warranty, when it was a generic product that contained a number of exclusions and financial limitations not normally found in a manufacturer's warranty
- certain statements contained in the product terms represented that the warranty benefits were in addition to the statutory protections under the ACL, when there was clear overlap with the consumer guarantee provisions.

NWC has since renamed the product to 'Optimum Warranty', and agreed to make several amendments to the product terms. NWC has also committed to review its other warranty products to ensure compliance with the ACL, and will monitor how motor dealers promote and sell its warranty products.

Indigenous consumers

- 2.14. In the September quarter Ministers endorsed the [2017-19 National Indigenous Consumer Strategy \(NICS\) Action Plan](#). NICS members are the ACCC, ASIC, state consumer affairs agencies and the Indigenous Consumer Action Network. NICS members work together to ensure that issues affecting Indigenous Australians are given a priority within each of the agencies and organisations.
- 2.15. The NICS Action Plan acknowledges that certain business practices continue to affect Indigenous consumers disproportionately, particularly those who live in remote and regional areas. The 2017-19 NICS Action Plan includes priority areas such as:
 - trading practices with a focus on door-to-door and telemarketing
 - scam practices with a focus on improving consumer awareness of scams
 - consumer-directed care focusing on the NDIS and increasing consumers' awareness of their rights, and
 - motor vehicles focusing on consumer and dealer rights and obligations.
- 2.16. In September 2017 Hope Vale became the third Indigenous community to become 'Do Not Knock Informed' (DNKi). The DNKi project represents a partnership between Indigenous communities, the ACCC, and the relevant state/territory fair trading agency. In this case the ACCC has partnered with the Hope Vale Aboriginal Shire Council, Cape York Partnership and Queensland Office of Fair Trading.
- 2.17. DNKi is about working with Indigenous communities to bring about consumer empowerment and choice. The project does not seek to ban door-to-door trade within

Indigenous communities but rather empower Indigenous consumers with the necessary consumer rights knowledge to best deal with this type of trade. Hope Vale consumers can choose to either negotiate with door-to-door traders or stop them from coming to their home by displaying a Do Not Knock sticker on their front door. DNKi also puts visiting traders on notice that they are expected to abide by the ACL and that consumers will enforce their consumer rights by reporting unlawful conduct.

Public warning notices

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

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

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

Consumer Consultative Committee

- 2.23. The Consumer Consultative Committee provides a forum through which consumer protection issues can be addressed collaboratively between the ACCC and consumer representatives.
- 2.24. The ACCC held a meeting of this committee on 15 September 2017. Topics discussed included the ACL review, Digital Literacy for Older Australians, disadvantaged and vulnerable consumers, and planning for the 2018 National Consumer Congress and Ruby Hutchison Lecture.

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

- 2.25. Educating consumers about their consumer rights is central to the ACCC's work protecting the interests and safety of consumers. The ACCC's education campaigns support consumers to navigate complex or difficult consumer decisions to help them make smart choices.
- 2.26. The ACCC commenced a compliance project on Consumer Directed Aged Care. The project aims to deliver educational resources to the aged care sector to inform consumers, their support networks and industry on their rights and obligations under the CCA and ACL. The resources are scheduled to be launched by mid-2018.

2.27. During this quarter ACCC online consumer education resources were accessed 939 067 times.

Scams

2.28. The ACCC's Scamwatch website provides consumers and small businesses with information about scams. The Scamwatch website attracted 517 702 visits this quarter.

2.29. This quarter the ACCC issued three media releases about prevalent or emerging scams. Topics covered were investment scams, National Broadband Network (NBN) scams and Apple iTunes gift card scams. These three media releases were also sent as radar alerts to our 62 800 Scamwatch email subscribers, as was another alert about the recently translated scams information available in 12 languages other than English.

2.30. The ACCC also operates a Scamwatch Twitter account, @Scamwatch_gov, which alerts the public to scams targeting consumers and businesses, and advises how to recognise, avoid and report them. The Scamwatch Twitter account continued to expand its reach with over 14 950 followers by 30 September 2017, which is an increase of approximately 900 followers during the quarter. About 75 tweets or retweets were posted during the quarter.

2.31. In August 2017 the ACCC concluded its 'scams disruption' project that used financial intelligence to identify Australians sending funds to high-risk jurisdictions and advising them that they may have been targeted by a scam. During the course of the project (which ran for over three years), the ACCC sent more than 10 000 letters to potential scam victims. About 70 per cent of those who received our warning letters stopped sending money overseas within six weeks of receiving the letter. As the ACCC recognises the ongoing and widespread harm caused by a range of scams, this discrete project has closed to allow the ACCC to redirect its resources to other projects, including awareness raising and working with other organisations to combat scams.

Supporting a vibrant small business sector

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

2.33. During this quarter the ACCC's online business education resources were accessed 404 147 times.

2.34. During this quarter we developed a report titled 'Small Business In Focus' that provides a summary of ACCC activities in small business and franchising sectors and updates on industry codes which is released twice a year.

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

- a program for small businesses covering major aspects of the CCA and ACL—over 34 000 users have accessed this program since its launch in April 2013, including nearly 1500 this quarter
- a program for tertiary students studying subjects that touch on the CCA and the ACL—over 41 000 users have accessed this program since its launch in November 2013, including almost 1500 this quarter, and

- a franchising pre-entry education program administered by Griffith University—over 13 000 people have enrolled in this program since July 2010, including more than 550 this quarter.
- 2.36. During the September quarter, 22 email updates were sent to the ACCC's small business and franchising information networks. The updates provided subscribers with information about:
- the ban on excessive payment surcharges
 - franchisors' end of financial year obligations under the Franchising Code of Conduct
 - two new videos on the ACCC YouTube channel: webinar recordings for country of origin food labelling and 'levelling the playing field for small businesses' scams, including translated ACCC publications and promoting the NSW Small Business Commissioners cybercrime survey
 - ACCC enforcement action in relation to business-to-business unfair contract terms
 - the passage through Parliament of the Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017, the Competition and Consumer Amendment (Misuse of Market Power) Bill 2017 and the Competition and Consumer Amendment (Competition Policy Review) Bill 2017
 - our 'Small Business In Focus' publication
 - franchisors' obligations to prepare financial statements under the Franchising Code of Conduct if they operate a marketing fund, and
 - the ACCC's Electricity Inquiry and New Car Retailing Industry Market Study.

Country of Origin Food Labelling

- 2.37. The Country of Origin Food Labelling Information Standard 2016 commenced on 1 July 2016 and has a two-year transition period, allowing businesses time to change their labels to comply with the new law before it becomes mandatory on 1 July 2018.
- 2.38. In February 2017 the ACL's country of origin 'safe harbour' defences were also amended. The amendments changed the criteria that a business must satisfy to claim a safe harbour. If a business is able to meet the conditions of a safe harbour, they will have an automatic defence to allegations that they have contravened the ACL by making that country of origin claim.
- 2.39. During the quarter the ACCC soft-launched a dairy food information sheet, providing guidance to key dairy food businesses to help them understand the new country of origin food labelling framework.

Horticulture Code of Conduct

- 2.40. The Horticulture Code of Conduct is a mandatory industry code under section 51AE of the CCA and is enforced by the ACCC. A revised Horticulture code took effect on 1 April 2017.
- 2.41. The ACCC website continues to be updated with new guidance, including FAQs.
- 2.42. This quarter the ACCC attended several events held by the industry and gave presentations to peak industry bodies to promote the new Horticulture Code.

