



# ACCCount

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

1 October to 31 December 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 October to December 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 released its final report for the New Car Retailing Industry Market Study. The report raises important issues such as the handling of consumer guarantee complaints, independent repairer access to technical information and fuel consumption and emissions information.
3. The ACCC released its second interim report as part of its inquiry into Australia's wholesale gas supply arrangements. The report focuses on the operation of the East Coast Gas Market, where there are continuing immediate and longer-term concerns about the availability of gas.
4. The ACCC accepted court enforceable undertakings from BHP and Esso to separately market their share of gas produced under the Gippsland Basin Joint Venture.
5. The Federal Court declared that eight terms in the standard form contract used by JJ Richards to engage small businesses are unfair, and therefore void, following ACCC enforcement action. This was the first court outcome under the new business to business unfair contract terms provisions of the Australian Consumer Law.
6. The Federal Court found that Meriton Property Services engaged in misleading or deceptive conduct in connection with the posting of reviews of its properties on the TripAdvisor website.
7. The ACCC's Takata Taskforce held a conference with suppliers and other interested parties in relation to the proposed draft compulsory recall notice of motor vehicles fitted with defective Takata airbag inflators, in accordance with s.132H of the *Competition and Consumer Act 2010*.
8. The ACCC published the Dairy inquiry interim report following a 12-month inquiry into the Australian dairy industry. The report recommended that a mandatory code of conduct should be considered for the Australian dairy industry to address problems caused by bargaining power imbalances between processors and farmers.
9. The ACCC accepted a court enforceable undertaking from Australian Unity to pay compensation to members who held couple and family policies in 2015 that were likely to have been misled about the dental benefits they could claim from their policy.

10. The ACCC's Quad Bike Taskforce released an Issues Paper inviting interested parties to provide information and comment on a range of questions regarding the safety of quad bikes supplied in Australia.
11. The ACCC accepted court enforceable outcomes from Telstra, Optus and TPG following separate investigations into representations about NBN speeds. The ACCC also commenced proceedings against Optus in relation to representations about transition to the NBN.
12. The Full Court of the Federal Court upheld an ACCC appeal, and dismissed a cross appeal by Cement Australia Pty Ltd, against the penalties imposed on Cement Australia and its related companies for making and giving effect to anti-competitive agreements.
13. The ACCC, in partnership with Health Canada and the Organisation for Economic Co-operation and Development (OECD), led a global toppling furniture and television safety campaign aimed at reducing the risk of injuries and deaths caused to children when those products tip over.
14. The ACCC announced that it would allow businesses in the new Eastern Energy Buyers Group, a group of buyers in the agriculture sector, to establish a joint energy purchasing group and run joint tender processes for electricity and gas for 11 years.
15. The ACCC accepted a court enforceable undertaking from 101 Residential that it will not enforce non-disparagement clauses in existing building contracts and will not use them in any future contracts.
16. The Full Court of the Federal Court of Australia dismissed an appeal by Valve Corporation against a ruling that it engaged in misleading or deceptive conduct and made false or misleading representations about consumer guarantees.

# 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 undertakings<sup>1</sup>, administrative resolutions and completing market studies.

## Proceedings

- 1.6. In the December quarter, the ACCC was involved in 13 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 13 competition enforcement proceedings:
  - 13 cases were carried over from the previous quarter
  - No new cases were commenced in the quarter
  - 2 cases were concluded, and
  - 11 cases remained ongoing at the end of the quarter.

### *Proceedings commenced*

Nil

### *Proceedings appealed*

Nil

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

## *Proceedings concluded*

### **CEMENT AUSTRALIA PTY LTD**

In October 2017 the Full Court of the Federal Court upheld an ACCC appeal, and dismissed a cross-appeal by Cement Australia, against the penalties imposed on Cement Australia Pty Ltd and its related companies for making and giving effect to anti-competitive agreements.

The trial judge had imposed penalties of \$17.1 million against the Cement Australia companies. The Full Court has now ordered these companies to pay increased penalties totalling \$20.6 million for breaching the anti-competitive provisions of the Act. This is the third highest total penalty imposed for an ACCC case.

The penalties imposed on each of the Cement Australia companies were:

- \$2.93 million against Pozzolanac Enterprises Pty Ltd
- \$10.28 million against Cement Australia (Queensland Pty Ltd) (formerly QCL)
- \$7.29 million against Cement Australia Pty Ltd, and
- \$100,000 against Pozzolanac Industries.

The Full Court upheld the ACCC's ground of appeal that related to the imposition of a single penalty, jointly and severally, on two respondent companies involved in one contravention. In upholding this ground, the Full Court confirmed that "deterrence is the primary objective for the imposition of civil penalties", and considered "that the imposition of a joint and several penalty would risk undermining this objective".

## *Judgments*

### **PZ CUSSONS AUSTRALIA PTY LTD**

In December 2017 the Federal Court dismissed the ACCC's case against PZ Cussons Australia Pty Ltd (Cussons), which had alleged that Cussons engaged in cartel conduct by arriving at an understanding with two other laundry detergent manufacturers to cease supplying standard concentrate laundry detergents in early 2009, and supply only ultra concentrates from that time.

The Court also dismissed the ACCC's allegation that Cussons had arrived at an understanding with the other laundry detergent manufacturers, which substantially lessened competition in the market for the supply of laundry detergent.

The case highlights that proving the existence of an understanding can be a complex task. The CCA was recently amended to include a new concerted practices prohibition. The ACCC will carefully consider the judgment.

## **Undertakings accepted**

- 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 December quarter, two s.87B undertakings relating to competition enforcement were accepted by the ACCC.

### **BHP BILLITON PETROLEUM (BASS STRAIT) PTY LTD AND ESSO AUSTRALIA RESOURCES PTY LTD**

In December 2017 both BHP Billiton Petroleum (Bass Strait) Pty Ltd (BHP) and Esso Australia Resources Pty Ltd (Esso) provided court-enforceable undertakings to separately market their share of gas produced under the Gippsland Basin Joint Venture (GBJV) from 1 January 2019.

The ACCC investigated the effect of joint marketing arrangements between BHP and Esso during the period from late 2013 to 2015, after concerns were raised with these arrangements through the ACCC's inquiry into the east coast gas market.

The ACCC was concerned that the joint marketing arrangements were likely to have resulted in a substantial lessening of competition in the market for the supply of gas to buyers in the southern states. The ACCC believes that competition in this market was negatively affected by the elimination of independent rivalry between BHP and Esso.

BHP and Esso, without admission, have each provided the ACCC with a court-enforceable undertaking that requires them to separately market GBJV gas from 1 January 2019 so that buyers will have the benefit of competing and potentially different offers from Esso and BHP in the future.

BHP and Esso have each committed to cease jointly negotiating and entering into gas sales agreements for the supply of GBJV gas from 1 January 2019, following a transition period that will enable the parties to put separate marketing arrangements into place.

In the transition period, the parties will only enter into new gas sales agreements for the supply of gas up to the end of 31 December 2020, except where a longer term gas sales agreement is requested by a third party, and the ACCC agrees to the request.

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

- 1.10. The ACCC will sometimes resolve matters administratively. This can involve seeking agreements to stop or change conduct and provide appropriate redress to the conduct in question. In some cases, we will publicly announce these administrative resolutions.
- 1.11. There were no administrative resolutions in respect of competition enforcement this quarter.

### **Agriculture Unit**

- 1.12. In the December quarter, the ACCC continued its commitment to increased engagement and enforcement in the agriculture sector through its Agriculture Unit. This work included:
- Release of the [ACCC Dairy inquiry interim report](#) regarding the competitiveness of prices, trading practices and the supply chain in the Australian dairy industry. The ACCC will consult on this interim report with submissions due by 31 January 2018. The final report will be submitted to the Treasurer by 30 April 2018. There is further information about this report at 4.14.

- Continuing to work with fruit and vegetable industry organisations to educate growers and traders of horticulture produce about their rights and obligations under the revised Horticulture Code. However, the ACCC has begun to shift its focus towards enforcing the Code and has issued compliance notices to a number of traders located across the wholesale central markets. The notices require these traders to provide the ACCC with specific information or documents they are required to keep, generate or publish under the Code.
  - 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. A review of the industry's progress with implementing the recommendations will be conducted in 2018.
  - Convening the 4th meeting of the ACCC Agriculture Consultative Committee on 3 November 2017 comprising 25 representatives of agricultural peak bodies, industry associations and industry advisors.
  - Increasing the number of subscribers to the Unit's Agriculture Information Network to 1,330 individuals and organisations.
  - Attending and speaking at a number of agriculture industry conferences and meetings including: NSW Farmers Horticulture Branch meeting; Agribusiness Australia ACT End of Year Wrap-up; and the Meat and Livestock Australia Business Breakfast as part of Red Meat 2017.
- 1.13. The Unit works closely with ACCC enforcement and merger teams on agriculture matters. During the quarter, the Unit assisted with the assessment of:
- [Saputo Dairy Australia Pty Ltd's proposal to acquire Murray Goulburn's operating assets.](#)
  - Several possible contraventions of the CCA in agriculture markets during the period. These included matters in the horticulture, grains, poultry, dairy, cotton, and agricultural chemicals 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.

## Financial Services Unit

- 1.15. The Financial Services Unit (FSU) was established following the 2017-18 Budget to examine competition issues in the financial sector. The FSU is progressing with a price inquiry into residential mortgage products.
- 1.16. The FSU continues to examine specific competition issues in the sector and will undertake market studies and report regularly on emerging issues and trends. It has engaged closely with the Council of Financial Regulators and the Productivity Commission.

## Commercial Construction Unit

- 1.17. The Commercial Construction Unit (CCU), which was established in 2017, continues to investigate a number of matters of alleged anti-competitive behaviour involving participants in the commercial construction sector.
- 1.18. The CCU has also continued a significant compliance and engagement program including stakeholder education sessions and participation at the National Conference of the Master Builders Association.

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

- 1.19. The ACCC reviews mergers and acquisitions to assess whether they would be likely to substantially lessen competition.
- 1.20. 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.
- 1.21. The ACCC deals with matters considered under the informal clearance system expeditiously when it determines that they do not require a detailed review because of the low risk that competition concerns will be raised. As indicated in Table 1, a significant proportion of the mergers considered by the ACCC are ‘pre-assessed’, enabling the ACCC to respond quickly when there are no significant competition concerns.

**Table 1: Matters pre-assessed and reviews undertaken – October to December 2017**

	Confidential	Public	Total
Pre-assessed 1 October – 31 December 2017	70	0	70
Public reviews undertaken 1 October – 31 December 2017	0	9	9
Total matters assessed and reviews undertaken	70	9	79
<b>Public reviews by category:</b>			
Not opposed	0	7	7
Finished—no decision (including withdrawn)	2	1	3
Opposed outright	0	1	1
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

- 1.22. With the revisions to the CCA coming into effect on 6 November in response to the recommendations of the Harper Review, the ACCC takes on the role of first instance decision maker for merger authorisations meaning that applications must now be made directly to the ACCC. The amended merger authorisation test enables authorisation to be granted on the basis that the acquisition will not substantially lessen competition, or alternatively, results in public benefits that outweigh any detriments. There have been no applications for merger authorisation made to the ACCC since the revisions to the CCA came into effect.

### Significant merger decisions

[BP Australia Pty Ltd – proposed acquisition of Woolworths Limited’s network of retail service station sites](#)

On 14 December 2017 the ACCC announced its decision to oppose BP Australia Pty Ltd’s (BP) proposed acquisition of Woolworths Limited’s

(Woolworths) network of retail service station sites. BP and Woolworths both retail fuel across Australia. Woolworths currently operates 531 sites and has 12 sites in development. BP supplies fuel to approximately 1,400 branded service stations throughout Australia, setting fuel prices at around 350 of these.

The ACCC considered that Woolworths is a vigorous and effective competitor which has an important influence on fuel prices and the price cycle in many markets throughout Australia.

Considering the scale of the Woolworths network across Australia, the ACCC was concerned that the removal of Woolworths' vigorous pricing strategy from the market and its replacement with BP's premium pricing strategy was likely to have a substantial impact on the competitive process, reducing the competitive constraint on remaining market participants.

The ACCC was also concerned that the proposed acquisition would likely affect metropolitan price cycles by making the price jumps quicker, larger and more coordinated. Reduced competition would also mean that prices will not fall as far, or as quickly, in the discounting phase of the cycle.

### **Related but separate decision on authorisation applications regarding Shopper Docket and Rewards Loyalty Program**

BP, Woolworths and BP Resellers applied separately for authorisation of certain provisions of agreements in order to offer fuel discounts and benefits to consumers under Woolworths' Shopper Docket Discount Scheme and Rewards Loyalty Program.

The ACCC's assessment of these applications was a separate legal process and involved applying a different legal test.

On 14 December 2017 the ACCC decided to grant these applications for authorisation subject to conditions.

These conditions specify that BP and Woolworths must limit shopper docket and loyalty scheme discounts to no more than 4 cents per litre (in total per fuel purchase). Woolworths is not permitted to fund more than 2 cents of the 4 cent discount.

While discounts to consumers are generally beneficial, the ACCC has long-standing concerns that fuel discounts offered through shopper docket or similar schemes can have anti-competitive effects if they are at a level that efficient fuel retailers are unable to match. The ACCC has also expressed its concern about the potential for supermarket funding of fuel discounts to distort competition in fuel retailing.

The conditions have been imposed to address these concerns.

However, the authorised conduct would only occur in the event BP acquires Woolworths' network of service stations. As noted above, the ACCC has announced its decision to oppose that proposed acquisition.

Further information, including a copy of the authorisation decision, is available from the ACCC's public register: [BP & Ors – Authorisations – A91580, A91581 & A91582](#).

### Platinum Equity – proposed acquisition of OfficeMax, 30 November 2017

On 30 November 2017 the ACCC announced that it would not oppose the proposed acquisition of OfficeMax Australia (OfficeMax) by Platinum Equity. Platinum Equity is a global private equity group that acquired Staples Australia Pty Ltd (now rebranded Winc) in April 2017. Winc and OfficeMax both supply office products to commercial and government customers around Australia.

The ACCC focused its assessment of the potential effects on competition of the proposed acquisition on the supply of traditional office products to large commercial and government customers in Australia. Winc is by far the largest supplier in this segment.

“Traditional” office products include paper, ink and toner, and general stationery. Although the parties also supply a number of other products, such as furniture, cleaning and janitorial equipment and kitchen supplies, the ACCC considered that there were alternative suppliers for those products that were not available for traditional office products.

The ACCC also considered that large commercial and government customers typically have distinct demand characteristics, including service requirements, which distinguish them from smaller customers.

In a finely balanced decision, the ACCC concluded that although the proposed acquisition was likely to lessen competition, it was not satisfied that it would give rise to a substantial lessening of competition. In reaching this conclusion, the ACCC took into account, in particular, the following factors:

- The ACCC’s analysis of tender data showed that the other key suppliers to large customers in Australia, Complete Office Supplies (COS) and Lyreco, had had recent success in winning large customers from Winc and OfficeMax.
- Contracts with large customers for office supplies are typically non-exclusive, and customers are therefore able to purchase off-contract from other suppliers and to switch suppliers.

The ACCC also considered that other existing suppliers of office products were likely to seek to grow their market shares if a combined Winc-OfficeMax sought to increase its prices.

On balance, the ACCC concluded that COS and Lyreco, combined with the ability of large customers to switch suppliers and purchase 'off-contract', were likely to provide sufficient competitive constraint on the combined Winc-OfficeMax to prevent a substantial lessening of competition.

### **Merger review consultation**

- 1.23. 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.

1.24. In the December quarter the ACCC issued a Statement of Issues for the following review:

- [Moly-Cop proposed acquisition of Donhad](#)

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

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

1.26. With the revisions to the CCA coming into effect on 6 November in response to the recommendations of the Harper Review, the ACCC may now also grant authorisation for certain forms of conduct if it is satisfied that no substantial lessening of competition is likely.