- 2.43. The ACCC prepared two articles on Horticulture Produce Agreements for both traders and growers, which were distributed by various grower associations to members.

Small Business and Franchising Consultative Committee

- 2.44. The Small Business and Franchising Consultative Committee is a forum where competition and consumer law concerns related to the small business and franchising sectors can be discussed by industry and government.
- 2.45. Membership of the committee includes industry representatives, legal professionals, small business and franchising advocates and academics. It is chaired by ACCC Deputy Chair, Dr Michael Schaper. Committee meetings are held at least twice a year. A selection process for new Committee members will be run before the end of the year.
- 2.46. The committee did not meet this quarter. The next meeting will be held on 13 October 2017.

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

- 2.47. Risk and intelligence inform the ACCC's approach to assessing current and emerging safety issues. The ACCC draws from numerous data sources to identify safety issues in consumer products. Data sources include mandatory reports of serious illness, injury or death, recalls that have taken place internationally and information received from the community. After the ACCC assesses relevant information, action may include:
- negotiating the recall of goods
 - educating industry and consumers
 - negotiating voluntary changes to packaging labelling or product design
 - working to introduce changes to voluntary or mandatory requirements, and/or
 - introducing and/or working to implement changes to product safety mandatory standards and bans.

Takata airbag recall

- 2.48. The Takata airbag recall is the world's largest automotive recall, affecting up to 100 million vehicles^[1]. Recalls are being conducted globally by manufacturers including those in the US, Canada, Europe, China, Malaysia and Japan.
- 2.49. A large number of motor vehicles (including motorcycles) supplied in Australia since the late 1990s have Takata airbags installed. Takata airbags use phase-stabilised ammonium nitrate (PSAN) as the propellant in the inflator. Over time moisture can enter the inflator, and the moisture and temperature cycling can cause the PSAN propellant to degrade. Degraded propellant can burn more rapidly than intended. During a collision a misdeployment can occur where the over-pressurised metal housing of the airbag inflator ruptures and fragments are projected into the vehicle cabin which may kill or injure vehicle occupants.
- 2.50. The death of a New South Wales motorist on 13 July 2017 has been linked to a defective Takata airbag, while in April 2017 a 21 year old woman was admitted to

^[1] DIRD, *Recall of vehicles in Australia fitted with Takata airbags: Report on progress and status of the recalls* (July 2017) page 3 [infrastructure.gov.au/vehicles/recalls/files/report-on-takata-airbag-recall.pdf](https://www.infrastructure.gov.au/vehicles/recalls/files/report-on-takata-airbag-recall.pdf).

Royal Darwin Hospital for more than two months after the Takata airbag unit in her car apparently projected a piece of metal at her face. There have been at least 19 deaths reported to be caused by defective Takata airbags worldwide, and many more injuries.

- 2.51. On 25 July 2017 the Minister for Small Business, the Hon Michael McCormack MP, and the Minister for Urban Infrastructure, Mr Paul Fletcher MP, wrote to vehicle manufacturers with models potentially affected by voluntary recalls demanding answers about their Takata airbag recall efforts.
- 2.52. From the responses to these letters, the ACCC identified that the overall measures to implement the recalls fail to adequately address the urgency of the safety issue. Actions to date proposed by vehicle manufacturers arguably fail to demonstrate a sufficient level of urgency and commitment to their consumer safety obligations.
- 2.53. The ACCC formed the Takata Taskforce (TTF) in late July and on 6 August 2017 Minister McCormack issued a Safety Warning Notice under section 129 of the ACL which included advice that the ACCC was investigating the safety of motor vehicles containing Takata airbags.
- 2.54. The investigation by the TTF has included serving CCA section 133D disclosure notices to a number of vehicle manufacturers, meeting with officials from the US National Highway Traffic Safety Administration (NHTSA) in Washington, and obtaining information from experts.
- 2.55. On 21 September 2017 Minister McCormack issued a proposed compulsory recall notice and draft recall notice. In accordance with section 132A of the CCA, Minister McCormack also invited suppliers to request a conference with the ACCC in relation to the proposed issue of the recall notice. This conference took place on 9 October in Melbourne.

Decorative alcohol fuelled devices

- 2.56. Decorative alcohol fuelled devices (also known as ethanol burners) are designed for domestic use and produce a flame using liquid ethanol as fuel. The devices are primarily used for decoration although the larger models also provide heating.
- 2.57. Since 2010 there have been at least 113 reported incidents involving decorative alcohol fuelled devices across Australia. These incidents are associated with at least 105 injuries and 36 house fires. Those injured range in age from newborn babies to pensioners, and their injuries include second or third degree burns requiring intensive care, skin grafts, operations, lengthy hospital stays and physiotherapy.
- 2.58. On 16 March 2017 Minister McCormack imposed a national interim ban on certain decorative alcohol fuelled devices. The ban came into force on 17 March 2017 for an initial period of 60 days. It was extended for two further 30-day periods and ended on 14 July 2017.
- 2.59. On 10 July 2017 the Minister decided to implement a mandatory safety standard for decorative alcohol fuelled devices. The mandatory standard, Consumer Goods (Decorative Alcohol Fuelled Devices) Safety Standard 2017, came into effect on 15 July 2017.
- 2.60. During this quarter, the ACCC commenced a national surveillance program in line with the mandatory standard. The surveillance program has been an opportunity to raise awareness of the mandatory standard among suppliers during the transition period between the interim ban and the mandatory standard.

- 2.61. The mandatory standard requires decorative alcohol fuelled devices to comply with the following requirements. They must:
- be a permanent fixture or have a dry weight of at least 8 kilograms and a footprint of at least 900 square centimetres
 - meet the stability test set out in the European standard
 - come with a fuel container with a flame arrester or an automatic fuel pump system, and
 - have the prescribed warning.

Product safety recalls

Table 6: Recalls—1 July to 30 September 2017

Recalls assessed by regulator	
General consumer goods—ACL regulators including the ACCC	72
Motor vehicles – DIRD	46
Food – FSANZ	18
Therapeutic goods – TGA	9
TOTAL	145

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

Infinity electrical cable recall

- 2.62. A national recall is underway to remediate premises that have been installed with substandard Infinity electrical cable.
- 2.63. The ACCC has audited individual suppliers to assess their communication strategies and recall efforts. The audit has identified 4722 km of supplied Infinity electrical cable under voluntary recall. This is an increase of approximately 800 km on the supplied figures for the voluntary recall prior to the audit.
- 2.64. As at 30 September 2017, 2400 km (51 per cent) of the voluntarily recalled cable is accounted for via remediation or scheduled remediation.
- 2.65. For further information on the recall, visit www.accc.gov.au/update/infinity-cable-recall-act-now-before-its-too-late.

Samsung top-loading washing machines recall

- 2.66. There is a serious defect in six models of Samsung top-loading washing machines that may cause, and has caused, electrical fires leading to property loss.
- 2.67. The ACCC continues to monitor the recall of the faulty Samsung washing machines, which is led by the NSW electrical safety regulator. The recall is compulsory in NSW but is offered voluntarily in the same terms to consumers in all other states and territories. At the end of the last reporting period in September the recall was approximately 87 per cent complete.
- 2.68. Clear ACCC advice about consumer rights in relation to the faulty machines has helped consumers seek their choice of remedy.

- 2.69. Visit <http://www.productsafety.gov.au/recall/samsung-samsung-top-loader-washing-machines> for more information on the recall.