## Authorisations

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

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

Total authorisations received	Number of applications (number of forms <sup>1</sup> )
	1 October – 31 December 2017
New	5
Revocation	0
Revocation and substitution	4
Minor variations	0

Decisions issued	Number of applications (number of forms <sup>1</sup> )
	1 October – 31 December 2017
Draft determinations	10
Final determinations	12
Interim decisions (prior to draft)	1

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

## Significant authorisations

### [Shopping Centre Council of Australia Limited - Revocation and Substitution - A91591 & A91592](#)

On 20 December 2017 the ACCC issued a determination granting re-authorisation to the Shopping Centre Council of Australia for the Casual Mall Licensing Code of Practice (the Code) for three years.

The Code regulates the terms on which shopping centres offer casual mall licences to temporary retailers, such as 'pop-up' shops. It gives permanent tenants (lessees) certain rights if casual mall licences are not granted in accordance with the Code.

Participation in the Code is voluntary for shopping centre lessors. Those shopping centres which do not participate in the Code may still offer casual mall licences.

The ACCC considered that the Code would likely result in public benefits in the form of:

- greater certainty and transparency for lessees and licensees about the terms by which casual mall licences may be granted
- the provision of a dispute resolution pathway, and
- efficiency for those lessees that enter into leases in multiple shopping centres or in multiple jurisdictions by standardising the terms.

The ACCC considers that these public benefits are likely to outweigh any public detriment resulting from the Code. In reaching this view, the ACCC consulted with interested parties and carefully considered concerns from some retail tenants that the Code hasn't served all retailers well in practice. To assist in addressing these concerns, the ACCC strongly encouraged the Shopping Centre Council to increase retailer representation on the Code Administration Committee.

The SCCA accepted this suggestion and has invited additional retailers to join the Committee. The SCCA also accepted in principle the ACCC's suggestions to appoint an independent chair to the Code Administration Committee, and raise awareness of the Code amongst retailers.

### [The Eastern Energy Buyers Group - Authorisations - A91594 & A91595](#)

On 22 November 2017 the ACCC issued a determination granting authorisation for businesses in a newly formed Eastern Energy Buyers Group (EEBG) to establish a joint energy purchasing group and run joint tender processes for electricity and gas for 11 years.

EEBG's current members are industrial energy users who operate in the agriculture industry. Members have significant operations in Victoria and some operations interstate. The proposed joint tender process would cover supply of electricity, gas and gas transport services to members of the group.

The intention of the EEBG is that, by pooling their demand for gas and electricity, they may reach a sufficient size to enable them to secure more competitive prices and commercial terms for both gas and electricity.

The terms of the Authorisation also allow other industrial energy users to join the group, provided the group's combined annual energy consumption does not exceed 16 Petajoules of gas or 4.5 Terawatt hours of electricity. This is equivalent to

around 10 per cent of Victorian consumption.

The ACCC considered that joint purchasing of electricity and gas would result in public benefits by generating efficiencies compared to each member of the purchasing group sourcing energy separately and allowing them to seek gas and electricity at more competitive prices.

The ACCC also considered that aggregating the group's demand and jointly tendering for long term contracts may provide incentives for investment in new generation. This could include a small-scale power purchase agreement where EEBG would commit to acquiring the generator's capacity up-front.

The ACCC also considered the joint sharing of costs likely to result from the tender provided a further source of public benefit.

The ACCC concluded that minimal public detriment was likely to result from the proposed conduct as EEBG members currently account for a relatively small proportion for both total gas and electricity demand in Victoria, such that its purchasing decisions are unlikely to distort competition in any market. Further, the limited interaction between members is unlikely to lessen competition in the downstream markets in which they compete.

For these reasons, the ACCC considered that the likely public benefit from the proposed conduct would outweigh the likely public detriment and decided to grant authorisation.

## Notifications

1.28. 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*

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

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

**Table 3: Exclusive dealing notifications**

Exclusive Dealing Notifications	Number of notifications (number of forms <sup>1</sup> )
	1 October – 31 December 2017
Matters lodged in the quarter	104 (124)
Matters requiring a draft notice	0 (0)
Matters allowed to stand	113 (138)
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.

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

### **Collective bargaining notifications**

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

1.33. Businesses seeking to lodge a valid collective bargaining notification must satisfy a number of requirements. For example each member of the collective bargaining group must reasonably expect that they will make at least one contract with the target and that the value of each member's transactions with the target will not exceed \$3 million per year (this figure differs for certain industries). These requirements do not apply to the authorisation process.

**Table 4: Collective bargaining notifications**

Collective Bargaining Notifications	Number of notifications (number of forms <sup>1</sup> )
	1 October – 31 December 2017
Matters lodged in the quarter	1 (1)
Matters allowed to stand	0 (0)

1. CCA Regulations require notifiers to submit specific separate forms for different types of conduct

### **Certification trademarks**

1.34. 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.

1.35. 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 <sup>1</sup> )
	1 October – 31 December 2017
CTMs received in the quarter	4 (4)
Final assessments issued	4 (18)

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

- 1.36. Prior to the revisions to the CCA in response to the Harper Review recommendations, merger parties could 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. The test that was applied by the Tribunal was a public benefits test which differed from reviews under section 50 where a substantial lessening of competition test is applied.
- 1.37. The role of the ACCC in the Tribunal process involved assisting the Tribunal's decision-making, by making inquiries, calling and examining witnesses and preparing a report.

### **Tabcorp Holdings - Tatts**

Tabcorp originally sought informal ACCC merger clearance to acquire Tatts and the ACCC commenced its review of the proposed acquisition in November 2016.

In March 2017 shortly after the ACCC had published a Statement of Issues regarding the proposed acquisition, Tabcorp withdrew its application for informal clearance from the ACCC and lodged an application for authorisation with the Australian Competition Tribunal.

In June 2017 the Tribunal granted merger authorisation for Tabcorp to acquire Tatts, subject to certain divestments.

The ACCC applied to the Federal Court for judicial review of the Tribunal's decision on 10 July 2017. Crownbet Limited filed a separate application for judicial review.

In September 2017 the Full Federal Court upheld the ACCC's application for judicial review, setting aside the original decision of the Tribunal to grant authorisation and remitting the matter back to the Tribunal for reconsideration. Due to uncertainty about the Tribunal's jurisdiction to reconsider the original application, Tabcorp also lodged a fresh application, which was heard and considered at the same time as the reconsideration of the original application.

On 22 November 2017 the Tribunal granted merger authorisation for Tabcorp to acquire Tatts.

## 2. Protecting consumers and supporting fair trading

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

- 2.1. The ACCC enforces the Australian Consumer Law (ACL) to prevent and redress harm to consumers and small businesses. Another key role of the ACCC is to inform businesses and consumers of their rights and obligations under the CCA through engagement, education and the provision of specialised information. This function also includes actions taken to ensure Australian consumers are not harmed by unsafe products.
- 2.2. Each year the ACCC reviews its compliance and enforcement priorities to determine where to focus its efforts to maximise impact, including by preventing and redressing harm to consumers and small businesses. 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.
  - in conjunction with other agencies and partners, disruption of scams, particularly those that rely on building deceptive relationships and which cause severe and widespread consumer or small business detriment, and
  - consumer protection issues impacting on vulnerable and disadvantaged consumers.
- 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. During the December quarter the ACCC commenced reviewing its 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 \$99 million since the introduction of the new consumer law remedies and powers in the CCA in April 2010, together with the introduction of the ACL on 1 January 2011. As at 31 December 2017 this figure encompasses 28 ACCC cases where penalties awarded by the Court have been at or above \$1 million.
- 2.7. In the December quarter, the ACCC was involved in 35 legal proceedings relating to consumer protection. Of these:
- 31 cases were carried over from the previous quarter
  - 4 cases were commenced
  - 8 cases were concluded, and
  - 27 cases remain ongoing at the end of the quarter.

### Proceedings commenced

#### **ASHLEY & MARTIN PTY LTD**

In November 2017 the ACCC instituted proceedings in the Federal Court against Ashley & Martin Pty Ltd (Ashley & Martin) alleging that clauses in its standard form contracts are unfair under the ACL and therefore void.

Ashley & Martin is an Australian company that provides hair loss treatment programs and hair replacement services to customers through its clinics in Australia, New Zealand and Singapore.

The ACCC alleges that from November 2013 until at least July 2017, Ashley & Martin used three different standard form contracts, all containing clauses that were unfair. The contracts were used for customers signing up to Ashley & Martin's 'Personal RealGROWTH Program'.

To sign up to the program, customers attended an initial consultation with an Ashley & Martin sales consultant. Customers typically signed a treatment contract for up to 12 months during this initial consultation and then attended a medical consultation with an Ashley & Martin doctor sometime after this.

To avoid paying the entire cost of the program, customers had only two days to consider the medical advice they received at the medical consultation and opt out of the contract.

The ACCC is seeking declarations that the terms are unfair and consequently void, and an order for consumer redress and costs.

#### **JAYCO CORPORATION PTY LTD**

In November 2017 the ACCC instituted proceedings in the Federal Court against Jayco Corporation Pty Ltd (Jayco), Australia's largest caravan and recreational vehicle manufacturer, alleging it breached the ACL by its conduct towards four

customers who purchased defective Jayco caravans.

The ACCC alleges that, between 2013 and 2015, Jayco acted unconscionably towards four customers by obstructing them from obtaining redress, such as a refund or replacement for their defective caravan. Jayco allegedly did this despite knowing the caravans were defective and not functioning properly, even after repeated, and failed, repair attempts.

The ACCC also alleges Jayco made false or misleading representations to the four affected customers about their rights to obtain a refund or replacements for their defective caravan, including that Jayco represented that it had no role or responsibility to provide a remedy such as a refund or replacement vehicle.

Despite requests from the four customers for a refund or replacement, the ACCC alleges that Jayco repeatedly told these four customers that their only remedy available was yet another repair.

The ACCC is seeking declarations, pecuniary penalties, consumer redress orders, injunctions, disclosure and compliance program orders, and costs.

### **GLAXOSMITHKLINE HEALTHCARE AUSTRALIA PTY LTD AND NOVARTIS CONSUMER HEALTH AUSTRALASIA PTY LTD**

In December 2017 the ACCC instituted proceedings in the Federal Court of Australia against GlaxoSmithKline Healthcare Australia Pty Ltd (GSK) and Novartis Consumer Health Australasia Pty Ltd (Novartis), alleging they made false or misleading representations in the marketing of Voltaren Osteo Gel and Voltaren Emulgel pain relief products.

The ACCC alleges that GSK and Novartis represented that Osteo Gel was specifically formulated for treating osteoarthritis conditions, and was more effective than Emulgel to treat those conditions, when the two products are identically formulated.

Both products contain the same active ingredient, diclofenac diethylammonium gel 11.6mg/g, which acts in a non-specific manner to reduce local pain and inflammation wherever it is applied.

Price sampling conducted by the ACCC at supermarkets and pharmacies found that Osteo Gel is often sold at a significant price premium to Emulgel.

For example, Osteo Gel 150g was found in-store at up to \$7.50 (or 33%) more than Emulgel 150g. The recommended retail price of Osteo Gel 150g was \$28.99 compared with \$25.99 for Emulgel 150g.

The ACCC is seeking declarations, injunctions, pecuniary penalties, a publication order, the imposition of a compliance program and costs.

### **OPTUS INTERNET PTY LTD**

In December 2017 the ACCC instituted proceedings in the Federal Court against Optus Internet Pty Ltd (Optus), alleging it misled customers about the need to move quickly from its existing HFC network to the National Broadband Network (NBN).

The ACCC alleges that between October 2015 and March 2017 Optus made false and misleading representations by writing to its customers to advise it would disconnect their HFC service within a specified time period as the NBN was

coming to their area.

However, the timeframes were earlier than Optus was contractually allowed to cancel the customers' services.

The ACCC alleged that Optus' misrepresentations put pressure on customers to move to the NBN sooner than they were required to. This is particularly concerning as Optus received a significant financial payment from NBN Co for each customer that moved from its cable network to the NBN.

It is also alleged that between October 2015 and September 2016, Optus misled some of its customers about their options for purchasing an NBN plan.

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

### ***Proceedings appealed***

#### **UNIQUE COLLEGE PTY LTD**

In December 2017 the ACCC and the Commonwealth (on behalf of the Department of Education and Training) have filed a cross-appeal in the ongoing Federal Court litigation against Unique International College Pty Ltd (Unique).

In June 2017 the Court found Unique had engaged in systemic unconscionable conduct in New South Wales. The Court found that Unique targeted disadvantaged consumers by offering gifts of laptops, providing financial incentives to its sales representatives and holding sign-up meetings to enrol students.

Unique appealed against the findings of the Court. The ACCC and the Commonwealth have now filed a cross-appeal as they maintain that the trial judge ought to have found that the systemic unconscionable conduct also occurred in Victoria and Queensland. The ACCC and the Commonwealth have also appealed the judge's failure to find that Unique's system had further features that contributed to the unconscionability of Unique's behaviour.

The ACCC is seeking redress for affected consumers by cancelling enrolments and debts. The ACCC and the Commonwealth are seeking orders for the repayment of the funds paid by the Commonwealth.

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

### ***Proceedings concluded***

#### **JJ RICHARDS & SONS PTY LTD**

In October 2017 the Federal Court declared, by consent, that eight terms in the standard form contract used by JJ Richards & Sons Pty Ltd (JJ Richards) to engage small businesses are unfair, and therefore void, following ACCC action.

JJ Richards is one of the largest privately-owned waste management companies in Australia and provides recycling, sanitary and green waste collection services.

This was the first court action by the ACCC to enforce new laws that protect small businesses from unfair contract terms. The unfair contract term laws were extended to apply to small businesses from November 2016.

The Court declared by consent that eight terms in JJ Richards' standard form contracts with small businesses, which were entered into or renewed after 12 November 2016, were unfair and consequently void.

In finding that each of the terms was unfair, his Honour also found that "the Impugned Terms tend to exacerbate each other, increasing the overall imbalance between the parties and the risk of detriment to JJR Customers."

In resolving these proceedings, JJ Richards consented to orders restraining it from relying on the unfair terms in existing small business contracts and from using the terms in future contracts with small businesses. JJ Richards also consented to orders to publish a corrective notice and provide a copy of the Court's orders to affected small business customers.

### **MSY TECHNOLOGY PTY LTD, MSY GROUP PTY LTD AND M.S.Y. TECHNOLOGY (NSW) PTY LTD**

In October 2017 the Federal Court ordered penalties totalling \$750,000 against MSY Technology Pty Ltd, MSY Group Pty Ltd, and M.S.Y. Technology (NSW) Pty Ltd (MSY Technology) for misrepresenting consumers' rights to remedies for faulty products.

MSY Technology operates 28 retail stores across Australia and online, selling computers, computer parts, accessories and software. MSY Technology admitted that it made false or misleading representations on the MSY website, and in oral and email communications to consumers about their rights.

This is the second time the ACCC has taken action against MSY entities. The court imposed penalties in 2011 for misleading consumer warranty representations.

The Federal Court also made other orders by consent including injunctions, a comprehensive ACL compliance training program, publication orders, and payment of \$50,000 towards the ACCC's costs.

Following the commencement of proceedings, MSY Technology made admissions and agreed to joint submissions on liability and relief (including penalty) that were filed with the Court.

### **MORILD PTY LTD**

In November 2017 the Federal Court has ordered Pastacup franchisor Morild Pty Ltd (Morild) to pay penalties of \$100,000 for breaches of the Franchising Code of Conduct (Franchising Code), following ACCC proceedings. The company's co-founder and former director, Mr Stuart Bernstein, has also been ordered to pay \$50,000 for being knowingly concerned in the breaches.