Mandatory injury reports

- 2.70. The ACCC receives mandatory injury reports from suppliers, which are assessed directly or referred to a specialist regulatory agency for assessment. The total number of assessed mandatory injury reports for this period was 772. Of these, 337 were out of jurisdiction or were referred to another agency for assessment. Sixteen were progressed for investigation, 12 were closed and assessed as part of an ongoing investigation and 407 were assessed as requiring no further action by the ACCC.
- 2.71. This period the ACCC received 214 reports of unsafe products and related enquiries that were escalated to the Consumer Product Safety Branch's Hazard Analysis section for assessment.

Supplier and consumer education

- 2.72. This quarter the ACCC continued to promote actions by some retailers to improve button battery safety, as part of the Button Battery National Strategy developed by ACL regulators and coordinated by the ACCC. These actions included retailers selling button batteries in child resistant packaging and reviewing the placement of button batteries in their store displays.
- 2.73. Takata airbag recalls were promoted in a consumer awareness campaign via ACCC Product Safety social media channels, urging people to check if their vehicles are affected and to take immediate action if they have recalled Takata airbags installed.
- 2.74. During this quarter the ACCC, in partnership with state and territory fair trading agencies, conducted the first round of surveys of furniture and television retailers to establish their adherence with the National Retail Association's Best Practice Guide for Furniture and Television Tip-Over Prevention. The survey found that only 12 per cent of retailers supplied anchors with products captured by the Guide and only 7 per cent displayed any in-store signage warning consumers about the risk of infant deaths or injuries.
- 2.75. The ACCC corresponded with major retailers that account for approximately 50 per cent of the television and furniture market sectors about the survey findings and sought their commitment to make improvements to their compliance programs. Retailers have responded positively with general agreement to roll out all of the key safety measures of the industry guidelines.

Mandatory safety standard reviews

- 2.76. During this quarter the ACCC has conducted analyses and formulated recommendations for the reviews of five mandatory safety standards.
- 2.77. We are finalising our recommendations for the following mandatory safety standards for consumer products:
- exercise cycles
 - vehicle trolley jacks
 - vehicle ramps
 - treadmills, and
 - vehicle support stands.

- 2.78. Reviews take a wide range of stakeholder views into account, including those of other safety regulators, industry participants, test laboratories and safety and consumer advocates. Recommendations to the Minister for Small Business are informed by improvements made to products since the standards were introduced and the impact that the standards have had on the type and rate of injuries, and deaths over time. Where possible, standards' requirements are streamlined to make them more effective and easier for businesses to apply. Warnings are improved so that consumers using the products are better informed of the actions to take to avoid injury.
- 2.79. As part of the ongoing review of mandatory safety standards, the ACCC regularly publishes consultation papers seeking stakeholder submissions. Interested stakeholders can subscribe to our mailing list and receive email alerts about future consultation processes by visiting <https://www.productsafety.gov.au/newsletter/subscribe>.

Consumer Product Safety Compliance

- 2.80. The ACCC conducts safety inspections of consumer products offered in the market through a three-tiered approach that categorises surveillance as high, medium or low priority. When prioritising, the ACCC considers intelligence about market place problems, the length of time since a sector or product was last inspected and the need to plan activities with other agencies. Inspections are a combination of:
- visual inspections of products in-store and online, and
 - performance testing by independent laboratories to check performance requirements mandated by the regulations.
- 2.81. The ACCC also conducts inspections to see how a particular regulation is working. During this quarter we undertook surveillance for the following regulated and non-regulated products: bicycle helmets, decorative alcohol fuelled burners, self-balancing scooters, mini jelly cups containing konjac, sky lanterns, and domestic furniture for toppling risks. As a result of this proactive surveillance program, two bicycle helmets and a toy containing excess DEHP were all recalled by suppliers.

Table 8: Quarterly surveillance snapshot

Total number of retailers/sites surveyed	460
Total number of product lines inspected	195
Total number of products requiring further assessment	56

3. Infrastructure regulation

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

- 3.1. The ACCC's infrastructure regulation role encompasses key infrastructure sectors of the economy, including telecommunications, petroleum, rail, water, ports and airports, and involves:
- regulating access to bottleneck infrastructure and the price for that access. Effective regulation of infrastructure services supports effective competition in upstream and downstream markets, and the economically efficient operation and use of, and investment in, Australia's key infrastructure, thereby promoting the long-term interests of end-users;
 - providing industry monitoring reports to government in relation to highly concentrated, newly deregulated or emerging markets. This includes annual monitoring reports for container stevedoring, airports, telecommunications and water, and at least quarterly reports on the prices, costs and profits relating to the supply of unleaded petroleum products; and
 - enforcing industry-specific competition and market rules in some infrastructure sectors to improve the efficient operation of markets.

Telecommunications

New broadband speeds guidance and strong interest in monitoring program

- 3.2. The ACCC published guidance on the marketing of broadband services on next generation networks (NGNs) on 21 August 2017. The guidance provides further details on six principles the ACCC published in February to guide retailers on best practices when it comes to marketing broadband speeds.
- 3.3. The guidance aims to promote a shift in practice from retailers advertising their services based on the maximum internet speeds that may be delivered during off-peak periods, to the speeds consumers can typically expect to achieve during the busy evening periods between 7pm and 11pm. It proposes standard labels for industry to adopt to give consumers better information about the sort of speeds they can expect during the evenings, and to allow consumers to compare plans.
- 3.4. This guidance is part of a three-pronged strategy by the ACCC to ensure consumers understand what they are purchasing when choosing fixed broadband plans. The other elements are the Broadband Performance Monitoring and Reporting (BPMR) program, and enforcement action in relation to misleading speed claims.
- 3.5. During the quarter the ACCC has progressed its BPMR program. After receiving almost 8,000 expressions of interest from potential volunteers, we are settling a representative sample. We are also in the process of appointing a third party testing provider to measure and report to us on the broadband performance of various broadband services, technologies, speed plans and geographical areas.

Revised proposal to vary NBN Co's access arrangements

- 3.6. The ACCC consulted on a revised variation to NBN Co's special access undertaking (SAU) during the quarter. On 22 June 2017 NBN Co withdrew its original proposed variation and simultaneously lodged a revised version. The main purpose of the

variation is to incorporate FTTN, fibre-to-the-basement and HFC technologies into the SAU to reflect the current multi-technology mix (MTM) NBN model.

- 3.7. The ACCC consulted on the proposal in August, seeking submissions on the application of the SAU pricing framework to MTM services, as well as on other key proposed changes:
- the reinstatement of the "network boundary point" definition;
 - the removal of the term "any other telecommunications network" from the definition of NBN Co Network; and
 - refinement of the co-existence and remediation provisions.
- 3.8. The ACCC is aware that NBN Co is currently undertaking a consultation process with customers on changes to its pricing model. Any changes to the pricing model as a result of this process will require NBN Co to submit a new variation to the ACCC. On 8 October 2017 the ACCC announced it will hold-off further progression of the variation to the SAU until a position on the pricing model has been reached.

Continued progress on communications market study

- 3.9. The ACCC continued to progress its market study into the communications sector during the quarter.
- 3.10. A successful stakeholder forum was held in Sydney on 3-4 July 2017. There was wide participation from approximately 70 industry stakeholders, ranging from large telecommunications service providers, small and new entrant service providers, consumer groups, government and industry bodies.
- 3.11. Topics discussed included immediate issues of concern (such as NBN competition and pricing) and more forward looking issues (such as potential substitution between fixed and wireless technologies and new innovations and growth in over-the-top and Internet of Things services). There was also a session on consumer-related issues, such as consumer information and consumer experience and expectations on the NBN. The ACCC published a summary of the forum discussions on its website.
- 3.12. The views and insights from the forum have assisted in further developing our thinking on key issues, and we expect to release a draft report in October 2017.