Mr Bernstein co-founded the Pastacup franchise in 2008 and has managed and been a director of two previous franchisors of the Pastacup franchise system that each became insolvent.

The Court found that Morild failed to provide a disclosure document which complied with the Franchising Code to franchisees, because the document provided failed to disclose Mr Bernstein's previous directorship of the insolvent Pastacup franchisors. The Court held that this was relevant business experience that was required to be disclosed to prospective franchisees in Morild's disclosure document. The Court also found that Mr Bernstein was knowingly concerned in

Morild's conduct.

Morild consented to the penalties, declarations and injunctions by the Court and to an order that it pay a contribution to the ACCC's costs.

### **AVELING HOMES PTY LTD**

In December 2017 the Federal Court ordered penalties totalling \$380,000 against Aveling Homes Pty Ltd (Aveling) for engaging in conduct liable to mislead the public in connection with two online review websites. The company's Group Sales and Marketing Manager, Mr Sean Quartermaine, was ordered to pay \$25,000 for being knowingly concerned in the conduct.

Aveling is a Perth-based home building company which operates and controls the review website [www.avelinghomesproductreviews.com.au](http://www.avelinghomesproductreviews.com.au) (link is external) and until 3 February 2017 also operated and controlled the review website [www.firsthomeownerscentreproductreviews.com.au](http://www.firsthomeownerscentreproductreviews.com.au).

The Federal Court found that during periods in 2016, Aveling represented that each of its review websites were independent of Aveling and were affiliated with the website [www.productreview.com.au](http://www.productreview.com.au) when that was not the case.

The Court also found that the overall star rating and reviews on the review websites were more favourable towards Aveling's products and services than would have been the case if all the reviews received by Aveling were published.

The features and appearance of the review websites that caused the contravening conduct were designed by Mr Quartermaine.

Aveling undertook to the Court not to engage in similar conduct for a period of three years and agreed to contribute to the ACCC's costs.

### **VALVE CORPORATION**

In December 2017 the Full Court of the Federal Court of Australia dismissed an appeal by Valve Corporation (Valve) against a ruling that it engaged in misleading or deceptive conduct and made false or misleading representations about consumer guarantees. Valve's appeal against a \$3 million penalty was also dismissed.

Valve is one of the world's largest online video game retailers and operates the Steam distribution platform. In 2016, the Federal Court ruled that the ACL applied to the company, which is based in the United States, and ordered Valve to pay a \$3 million penalty.

The Full Court found Valve carried on business in Australia, and was therefore bound by the ACL in its dealings with customers here.

The Full Court also upheld the finding that Valve made misleading representations about consumer guarantees and that certain terms and conditions in the Steam subscriber agreements and refund policies were false or misleading.

The ACCC's cross-appeal was dismissed in relation to representations made by Valve in online chats to individual consumers. The trial judge had previously found that these representations were not misleading, in part because the consumers had asserted their ACL rights, and were therefore not likely to be misled.

## Judgments

### **MERITON PROPERTY SERVICES PTY LTD**

In November 2017 the Federal Court found that Meriton Property Services Pty Ltd, trading as 'Meriton Serviced Apartments' (Meriton), engaged in misleading or deceptive conduct in connection with the posting of reviews of its properties on the TripAdvisor website.

The Court found that from November 2014 to October 2015, Meriton engaged in misleading or deceptive conduct by taking steps to prevent guests it suspected would give an unfavourable review from receiving TripAdvisor's 'Review Express' prompt email. Meriton did so by:

- inserting additional letters into guests' email addresses provided to TripAdvisor so that the prompt email never reached the guest, or
- not sending guest email addresses to TripAdvisor.

The Court found that on several occasions Meriton engaged in this conduct in respect of the majority of guests staying at one of its hotels during periods when there were infrastructure or service problems, such as no hot water or a lift not working.

The Court also held that Meriton's conduct was liable to mislead the public as to the nature, characteristics and suitability of purpose of its accommodation services.

A hearing on relief against Meriton will be held on a date fixed by the Court.

## 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 ACL.
- 2.9. In the December quarter, the ACCC received payment for six infringement notices arising from three matters.

### **WEST AUST COURIERS PTY LTD**

In November 2017 West Aust Couriers Pty Ltd, trading as Fastway Couriers (Perth), paid a \$9,000 penalty after the ACCC issued an infringement notice for alleged non-compliance with the Franchising Code of Conduct (Franchising Code).

Fastway Couriers (Perth) is the West Australian regional franchisor of the Fastway Couriers franchise. The ACCC alleged Fastway Couriers (Perth) breached the Franchising Code by providing a disclosure document that did not include details of former franchisees that had terminated or transferred their courier franchises to a prospective franchisee. This information is required by the Code to be included in each disclosure document.

Fastway Couriers (Perth) also provided the ACCC with a court-enforceable undertaking to address the ACCC's concerns that it had made false or misleading representations regarding the future earnings of courier franchisees by advertising an "income guarantee" of \$1,500 per week for 30 weeks to prospective franchisees.

The ACCC was concerned that prospective franchisees would understand this representation to be the likely income they could therefore expect to earn at the end of the stipulated period.

The company has undertaken to provide actual earnings information to prospective franchisees, and not to describe the offered financial support as an “income guarantee” in future marketing of its courier franchises.

#### **HIVE EMPIRE PTY LIMITED**

In November 2017 Hive Empire Pty Limited, trading as finder.com.au (Finder), paid a penalty of \$10,800 following the issue of an infringement notice by the ACCC for alleged false or misleading claims about the number of health insurance policies it compares.

The ACCC alleges that between February and May 2017 Finder represented on its website that its health insurance comparison service allowed consumers to “compare roughly 65,000 policies”, when the number of policies compared was substantially less than this.

The ACCC issued the infringement notice because it had reasonable grounds to believe that Finder had breached the ACL.

Finder has removed the representation from its website.

Finder made the allegedly misleading representation during the period when Australian health funds announce their annual premium “rate rises”. Known as the industry “switch period”, this is the annual peak period when consumers seek to change health insurance policies or insurance providers, often having used online health insurance comparison services.

#### **RED BALLOON PTY LTD**

In November 2017 Red Balloon Pty Ltd (Red Balloon) paid penalties totalling \$43,200 following the issue of four infringement notices by the ACCC for alleged breaches of the new excessive payment surcharges laws in the CCA.

Red Balloon is an online trader that sells ‘experiences’ in Australia, such as skydiving jumps, wine tours, and cooking classes.

The ACCC alleged that on 31 March and 30 June 2017, Red Balloon charged four consumers excessive payment surcharges in respect of payments they made by MasterCard credit, Visa credit, Visa debit and MasterCard debit respectively.

Red Balloon is classified as a ‘large business’ under the excessive payment surcharges provisions. The ban on excessive surcharges has applied to large businesses in Australia for more than a year, commencing on 1 September 2016. For all other Australian businesses, the new ban has applied since 1 September this year.

Red Balloon has since lowered its payment surcharges to the correct amounts, and cooperated with the ACCC’s investigation.

## 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 December quarter, there were ten s.87B undertakings given relating to consumer protection.

### **ADVANCED HAIR STUDIO PTY LTD**

In October 2017 Advanced Hair Studio Pty Ltd (Advanced Hair) announced that it will partly refund some customers who purchased the Advanced Laser Therapy Program between April 2015 and June 2017, following ACCC concerns that Advanced Hair's contract contained terms that were unfair.

Advanced Hair supplies hair loss treatments and procedures including laser therapy as part of 3-12 month programs.

One of the cancellation clauses in Advanced Hair's contracts required customers to pay the entire cost of the program even if they had attended only one or two laser sessions.

Advanced Hair provided the ACCC with a court-enforceable undertaking that it will:

- refund 80 per cent of the total price, less \$150 for laser therapy sessions attended, to affected consumers who entered into the program between April 2015 and June 2017 and who contacted Advanced Hair about cancelling after they started laser therapy sessions, and
- establish an ACL Compliance Program.

The ACCC decided not to take further enforcement action as Advanced Hair cooperated and offered to provide redress to affected customers.