Advice to government on allocation limits for unsold spectrum

- 3.13. The ACCC provided the Minister for Communications and the Arts with advice on the auction of unsold spectrum on 14 August 2017. The spectrum is in the 1800 megahertz (MHz), 2 gigahertz (GHz), 2.3 GHz and 3.4 GHz bands. The ACCC's advice followed a request from the Minister in July 2017.
- 3.14. The ACCC recommended that no allocation limits be placed on the 2 GHz, 2.3 GHz and 3.4 GHz bands. We also recommended the retention of the current allocation limit for spectrum in the 1800 MHz band. We conducted targeted consultation as part of preparing the advice.
- 3.15. On 4 September 2017 the Minister made a direction consistent with the ACCC's advice.

NBN wholesale market report - June quarter 2017

- 3.16. The ACCC released its sixth quarterly National Broadband Network Wholesale Market Indicators Report on 11 August 2017, covering the June quarter 2017.

- 3.17. The report reveals shows that there are now at least five access seeker groups acquiring wholesale services directly from NBN Co at 118 points of interconnection (POI), and six access seeker groups at 89 of the 121 POIs. There are over 20 access seekers directly connected to NBN Co's network compared with 14 access seekers when the first report was produced in 2015. Other key findings for the quarter include:
- NBN Co was supplying a total of 2,511,392 broadband wholesale access services (an increase of 21 per cent since the March 2017 quarter);
 - hybrid fibre coaxial (HFC) and fibre-to-the-node (FTTN) connections as a proportion of NBN connections increased significantly — there were 153,371 HFC connections (compared to 14,551 connections 6 months earlier) and 906,602 FTTN wholesale connections (compared to 102,293 connections 12 months earlier);
 - demand for aggregate network capacity (Connectivity Virtual Circuit (CVC) capacity) continues to increase with NBN Co contracted to supply 2,820 gigabits per second (Gbps);
 - the average CVC capacity acquired per user has increased by almost 10 per cent since the previous quarter (from 1 megabit per second (Mbps) to 1.09 Mbps);
 - the most popular speed tier continues to be 25/5 Mbps; and
 - competitors to Telstra in regional areas are consistently maintaining higher market shares compared to traditional broadband services.

Extension of NBN "Services in Operation" record-keeping rule

- 3.18. On 18 September 2017 the ACCC extended the NBN Services in Operation record keeping rule for a further three years until September 2020. The rule requires NBN Co to provide information on the number of wholesale Access Virtual Circuit (AVC) services in operation, the amount of CVC capacity being acquired, and the average CVC utilisation over the NBN. NBN Co is also required to provide relevant extracts for publication in the Wholesale Market Indicators Report. The extension follows an ACCC review of the rule. We are currently consulting to determine whether additional information should be captured by the rule, specifically more details on AVC and CVC, and whether reporting could be more frequent.

Migration plan forbearance for 'high security sites'

- 3.19. The ACCC approved a Telstra request for regulatory forbearance from its Migration Plan obligations on 7 September. The request related to Commonwealth Government High Security sites, which due to their nature are posing difficulties for NBN connection. The regulatory forbearance aims to ensure that, where there are difficulties in making these sites serviceable, they can remain connected to existing services for a limited additional period. Telstra and NBN Co will review the arrangements in 12 months' time.

Fuel

June quarter 2017 petrol monitoring report

- 3.20. On 31 August 2017 the ACCC released its report on the Australian petroleum industry for the June quarter 2017. The report found that retail margins remained high despite quarterly average petrol prices in the five largest cities (i.e. Sydney, Melbourne, Brisbane, Adelaide and Perth) decreasing by 3.9 cents per litre (cpl) from the March quarter to 125.2 cpl.

- 3.21. Retail prices in Brisbane were the highest of the five largest cities in the quarter. They were 3.3 cpl higher than the average across the other four largest cities. The ACCC is currently examining the high retail prices, margins, and profits in Brisbane and a report is scheduled to be released in the next few weeks.
- 3.22. Average gross retail margins (i.e. the difference between retail prices and wholesale prices) in the five largest cities in the June quarter decreased by 0.6 cpl from the previous quarter to 11.7 cpl. On an annual average basis, gross retail margins in real terms in 2016-17 were the highest since the ACCC began monitoring them in 2002.
- 3.23. The report also noted that annual average petrol prices in 2016-17 (122.6 cpl) were at their lowest levels in real terms since 2001-02. Prices in 2016-17 reflected the relatively low international price of refined petrol.
- 3.24. The average differential between prices in regional locations in Australia and prices in the five largest cities was broadly stable in the June quarter 2017, increasing by 0.3 cpl from the March quarter 2017 to 6.2 cpl. Of the four regional petrol markets that the ACCC has studied in depth since 2015 (Darwin, Launceston, Armidale and Cairns) retail prices in Launceston, Armidale, and Cairns remained above a long-term competitive cost-based price in the June quarter 2017. The ACCC will continue to monitor fuel prices in these four regional locations in its quarterly petrol reports.

Promotion of fuel price transparency

- 3.25. On 13 September 2017 ACCC Chairman Rod Sims delivered a speech to the Asia Pacific Fuel Industry Forum in Melbourne. The speech outlined the ACCC's focus on highlighting for consumers the ability of technology to help them find where the cheapest petrol prices are, and to encourage them to buy where petrol is cheapest.

Rail

Commencement of ARTC annual compliance assessment

- 3.26. On 31 August 2017 Australian Rail Track Corporation (ARTC) submitted its annual compliance documentation for the 2015 calendar year. The ACCC commenced consultation on 15 September, with submissions due by 13 October. The 2011 Hunter Valley Access Undertaking requires ARTC to submit annually documentation for ACCC assessment that demonstrates its compliance with the financial model and pricing principles in the undertaking.

Wheat

Wheat code exemptions finalised

- 3.27. On 28 July 2017 the ACCC issued final determinations to exempt Riordan Grain Services and Semaphore Container Services Pty Ltd from having to comply with parts of the Bulk Wheat Code when providing services at their respective Port of Geelong and Port of Adelaide facilities. The exemptions follow public consultation by the ACCC on its draft determinations proposing to exempt the Riordan and Semaphore facilities.

Water

Submission to Victorian Parliament Inquiry

- 3.28. In August 2017 the ACCC provided a submission to the Victorian Parliament's Environment, Natural Resources and Regional Development Committee inquiry into the Management, Governance and Use of Environmental Water. The submission commented on fees and charges applying to environmental water, barriers to more efficient use and management of environmental water, and access to trade, carryover and other mechanisms to manage environmental water. The submission is available on the ACCC website.

Finance and insurance

Competition in clearing and settlement of cash equities

- 3.29. The ACCC continued its work with the Council of Financial Regulators (CFR) on competition in the clearing and settlement of Australian cash equities.
- 3.30. In September 2017 the CFR and ACCC released policy statements for the finalised review of competition in settlement, which took into account the submissions to a consultation paper released in March 2017. The ACCC and CFR also released minor and consequential changes to update policy statements for the review of competition in clearing.
- 3.31. The ACCC is now working with the CFR and the Government on the development of draft legislation to implement the rule-making power for ASIC and the Reserve Bank, and an arbitration power for the ACCC.