### **BXT INTERNATIONAL LIMITED AND TCF GLOBAL LIMITED**

On 13 December 2017 online electronics retailers, BXT International Limited (BecexTech) and TCF Global Limited (which operates Tchrific and CatchDeal) admitted to contravening the ACL and provided court-enforceable undertakings to the ACCC.

Until September 2017 BecexTech, Tchrific and CatchDeal advertised electronic goods such as mobile phones and tablet computers as 'new', when they were in fact refurbished.

During 2017 the ACCC received 96 complaints about BecexTech, 34 complaints about Tchrific and 60 complaints about CatchDeal.

BecexTech also admitted to misleading consumers about their rights by falsely claiming they were not bound by the ACL as they were incorporated overseas.

Both BXT International and TCF Global have undertaken to:

- clarify when products are refurbished or are not Australian market versions of those products on their website
- contact and offer redress to certain consumers who were either misled into purchasing refurbished products or were misled as to their rights under the

#### ACL.

- implement an ACL compliance program, including staff training and regular reviews, and
- publish a notice notifying consumers about these undertaking and not engage in this type of conduct any further.

BXT International has also undertaken to:

- cease its practice of ‘pre-selecting’ for purchase items additional to those which a consumer actually intends to purchase, and
- revise its warranty policy to clarify it does not limit or exclude consumer guarantees.

#### **TELSTRA CORPORATION LIMITED**

In November 2017 Telstra Corporation Limited (Telstra) agreed to offer remedies to around 42,000 customers for promoting and offering some of its National Broadband Network (NBN) speed plans as being capable of delivering specified maximum speeds, when those maximum speeds could not be achieved in real-world conditions.

Between September 2015 and November 2017, Telstra offered internet services through both its Telstra and Belong brands, advertising a range of different speed plans. This included a “Super Fast Speed Boost” which advertised maximum download speeds of up to 100 megabits per second (Mbps) and maximum upload speeds of up to 40 Mbps (100/40 Mbps).

Limitations on the affected customers’ NBN fibre to the node or fibre to the building internet connections, however, meant that many customers’ internet services were not capable of receiving the maximum advertised speeds of the plans.

Telstra admits that by this conduct it was likely to have contravened the ACL by engaging in misleading or deceptive conduct and making false or misleading representations.

Telstra has provided a court-enforceable undertaking to the ACCC detailing the remedies it will provide affected customers, including refunds, the option to change speed plans, and exit from contracts without paying a fee.

The issue affected a range of customers across a number of different tiered speed plans. Telstra came to the ACCC to notify it of issues relating to some, but not all, of the affected customers, which the ACCC investigation subsequently uncovered.

The ACCC will continue to investigate other retail service providers selling broadband plans over the NBN and take enforcement action where appropriate.

#### **AUSTRALIAN UNITY HEALTH LIMITED**

In November 2017 following an ACCC investigation, Australian Unity Health Limited (Australian Unity) agreed to pay compensation to members who held couple and family policies in 2015 that were likely to have been misled about the dental benefits they could claim from their policy. It is expected that Australian Unity will pay at least \$620,000 in compensation to affected consumers.

At the start of 2015 Australian Unity’s Comprehensive Extras policy for couples and families included one overall limit for dental benefits, which was between

\$1,600 and \$2,400 per calendar year. The insurer's fact sheets, website and terms and conditions in 2015 represented to members that these benefits were fixed and would not change for that year.

Members had been able to choose how to split the annual limit among individual family members. For example, families could use all of the annual limit towards braces for one child. However in September 2015 Australian Unity changed the way the annual limit worked.

While the total limit for dental benefits was the same, claims for each individual family member were limited to half of the total annual limit. For example, claims for dental work for an individual family member, which had been able to be made up to the entire \$1,600 annual limit, were now subject to an \$800 limit.

Australian Unity wrote to members notifying them of the change in August 2015.

Australian Unity has provided a court-enforceable undertaking to the ACCC, under which it has agreed for a period of three years that:

- it will not make a detrimental change to any benefits that are represented as benefits provided for a 12 month period, during that 12 month period
- it will improve the information it provides to consumers about Australian Unity's ability to change benefits, including disclosing that Australian Unity is bound by the ACL when making changes
- it will provide compensation, expected to be at least \$620,000, to affected members, including reimbursement for out-of-pocket costs for dental services incurred in 2015, and payment of expenses on ongoing dental plans, and
- it will notify members about its conduct and Australian Unity's commitments contained in the undertaking.

### **OPTUS INTERNET PTY LTD**

In December 2017 Optus Internet Pty Ltd (Optus) agreed to offer remedies to more than 8,700 of its customers who were misled about maximum speeds they could achieve on certain Optus NBN plans.

Between 1 September 2015 and 30 June 2017, Optus offered NBN services to consumers advertising a range of speed plans. This included a "Boost Max" which advertised maximum download speeds of up to 100 megabits per second (Mbps) and maximum upload speeds of up to 40 Mbps (100/40 Mbps).

However, technical limitations on the customers' fibre to the node or fibre to the building NBN connections meant they could not get the speeds that were advertised. The issue affected a range of customers across a number of different-tiered speed plans.

Optus has admitted that by promoting and offering speed plans that could not be delivered, it likely contravened the ACL by engaging in misleading or deceptive conduct and making false or misleading representations.

Optus has provided a court-enforceable undertaking to the ACCC detailing the remedies it will provide to affected customers, including refunds, moving speed plans, discounted speed plans, and exit from contracts without paying a fee. Optus will be contacting affected consumers on or before 2 March 2018.

## **TPG INTERNET PTY LTD**

In December 2017 TPG Internet Pty Ltd (TPG) agreed to compensate nearly 8,000 of its customers who were misled about maximum speeds they could achieve on certain TPG NBN plans.

Between 1 September 2015 and 30 June 2017, TPG sold NBN broadband plans advertising a range of speeds, including the top 100/40 speed tier (download speeds of 100 Mbps and upload speeds of 40 Mbps).

TPG advertised its high-speed plan as “Seriously Fast Internet. Up to 100Mbps”.

TPG has admitted that by promoting and offering speed plans with maximum speeds that could not be delivered, it likely contravened the ACL by engaging in misleading or deceptive conduct and making false or misleading representations.

The conduct affected TPG customers who purchased TPG’s fibre to the node and fibre to the building NBN plans.

TPG has provided a court-enforceable undertaking to the ACCC detailing the compensation it will provide. Affected customers can choose from options including moving to a lower tier speed plan with a refund, or exiting their plan without cost and receiving a refund. TPG customers entitled to a refund will receive between \$10 and \$30 for each month that they paid for their plan.

TPG will contact affected consumers by 2 March 2018 by email or letter. TPG will tell affected consumers the maximum speed their connection can achieve and explain their compensation options.

## **BELKIN LIMITED**

In December 2017 the ACCC accepted a court-enforceable undertaking from consumer electronics manufacturer Belkin Limited (Belkin) to honour claims under its lifetime warranty policies for the lifetime of the original purchaser.

During 2016 and 2017 Belkin supplied certain products with a “lifetime warranty” or “limited lifetime warranty”. However Belkin applied a policy of only repairing or replacing products under these warranties within five years from the date of purchase. A disclaimer was not printed on product packaging but was referred to on Belkin’s website.

Products affected by these “lifetime warranty” claims included wireless routers, switches and cables.

In addition, Belkin has admitted that some products with lifetime warranties were likely to be non-compliant with the ACL because they did not include the wording required for use in any warranty against defects. Belkin has undertaken to correct its website and packaging to comply with this requirement.

Belkin cooperated with the ACCC’s investigation and has taken steps to resolve the ACCC’s concerns.

## **101 RESIDENTIAL PTY LTD**

In December 2017 Perth based building company, 101 Residential Pty Ltd, amended its standard home building contract following ACCC concerns that it contained unfair terms and made false or misleading representations.

Between October 2014 and August 2017, 101 Residential's building contract contained non-disparagement clauses that allowed it to prohibit customers from publishing any unapproved information about the company, including online reviews.

The non-disparagement clauses also allowed 101 Residential to remove any published information, suspend work on the customer's construction site and ultimately terminate a customer's building contract.

101 Residential has accepted that the non-disparagement clauses may be unfair and has cooperated in providing the ACCC with a court-enforceable undertaking.

The undertaking provides that 101 Residential will not enforce non-disparagement clauses in existing building contracts and will not use them in any future contracts. 101 Residential will also refund customers who lost their deposits because they decided not to proceed with 101 Residential due to the non-disparagement clauses.

101 Residential also accepted that there were two statements in its standard home building contract that were likely to amount to false or misleading representations:

- a term that unreasonably limited 101 Residential's liability and was inconsistent with the statutory guarantees automatically provided to consumers under the ACL, and
- a statement that an annexure to its building contract was based on a Housing Industry Association standard building form, when this was not the case.

Under the court-enforceable undertaking provided to the ACCC, 101 Residential will also publish a corrective notice and write to affected consumers; and establish an ACL Compliance Program.

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

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

2.13. In the December quarter, administrative resolutions were agreed with Telstra, ALDI and CompassCorp Pty Ltd. The ACCC also released its 'Airline: Terms and Conditions' report which highlighted common consumer issues in the airline industry.

### **TELSTRA**

In August 2017 Telstra offered refunds to some AFL Live Pass app subscribers after the ACCC raised concerns about Telstra's disclosure of the size of its viewing screen available on mobiles and tablets.

During the 2016 season, live AFL matches appeared in full-screen on tablets. On 31 January 2017 Telstra introduced a screen size restriction of seven inches for live matches, meaning games no longer appeared full screen on many tablets.

The AFL Live Pass is advertised on the AFL website with images of AFL matches appearing full-screen on tablets. These images are accompanied by the text

“Watch every AFL match live...on mobile and tablet”.

In August, prompted by the ACCC concerns, Telstra offered refunds to consumers who were annual subscribers to the AFL Live Pass at 31 January 2017, and who had downloaded the AFL Live Pass on a tablet. People who purchased the AFL Live Pass app may still obtain a refund by filling in an application form on Telstra’s Crowd Support website.

### **ALDI**

In October 2017 the ACCC completed its investigation into ALDI’s ‘flushable’ wipes and will take no further action after ALDI stopped selling its personal hygiene wipes and removed potentially misleading claims from its bathroom cleaning wipes packaging.

ALDI has now advised the ACCC that it has removed the word ‘flushable’ from its bathroom cleaning wipes and added the instruction ‘do not flush’. ALDI has also removed its personal hygiene flushable wipes from sale.

### **COMPASSCORP PTY LTD**

In December 2017 CompassCorp Pty Ltd trading as Compass Claims (Compass) agreed to amend its advertising and sales practices following an investigation by the ACCC.

Compass is a credit hire business which provides hire cars to consumers who are not at fault in car accidents. Compass is one of the largest providers of these services in Australia.

The ACCC considered Compass was misrepresenting in brochures, its website and in phone calls that consumers who engaged Compass would not be liable for car hire charges or associated costs. Although Compass waived those charges, its contract only required Compass to do so if it was able to recover the charges from the at-fault party or their insurer.

The ACCC also considered Compass represented that consumers would not have to take any further steps to recover costs arising from their car hire. Instead, a consumer was required to assist Compass, which could include authorising court action in the consumer’s name, providing witness statements and attending court.

Compass cooperated with the ACCC’s investigation and has made several changes to its advertising, call centre procedures and sales practices to inform consumers of hire charges and their obligation to provide assistance.

The ACCC will review the marketing and sales practices of other credit hire businesses and will pursue businesses that mislead consumers.

- 2.14. In November 2017 the ACCC released an independent research report on commission-based fundraising in the charity sector as part of its 2017 compliance and enforcement focus on consumer issues arising from commission-based sales. The report, by Frost & Sullivan, is based on interviews with three fundraising agencies, one industry association, 14 charities and 13 individuals who currently or have recently worked in commission-based fundraising.
- 2.15. The report found that some charities operated on a model in which third-party marketing firms earn fees for each donor that signs up from face-to-face or telemarketing approaches. The fee is commonly calculated by a multiple (typically 8 to 17 times) of the monthly donation to which the donor commits. The report is

available at: [Research into the Commission-based Charity Fundraising Industry in Australia.](#)

- 2.16. In December 2017 the ACCC released a report highlighting common consumer issues in the airline industry. The report outlined the ACCC's concerns and informed consumers of their ACL rights when dealing with airlines.

#### **AIRLINES: TERMS AND CONDITIONS REPORT**

The ACCC has examined issues arising in the Australian airline industry relating to consumer guarantee rights and contract terms which may be unfair.

Consumer guarantees relating to services provided in industries such as the airline industry are a current priority for the ACCC. Airlines must ensure they comply with the ACL, avoid unfair contract terms and make sure their terms and conditions are consistent with consumer guarantees.

Between 1 January 2016 and 14 December 2017, the ACCC received over 1400 consumer complaints about airlines. These included hundreds of complaints relating to consumer guarantees and excessive fees.

The ACCC has reviewed complaint data from its own records, state fair trading agencies and consumer group CHOICE about the largest Australian-based airlines (the Airlines) and has identified the following issues of focus:

- 'no refund' statements on the Airlines' websites
- excessive fees for flight cancellations and changes, and
- the application of consumer guarantees, including statements made about a customer's consumer guarantee rights under the ACL, in circumstances where flights have been cancelled or delayed.

The purpose of the report is to highlight common consumer issues arising in the airline industry and the ACCC's concerns, and to inform consumers of their ACL rights when dealing with airlines. Where consumer issues continue, the ACCC will take action to address concerns. In 2018 the ACCC will engage with the Airlines to discuss its expectations for change.

The report is available at: [Airlines: Terms and Conditions Report.](#)

#### **Public warning notices**

- 2.17. 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.
- 2.18. In the December quarter one public warning notice was issued by the ACCC in respect of the overseas based online retailer Digital Sourcing ApS (Digital Sourcing), formerly known as Lux International Sales ApS (Luxstyle). In March 2017 the ACCC issued a public warning about the conduct of Luxstyle. Luxstyle allegedly sent unsolicited goods to consumers then demanded payment for the goods. The company changed its name to Digital Sourcing on 1 October 2017.

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

- 2.19. 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.
- 2.20. 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.
- 2.21. The ACCC also works with businesses, industry associations and consumer groups to promote awareness of the CCA and ACL.

### **Consumer Consultative Committee**

- 2.22. The Consumer Consultative Committee provides a forum through which consumer protection issues can be addressed collaboratively between the ACCC and consumer representatives.
- 2.23. The ACCC held a meeting of this committee on 21 November 2017. Topics discussed included the Northern Australia Insurance Inquiry, a report on unsolicited sales (released by the Consumer Action Law Centre) and the ACCC's compliance and enforcement activities.
- 2.24. Also on 21 November 2017 the CCC held a joint meeting with the AER's Customer Consultative Group (CCG). Topics discussed included the ACCC Retail Electricity Pricing Inquiry, metering contestability and data, and consumer engagement on price comparator rates.
- 2.25. The ACCC commenced work with the CCC to organise the 2018 National Consumer Congress and Ruby Hutchison Lecture. The events will be held on 14 and 15 March 2018 in Sydney.

### **Australasian Consumer Fraud Taskforce**

- 2.26. Following an ACCC review and consultation with members, the Australian Consumer Fraud Taskforce (ACFT) reformed in December 2017 to include additional members and embrace a new focus on information sharing. The taskforce also changed its name to the Australian Scams Awareness Network. The National Consumer Fraud Week campaign, which is held each May, will now be called National Scams Awareness Week.
- 2.27. The network is comprised of government regulatory agencies and departments in Australia and New Zealand that work alongside private sector, community and non-government partners to prevent fraud.
- 2.28. The ACCC hosted a meeting on 20 October 2017. Topics discussed included the evaluation of the 2017 National Consumer Fraud Week campaign and possible themes for the 2018 campaign.