Multi-sector

Guidelines on arbitrations under the National Access Regime

- 3.32. The ACCC finalised guidelines for the deferral of arbitrations and backdating of determinations under Part IIIA of the Competition and Consumer Act. This followed consultation on draft guidelines in the previous quarter.
- 3.33. The guidelines provide information on how the ACCC can:
- defer arbitration of an access dispute under Part IIIA where it is also considering an access undertaking on related issues; and/or
 - backdate a final determination and apply payment of interest to a backdated determination.
- 3.34. The guidelines were registered on the Federal Register of Legislative Instruments on 30 August 2017, and following a period allowing for disallowance the ACCC will publish the final guidelines on its website.

ACCC & AER Regulatory Conference

- 3.35. The ACCC and AER annual regulatory conference was held in Brisbane on 27-28 July and was attended by more than 400 delegates. The conference draws together international and local experts to discuss current and emerging issues affecting all regulated infrastructure sectors. Under the broad theme of 'Innovation and Better Regulation' sessions included:

- Current issues relating to the economic regulation of infrastructure from a UK, European and US perspective.
- How other countries address the potential market power of airports
- Innovative regulatory developments in the telecommunications, water and electricity sectors.
- What makes for an excellent economic regulator, and new insights on how to reduce the risk of regulatory failure.
- International comparisons of legal reviews of regulatory decisions.
- Gains from innovation in the communications sector.
- The role of policy makers in transitioning to the electricity industry of the future.
- Infrastructure regulation dwarfed or bypassed by innovation: decentralisation and digitalisation.

3.36. The 2018 conference will be held at the Brisbane Convention and Exhibition Centre on 26-27 July.

4. Market studies and research

Australian east coast gas market inquiry

- 4.1. The ACCC provided its first interim report to the Treasurer as part of its new gas market inquiry role. The report is focussed on likely supply and demand conditions for 2018 for the east coast gas market, given the immediate and apparent supply concerns. We provided the report to the Treasurer on 22 September and it was released publicly on 25 September.
- 4.2. The report predicts that in 2018 the east coast gas market is likely to face a supply shortfall of up to 55 petajoules (PJ), rising to 108PJ if domestic demand is higher than expected. Users of gas, particularly commercial and industrial (C&I) users, are facing very difficult conditions, including limited supply offers, high prices and less flexible terms.
- 4.3. Demand from the three Queensland liquefied natural gas (LNG) projects is more than twice the level of domestic demand. It includes over 60 PJ of forecast sales on international LNG spot markets above contracted levels. High domestic prices suggest that supply of this additional gas into the domestic market may not deprive the LNG projects of profits they would otherwise earn in overseas markets.
- 4.4. The ACCC has also determined reasonable benchmark prices against which to assess current gas prices (including prices being offered to C&I users).
- 4.5. The report follows a direction to the ACCC on 19 April 2017 from the Treasurer to inquire into improving the transparency of gas supply in Australia. The ACCC is required to submit interim reports at least every six months, with a final report due by 30 April 2020. Future reports will cover:
 - conditions for, and pricing of, access to transportation and storage services;
 - long-term supply outlook;
 - reasons why LNG projects are not entering into more international swaps that would allow more supply into the domestic market;
 - retailer costs and margins; and
 - recommendations for improvements to market transparency and consistency of reporting.

Dairy Inquiry

- 4.6. The ACCC is continuing to conduct its inquiry into the competitiveness of prices, trading practices and the supply chain in the Australian dairy industry. The inquiry is being conducted under Part VII of the CCA, which provides the ACCC with compulsory information gathering powers to ensure we can access relevant business information and conduct hearings with businesses in the industry.

Residential mortgage products price inquiry

- 4.7. On 9 May 2017 the Treasurer, the Hon Scott Morrison MP, directed the ACCC to conduct an inquiry into the prices charged or proposed to be charged by banks affected by the Major Bank Levy in relation to residential mortgage products.
- 4.8. The inquiry will monitor prices for the period 9 May 2017 until 30 June 2018.

- 4.9. In undertaking the inquiry, the Treasurer has asked that the ACCC have regard to the Government's view that banks need to fully and transparently account for their decisions. This includes how the banks balance the needs of borrowers, savers, shareholders and the wider community.
- 4.10. The ACCC has issued statutory notices under section 95ZK of the CCA to the five banks affected by the Major Bank Levy seeking information and documents. The ACCC has started receiving responses to the notices and is currently reviewing and analysing this material.
- 4.11. The ACCC will report on the status of the inquiry as appropriate, including by reporting to the Treasurer if the evidence obtained indicates that the banks have passed on the Major Bank Levy to their residential mortgage customers.
- 4.12. The ACCC is engaging with the RBA, APRA, the Productivity Commission and APRA in relation to the inquiry.
- 4.13. A report will be delivered to the Treasurer at the conclusion of the inquiry.

New car retailing industry market study

- 4.14. On 10 August 2017 the ACCC released its draft report for the new car retailing industry study. The report detailed its findings of nearly 12 months of investigation, consultation and research. It identified a number of problems that are harming consumers and hindering effective competition in the industry. Submissions to the draft report closed on 7 September 2017 and the ACCC held a round table with key stakeholders on 25 September 2017 to discuss the report's draft findings and recommendations. In the next quarter, the ACCC will be undertaking further consultation on the draft report before aiming to release the final report by the end of 2017.

Private health insurance report

- 4.15. On 18 July 2017 the ACCC released its report to the Senate for the 2015-16 reporting period. This year's report provided an update on key developments and trends during the period. It found that affordability of private health insurance remains a significant concern for consumers and that consumers are shifting towards lower-cost policies with lower benefits.

Electricity supply and prices inquiry

- 4.16. On 27 March 2017 the Treasurer, the Hon Scott Morrison MP, directed the ACCC to hold a public inquiry into the supply of retail electricity and the competitiveness of retail electricity prices in the National Electricity Market (NEM). The inquiry formally commenced on this date.
- 4.17. On 16 October 2017 the ACCC released a preliminary report in respect of the inquiry. The report highlights significant concerns about competition in the NEM, which is leading to serious problems with affordability for consumers and businesses.
- 4.18. The ACCC is now focused on identifying ways to improve competition in the market and improve the ability of consumers to engage effectively in it. Further submissions have been sought by 17 November 2017. The ACCC is due to provide a final report to government by 30 June 2018.

5. Advocacy and legislative and legal developments

Australian Consumer Law Review

- 5.1. On 30 and 31 August 2017 the ACCC attended the Consumer Affairs Australian New Zealand (CAANZ) and Legislative Governance Forum on Consumer Affairs (CAF) meetings.
- 5.2. In the CAF meeting, Ministers supported CAANZ's recommendations on how to progress each of the proposals in the ACL Review Final Report released on 19 April 2017. Ministers agreed to 15 proposals to make minor amendments to the ACL, supported further public regulatory impact assessment proposals for another seven proposals for legislative change and noted that consumer law regulators will publish guidance to clarify the existing law on three topics and explore options to streamline regulatory processes. Ministers also asked CAANZ to consider further a number of topics which CAANZ was not yet in a position to make recommendations on during the review.
- 5.3. Following the August meetings the ACCC participated in a number of sub-committees of CAANZ members which are progressing the proposals and actions arising from the ACL Review Final Report. This has included:
 - ensuring support for proposed legislative changes and assisting with the development of regulatory impact assessments; and
 - working with CAANZ members to progress work on 'unsafe' goods and 'reasonable durability' guidance and development of guidance on the application of the ACL to the activities of charities, not-for-profits and fundraisers.
- 5.4. The Productivity Commission (PC) separately examined the multi-regulator enforcement and administration arrangements underpinning the ACL in its Consumer Law Enforcement and Administration study. The PC released its Research Report on 12 April 2017. It concluded that the multi-regulator model for enforcing the ACL is operating reasonably well and made 12 findings and 4 recommendations in the areas of, for example, product safety and enforcement tools and remedies.
- 5.5. In the quarter, the ACCC led a sub-committee of CAANZ members advising CAANZ on how it might respond to and progress the findings and recommendations arising from the PC's Research Report. ACL regulators' commitment to continuous improvement in areas such as information sharing, communication and coordination, accountability and reporting was noted by Ministers at the CAF meeting on 31 August 2017.

Product safety advocacy

ACL Review and Productivity Commission Study

- 5.6. The ACL Review Final Report put forward seven product safety related proposals including introducing a general safety provision, streamlining product bans and recalls, strengthening ACCC powers to obtain product safety information, and introducing a product safety incidents database.
- 5.7. The PC Research Study detailed six product safety related findings and recommendations including a number of options to improve interactions between ACL and specialist safety regulators, particularly building and electrical safety regulators.

- 5.8. During the quarter, the ACCC continued to lead a CAANZ sub-committee tasked with progressing the product safety related proposals, findings and recommendations arising from both the ACL Review Final Report and PC Research Study.
- 5.9. The ACCC also attended the Legislative Governance Forum on Consumer Affairs (CAF) and CAANZ meetings on 30 and 31 August 2017, where Ministers agreed, noted and supported the product safety related reforms.

Queensland Building and Construction Legislation Amendment Bill

- 5.10. On 4 August 2017 the Queensland Public Works and Utilities Committee recommended the Building and Construction Legislation (Non-conforming Building Products – Chain of Responsibility and Other Matters) Amendment Bill 2017 be passed. The ACCC supported this Bill through a submission on 21 June 2017.
- 5.11. The Bill gives the Queensland Building and Construction Commission (QBCC) a number of new regulatory and enforcement powers to ensure the safety of building products and buildings, including recall, investigation and information sharing powers.
- 5.12. The Bill was passed with amendment on 24 August 2017. Following this, the Queensland Building and Construction (QBC) Product Committee, which the ACCC attends as an observer, takes on a formal statutory role as the Building Product Advisory Committee (BPAC), tasked with advising the Queensland Commissioner on non-conforming building products. The ACCC will continue as an observer on the BPAC, and will observe their development of governance arrangements, including MoUs and referral templates.

Non-conforming building products

- 5.13. On 23 June 2015 the Senate Economics References Committee commenced an inquiry into non-conforming building products. The inquiry aims to assess the economic impact of non-conforming building products, possible improvements to the current regulatory frameworks and the illegal importation of products containing asbestos.
- 5.14. An interim report on aluminium composite cladding was released on 6 September 2017 proposing eight recommendations to address the issues around non-conforming building products. An interim report on the illegal importation of products containing asbestos is due to be released on 31 October 2017.
- 5.15. A number of portfolio government agencies, including the ACCC, are working together to prepare a whole-of-government response to the interim report on aluminium composite cladding. Where a building product, such as aluminium composite cladding, meets the definition of “consumer goods” under the ACL, a usual-risk based assessment is undertaken by the ACCC.
- 5.16. The final inquiry report on aluminium composite cladding and asbestos is due at the end of April 2018.

Competition Policy Review

- 5.17. On 1 December 2016 the Government introduced the Competition and Consumer Amendment (Misuse of Market Power) Bill 2016 into Parliament (MMP Bill). As at 30 September the MMP Bill was before the Senate.
- 5.18. The MMP Bill aims to implement the Harper Review’s recommended changes to section 46 by amending the misuse of market power provision in the CCA to prohibit

corporations with a substantial market power from engaging in conduct the purpose, effect or likely effect of substantially lessening competition in markets in which they directly or indirectly participate.

- 5.19. Schedule 2 of the MMP Bill repeals the telecommunications-specific anti-competitive conduct provisions in Division 2 of Part XIB of the CCA, and the competition notices and exemption order regime in Division 3 of Part XIB of the CCA.
- 5.20. The Government introduced the Competition and Consumer Amendment (Competition Policy Review) Bill 2017 on 2 February 2017 (CPR Bill). As at 30 September the CPR Bill was before the House of Representatives. The CPR Bill aims to simplify, clarify, and strengthen a range of CCA provisions, including:
 - those relating to cartels
 - introducing a prohibition on concerted practices which substantially lessen competition
 - mergers and authorisations, and
 - The National Access Regime under Part IIIA.

Free Range Eggs

- 5.21. On 18 April 2017 the new National Information Standard on free range egg labelling was published. It will come into effect on 26 April 2018, giving businesses a transition period to adjust to the new rules. The information standard requires eggs labelled as 'free range' to have been laid by hens that had meaningful and regular access to the outdoors, and limits outdoor stocking density to 10 000 hens per hectare. Stocking density must be prominently displayed.
- 5.22. The ACCC is in the process of adjusting its guidance to reflect the new information standard and will publish this guidance before April 2018.

Excessive Payment Surcharge Ban

- 5.23. On 1 September 2017 the excessive payment surcharge ban was applied to all businesses across Australia. The ban restricts the amount a business can charge customers for using EFTPOS (debit and prepaid), Mastercard (credit, debit and prepaid), Visa (credit, debit and prepaid) and American Express cards issued by Australian banks.
- 5.24. The excessive surcharging ban has applied to large businesses since September 2016 and now applies to all businesses that are either based in Australia or use an Australian bank. The ban does not affect businesses that choose not to apply a surcharge to payments.
- 5.25. The ACCC is responsible for enforcing the ban and will investigate complaints relating to excessive payment surcharges.

ASIC Enforcement Review

- 5.26. During the September quarter the ACCC made a submission to the ASIC Enforcement Review on three issues of interest: harmonisation and enhancement of search warrant powers, industry codes in the financial sector, and telecommunication intercept powers. The submissions will become publically available once they are published on the ASIC Enforcement Review website.

Intellectual Property Arrangements

- 5.27. In August, the Government released its response to the Productivity Commission's (PC) Intellectual Property Arrangements Inquiry Final Report. In particular, the Government supported in principle, the PC's recommendation that Australia introduce a pharmaceutical industry pay-for-delay agreement mandatory reporting regime administered by the ACCC.
- 5.28. Pharmaceutical 'Pay-for-delay' agreements are agreements between pharmaceutical patent holders and generic pharmaceutical manufacturers in which the generic agrees, in some way, not to enter or to delay entry to the market for the relevant drug. These agreements limit competition for the affected pharmaceuticals.
- 5.29. Following release of the Government response, the ACCC began to work on the regime framework to inform the Government's future consideration of a legislative response.

6. International collaboration

- 6.1. The ACCC continued to engage closely with competition and consumer protection counterparts around the world. The need for international cooperation has grown as trading across jurisdictional borders has become more frequent and consumers are exposed to more complex transactions occurring across multiple jurisdictions.
- 6.2. This particularly applies to trade with Australia's Asian neighbours, with the growth in trade and investment between Australia and Asia expected to result in an increase in Australian competition matters (such as merger and cartel investigations) that have an Asian nexus. Recognising the value of effective competition and consumer protection regulation and regional cooperation, the ACCC continues to commit efforts to relationship and capacity building in the Asia Pacific region and beyond.
- 6.3. Frequent collaboration with our ASEAN colleagues also occurs through the Competition Law Implementation Program (CLIP). The CLIP team has frequent contact with the ASEAN Secretariat, as well as the various ASEAN competition agencies, particularly in relation to capacity building.

Cooperation and assistance

- 6.4. During the September quarter the ACCC engaged with counterparts on a range of matters, including product safety, consumer and competition investigations and regulatory developments. In particular, the ACCC:
 - received and responded to requests for information from international agencies, including Canada, the European Commission, Japan, New Zealand, Papua New Guinea, South Africa, Spain, Sweden and the UK
 - made requests for information to agencies from Canada, Denmark, the European Commission, Japan, New Zealand, Switzerland, the UK and the USA
 - met with delegations from the Chinese Ministry of Commerce and Korea Fair Trade Commission
 - attended bi-monthly meetings with the New Zealand Commerce Commission
 - commenced a 12 month executive exchange program with the Competition Bureau of Canada, and
 - visited the US National Highway & Safety Administration to discuss the global recall of Takata airbag inflators and gain information relevant to our investigation.
- 6.5. The ACCC continued to deliver capacity building assistance to countries in the Association of South East Nations through CLIP with funding from the Australian and New Zealand aid programs. CLIP aims to build the capacity of the region's competition agencies to enforce relevant laws effectively and fairly.
- 6.6. In the September quarter the ACCC delivered a number of CLIP activities including:
 - placing an ACCC officer in the Myanmar Ministry of Commerce Competition Division for four weeks to support the development of an analytical framework for implementing competition law
 - placing an ACCC officer in the Philippine Competition Commission for three months to support the development of implementing rules for the competition law and provide staff training
 - delivering a cartel investigations workshop for the Office of the Trade Competition Commission of Thailand

- hosting six secondments from ASEAN (Cambodia, Lao PDR, Malaysia (2), Myanmar and the Philippines) at the ACCC for 10 weeks of work experience in enforcement teams, formal study of competition law and economics and investigations training, and
- developing a draft ASEAN Regional Cooperation Framework and hosting a regional brainstorming session to develop the Framework supporting secondment of a Cambodian competition official to the New Zealand Commerce Commission.

Participation in international forums

- 6.7. The ACCC continued to collaborate with our international counterparts through international forums including on matters of consumer protection enforcement and policy. The ACCC is leading the International Consumer Protection Enforcement Network's website redevelopment project. For details of the updated website refer to: [International consumer protection enforcers relaunch website](#). The ACCC continued its close engagement with the International Competition Network and the OECD's Competition Committee, Product Safety Working Group, Regulatory Policy Committee and Network of Economic Regulators.
- 6.8. The ACCC continued to work closely with international counterparts on matters of regulatory practice and policy, including:
- participating in the APEC Policy Dialogue on Sharing Experiences of Giving Economic Evidence in Ho Chi Minh City, Vietnam
 - participating in the UNCTAD Intergovernmental Group of Experts workshop: Competition Law and Policy 16th session conference and Consumer Protection Law and Policy 2nd session conference
 - a presentation at the annual Competition Law Conference 2017 in Singapore
 - attendance and contribution to a conference for SME's on competition law in Manila, the Philippines
 - a presentation in partnership with the US Fair Trade Commission to the Ministry of Consumer Affairs, India at a workshop on 'consumer protection in India: opportunities and challenges'
 - a presentation at a Taiwan Fair Trade Commission/Competition Commission of Singapore regional anti-trust seminar
 - attending the New Zealand Commerce Commission 'Competition Matters 2017' Competition and Regulation conference, and
 - attending the 13th East Asia Top Level Officials' Meeting on Competition Policy, the 10th East Asia Conference on Competition Policy and Law and the International Academic Seminar on Competition Law and Policy.

Appendices

A Reports and enquiries

During the September quarter the ACCC served or received reports from 75 306 businesses and consumers (20 546 phone calls, 54 508 emails and 252 letters). Of these, 74 were escalated for assessment.

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

Category	September 2017 quarter
Contacts received (phone, email and letters)	75 306*
Contacts recorded in the database	65 770
Under assessments commenced	118
Initial investigations commenced	61
In-depth investigations commenced	26
First instance litigation commenced	6

** In past ACCCount Reports, this figure has reflected all contacts received including phone calls not answered. The methodology has now changed to reflect only calls answered and web-forms received.*

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

State	ACL	Scams	(ACL + Scams)	Anti-competitive Practices	Industry Codes	Other	Total
NSW	5 610	12 205	17 815	137	31	1 024	18 900
QLD	4 234	9 356	13 590	87	25	719	14 339
VIC	5 173	8 993	14 166	112	27	872	15 074
WA	1 995	3 893	5 888	40	12	333	6 233
SA	1 462	3 737	5 199	20	5	275	5 470
ACT	577	1 215	1 792	15	4	93	1 895
TAS	444	1 117	1 561	5	5	61	1 619
NT	147	379	526	4	0	16	545
Overseas	193	1 160	1 353	3	1	67	1 410
Not specified	121	93	214	7	2	68	286

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

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

Industry	Contacts
Car Retailing	2 660
Non-Store Retailing	1 975
Other Personal Services	1 780
Electrical, Electronic and Gas Appliance Retailing	1 725
Other Administrative Services	812
Motor Vehicle Manufacturing	496
Other Telecommunications Services	462
Supermarket and Grocery Stores	457
Clothing Retailing	427
Internet Service Providers and Web Search Portals	417

Table 4: Top scam categories reported to the ACCC

Scam category	Contacts
Attempts to gain your personal information (fake bank or telco, computer hacking, ID theft)	11 821
Buying, selling or donating (classifieds, business listings, auction, health, fake business etc.)	11 315
Unexpected money (inheritance, helping a foreigner, fake government or bank, loan opportunity)	5 480
Unexpected Prizes (lottery, travel, scratchie)	5 191
Jobs & investment (sport, high return, pyramid scheme, employment)	4 425
Threats & extortion (malware and software by email, malware and software by phone, hitman etc.)	2 826
Dating and Romance (Including Adult Services)	980

B Enforcement outcomes & matters in court

Proceedings commenced

Competition		
	Nil	
Consumer protection		
Scams disruption	Domain Name Corp Pty Ltd & Ors	
	commenced jurisdiction	4 August 2017 Federal Court Western Australia
Car retailing	Ford Motor Company of Australia Limited	
	Commenced jurisdiction	26 July 2017 Federal Court Melbourne
Small Business - Unfair contract terms	JJ Richards & Sons Pty Ltd	
	commenced jurisdiction	6 September 2017 Federal Court Melbourne
False or misleading representations	Mr Tuan Nguyen	
	commenced jurisdiction	9 August 2017 Federal Court Melbourne
Small Business - Unfair contract terms	Servcorp Ltd & Ors	
	commenced jurisdiction	14 September 2017 Federal Court Sydney
Consumer – Online	Viagogo	
	commenced jurisdiction	28 August 2017 Federal Court Sydney

Proceedings ongoing

Competition		
Cartel	Air New Zealand Ltd (HC appeal)	
	commenced jurisdiction	18 April 2016 High Court of Australia
Cartel	Cascade Coal Pty Ltd & Ors	
	commenced jurisdiction	25 May 2015 Federal Court Sydney

Anti-competitive agreements/practices	Cement Australia Pty Ltd & Ors (appeal)	
	commenced jurisdiction	6 June 2016 Federal Court Brisbane
Cartel	Colgate-Palmolive Pty Ltd & Ors	
	commenced jurisdiction	12 December 2013 Federal Court Sydney Continues following settlement with some of the parties
Secondary boycott	Construction Forestry Mining and Energy Union (CFMEU)	
	commenced jurisdiction	20 November 2014 Federal Court Melbourne
Anti-competitive agreements/practices	Flight Centre Ltd (HC appeal)	
	commenced jurisdiction	11 March 2016 High Court of Australia
Cartel	Kawasaki Kisen Kaisha Ltd	
	commenced jurisdiction	November 2016 Downing Centre Local Court Sydney
Cartel – anti competitive agreements	Oakmoore Pty Ltd	
	commenced jurisdiction	23 June 2016 Federal Court Brisbane
Cartel	P.T. Garuda Indonesia Ltd (HC appeal)	
	commenced jurisdiction	18 April 2016 High Court of Australia
Misuse of market power and exclusive dealing	Pfizer Australia Pty Ltd (appeal)	
	commenced jurisdiction	18 March 2015 Federal Court Sydney
Cartel	Prysmian Cavi e Sistemi Energia S.R.L (appeal)	
	commenced jurisdiction	14 August 2017 Federal Court Adelaide
Health	Ramsay Health Care Australia Pty Limited	
	commenced jurisdiction	1 May 2017 Federal Court Sydney
Cartel	Yazaki Corporation & Australian Arrow Pty Ltd (appeal)	

	commenced jurisdiction	30 May 2017 Federal Court Adelaide
Consumer protection		
Scam	ABG Pages Pty Ltd	
	commenced jurisdiction	15 December 2016 Federal Court Brisbane
Unconscionable conduct vulnerable consumers	ACM Group Ltd	
	commenced jurisdiction	2 June 2016 Federal Court Sydney
Truth in advertising (Large Business)	Apple Pty Ltd and Apple Inc	
	commenced jurisdiction	6 April 2017 Federal Court Melbourne
Unconscionable conduct vulnerable consumers	Australian Institute of Professional Education Pty Ltd	
	commenced jurisdiction	31 March 2016 Federal Court Sydney
Unconscionable conduct vulnerable consumers	Clinica Internationale Pty Ltd & Ors	
	commenced jurisdiction	9 December 2015 Federal Court Sydney
Unconscionable conduct vulnerable consumers	Cornerstone Investment Australia Pty Ltd t/a Empower Institute	
	commenced jurisdiction	9 December 2015 Federal Court Sydney
Industry Codes Franchising	Geowash Pty Ltd	
	commenced jurisdiction	26 May 2017 Federal Court Perth
False or misleading representations -- health	HJ Heinz Company Australia Ltd	
	commenced jurisdiction	21 June 2016 Federal Court Adelaide
Truth in advertising	Kimberly-Clark Australia Pty Ltd	
	commenced jurisdiction	12 December 2016 Federal Court Sydney
Consumer guarantees	LG Electronics Australia Pty Ltd (appeal)	

	commenced jurisdiction	25 September 2017 Federal Court Sydney
False or misleading representations - consumer guarantees	MSY Technology Pty Ltd	
	commenced jurisdiction	1 December 2016 Federal Court Sydney
False or misleading representations and unconscionable conduct – health	Medibank Private Ltd (appeal)	
	commenced jurisdiction	21 September 2017 Federal Court Melbourne
False or misleading representations	Meriton Property Services Pty Ltd	
	commenced jurisdiction	24 November 2016 Federal Court Melbourne
Industry Codes Franchising	Morild Pty Ltd	
	commenced jurisdiction	21 September 2016 Federal Court Perth
Agriculture sector	Murray Goulburn Cooperative Co. Limited	
	commenced jurisdiction	28 April 2017 Federal Court Melbourne
Vulnerable consumers	NIB Health Funds Limited	
	commenced jurisdiction	30 May 2017 Federal Court Melbourne
Truth in advertising	Pental Limited & Ors	
	commenced jurisdiction	12 December 2016 Federal Court Sydney
Unconscionable conduct vulnerable consumers	Phoenix Institute of Australia Pty Ltd & Anor	
	commenced jurisdiction	24 November 2015 Federal Court Sydney
Scam	Sensaslim Australia Pty Ltd & Ors (appeal)	
	commenced jurisdiction	1 June 2016 Federal Court Sydney
False or misleading representations – small business	Taxsmart Group Pty Ltd	
	commenced jurisdiction	20 June 2013 Federal Court Melbourne
Product safety	Thermomix in Australia Pty Ltd	

	commenced jurisdiction	16 June 2017 Federal Court Melbourne
Industry Codes Franchising	Ultra Tune Australia Pty Ltd	
	commenced jurisdiction	19 May 2017 Federal Court Sydney
Unconscionable conduct - vulnerable consumers	Unique International College Pty Ltd	
	commenced jurisdiction	27 October 2015 Federal Court Sydney
Consumer guarantees	Valve Corporation Pty Ltd (appeal)	
	commenced jurisdiction	14 February 2017 Federal Court Sydney
False or misleading representations – car retailing	Volkswagen Aktiengesellschaft and Volkswagen Group Australia Pty Ltd	
	commenced jurisdiction	31 August 2016 Federal Court Sydney
False or misleading representations	We Buy Houses Pty Ltd and Rick Otton	
	commenced jurisdiction	2 March 2015 Federal Court Sydney

Proceedings concluded

Competition		
Cartel	Australian Egg Corporation Limited & Ors	
	commenced jurisdiction	26 May 2014 Federal Court Adelaide
Cartel	Nippon Yusen Kabushiki Kaisha Pty Ltd	
	Commenced jurisdiction	14 July 2016 Federal Court NSW Criminal Division
Consumer Protection		
Unconscionable conduct vulnerable consumers	Get Qualified Australia Pty Ltd	
	commenced jurisdiction	9 September 2016 Federal Court Melbourne
Credence claims	Snowdale Holdings Pty Ltd	
	commenced jurisdiction	9 December 2013 Federal Court Perth

Section 87B undertakings

Consumer Protection		
Car retailing	GM Holden Ltd	2 August 2017

C Use of compulsory information gathering powers

During the September 2017 quarter the ACCC issued:

- 39 notices pursuant to sections 155(1)(a)&(b)
- 23 notices pursuant to section 155(1)(c)
- 0 notices pursuant to section 155AAA
- 62 notices pursuant to section 95ZK
- 3 notices pursuant to section 51ADD, and
- 21 notices with 23 variations issued pursuant to sections 60H or 133D.

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

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

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

D Major speeches

During the September 2017 quarter, the ACCC took part in 48 speaking events^[2], including:

[Consolidation in agriculture: impacts to the farm, research and agribusiness](#)

Commissioner Mick Keogh

University of Western Australia Institute of Agriculture Industry Forum 2017

18 July 2017

[Communications at the turning point](#)

ACCC Chairman Rod Sims

CommsDay Unwired Revolution Conference

20 July 2017

[Ceteris paribus, competition is king](#)

ACCC Chairman Rod Sims

2017 Australian Conference of Economists

21 July 2017

[Chairman's address to CEDA WA](#)

ACCC Chairman Rod Sims

CEDA WA

24 August 2017

[Welcome address: ACCC & AER Regulatory Conference](#)

ACCC Chairman Rod Sims

ACCC & AER Regulatory Conference

27 July 2017

[Advocacy and the regulator](#)

ACCC Chairman Rod Sims

Australian Automotive Dealer Association Convention

19 September 2017

[Shining a light: Australia's gas and electricity affordability problem](#)

ACCC Chairman Rod Sims

National Press Club

20 September 2017

² List includes panel discussions and unpublished speeches.