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

- 2.29. 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.

- 2.30. During this quarter ACCC online consumer education resources were accessed 939 067 times.
- 2.31. The ACCC worked with the (then) Department of Infrastructure and Regional Development to produce a simple resource for Norfolk Island consumers to inform them of their rights under the CCA. The Norfolk Island newspaper published this resource in print and on its website in January 2018.
- 2.32. The ACCC is also arranging for Norfolk Islanders to be able to call the ACCC using a local number, rather than incurring international toll charges.

### **Consumer Directed Care**

- 2.33. The ACCC continued work to develop education resources for the Consumer Directed Aged Care (home care services) sector. The ACCC is working with industry, consumer organisations and other regulators to educate older consumers and service providers about their rights and obligations under the CCA and ACL.
- 2.34. In October the ACCC surveyed the home care sector to gain a better understanding of the key competition and consumer issues and the education needs of consumers and service providers. The ACCC received over 120 responses and held its first meeting with the cross agency working group in December.
- 2.35. To coincide with the International Day of People with Disability on 3 December, the ACCC and other ACL regulators undertook an education campaign emphasising the need for providers under the National Disability Insurance Scheme (NDIS) to treat consumers fairly and understand their competition obligations.

### **Scams**

- 2.36. The ACCC's Scamwatch website provides consumers and small businesses with information about scams. The Scamwatch website attracted 524 581 visits in the December quarter.
- 2.37. The ACCC issued three media releases about prevalent or emerging scams during this quarter — a warning about common online scams during Stay Smart Online Week, information about betting and sports investments scams and common Christmas-time scams. These three media releases were also sent as radar alerts to our 66 700 Scamwatch email subscribers. The ACCC also sent an email to the National Retail Association and Australian Retailers Association on behalf of the ACCC and Australian Taxation Office in October 2017 with a warning for retailers about iTunes gift card scams.
- 2.38. 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 15 700 followers by 31 December 2017, which was an increase of approximately 780 followers during the quarter. Over 100 tweets or retweets were posted during the quarter.

### **Supporting a vibrant small business sector**

- 2.39. 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.

- 2.40. During this quarter the ACCC's online business education resources were accessed 333 699 times.
- 2.41. During this quarter we continued to promote our three free online education programs:
- a program for small businesses covering major aspects of the CCA and ACL—over 35 000 users have accessed this program since its launch in April 2013, including over 1100 this quarter
  - a program for tertiary students studying subjects that touch on the CCA and the ACL— almost 43 000 users have accessed this program since its launch in November 2013, including over 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.
- 2.42. During this quarter the ACCC sent 19 email updates to small business and franchising information networks. The updates provided subscribers with information about:
- scammers targeting ASIC customers
  - ACCC enforcement action in relation to franchising
  - new appointments to the ACCC's Small Business and Franchising Consultative Committee for 2018 and 2019
  - essential selling tips for Christmas, and
  - the ACCC's New Car Retailing Industry Market Study final report.

### **Country of Origin Food Labelling**

- 2.43. 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.
- 2.44. 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.
- 2.45. During the quarter the ACCC provided guidance to food businesses to help them understand the new country of origin food labelling framework.

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

- 2.46. The Small Business and Franchising Consultative Committee is a forum for industry and government to discuss competition and consumer law concerns related to the small business and franchising sectors.
- 2.47. Dr Michael Schaper, ACCC Deputy Chair, chairs the committee. Committee meetings are held at least twice a year. The Committee's final meeting for 2017 was held on 13 October.

- 2.48. In accordance with good governance practice a biennial membership review was conducted during the quarter. The new membership consists of 17 industry associations, seven professional advisors and five academic representatives. Members commit to a two-year term covering 2018 and 2019.

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

- 2.49. 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
  - working to implement new or revised product safety mandatory standards and bans.

### Takata airbag recall

- 2.50. The Takata airbag recall is the world's largest automotive recall, affecting up to 100 million vehicles.<sup>[1]</sup> Voluntary and mandatory recalls of affected vehicles are being conducted globally including in the US, Canada, Europe, China, Malaysia and Japan.
- 2.51. A large number of motor vehicles supplied in Australia since the late 1990s have airbags installed that were manufactured by Takata Corporation. Over time the propellant in certain Takata airbags degrades as the inflator housing is permeable to moisture and exposed to temperature fluctuations. When the airbag is triggered in a collision, sufficiently degraded propellant will burn too quickly and create excessive gas, causing the airbag inflator housing to rupture and project metal shrapnel towards the vehicle occupants, which may cause serious injury or death.
- 2.52. Worldwide, defective Takata airbag inflators have been associated with at least 22 deaths and over 230 injuries. In Australia defective airbags have been linked to the death of a man in Sydney in July 2017 and seriously injuries to a woman in Darwin in April 2017.
- 2.53. On 25 July 2017 the former Minister for Small Business, the Hon Michael McCormack MP, and the Minister for Urban Infrastructure, the Hon Paul Fletcher MP, wrote to vehicle manufacturers with vehicles under voluntary recall demanding answers about their Takata airbag recall efforts.
- 2.54. On 5 August 2017 the former Minister for Small Business issued a Safety Warning Notice for consumers on the risks of defective Takata airbag inflators and announced a product safety investigation by the ACCC. The ACCC's objectives are to better understand the safety hazards and risks posed by Takata airbags and to build an evidence base to support recommendations to the Minister on any appropriate recall action. This includes examining the actions taken by manufacturers in carrying out their voluntary recalls to assess whether these efforts are sufficiently effective.

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<sup>[1]</sup> 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://infrastructure.gov.au/vehicles/recalls/files/report-on-takata-airbag-recall.pdf).

- 2.55. On 21 September 2017 following a recommendation from the ACCC, the former Minister for Small Business issued a proposed recall notice pursuant to s.132A of the CCA for vehicles fitted with defective Takata airbag inflators. A proposed recall notice must be issued if the Minister proposes to issue a recall notice for consumer goods of a particular kind pursuant to s.122 of the ACL. A recall notice for consumer goods of a particular kind may be issued if it appears to the Minister that such goods will or may cause injury to any person and one or more suppliers of such goods have not taken satisfactory action to prevent those goods causing injury to any person. In the proposed recall notice issued on 21 September 2017, the former Minister for Small Business outlined reasons why it appeared to him that certain Takata airbags posed a serious risk of injury and that suppliers of vehicles with certain Takata airbags under voluntary recall had not taken satisfactory action to prevent those goods causing injury.
- 2.56. The ACCC held a supplier and stakeholder conference in relation to the proposed recall notice as well as a number of post-conference meetings. Manufacturers and interested parties have also provided a number of written submissions.

### **Quad bike safety**

- 2.57. Quad bikes, also known as all-terrain vehicles (ATVs), have been responsible for 114 deaths in Australia during 2011 to 2017. Seventeen of these deaths were children under the age of 16.
- 2.58. During the December quarter the ACCC continued its investigation into the safety of quad bikes, which will consider whether a safety standard is required for quad bikes under the ACL. A safety standard for quad bikes could:
- require quad bikes to be tested in accordance with a national quad bike safety rating system
  - prohibit unsafe design features or mandate requirements for design and construction, and
  - prescribe the form and content of any warnings or instructions that need to accompany quad bikes at the point of sale, including the safety rating achieved by the quad bike.
- 2.59. On 13 November 2017 the ACCC released an Issues Paper for consultation with interested stakeholders. Submissions closed on 15 December 2017, and 56 submissions were received. The submissions will inform a cost benefit analysis and any draft policy options. The ACCC intends to consult on its draft recommendation through a Regulation Impact Statement in mid-February 2018, and will provide its final recommendation to the Minister by mid-2018.
- 2.60. The Quad Bike Inter-Departmental Committee (IDC), which was formed earlier in 2017 to consider the development of a quad bike safety star rating system, has formed a Technical Reference Group (TRG). Its purpose is to review a model safety star rating system developed by the University of New South Wales Transport and Road Safety Unit (UNSW TARS) to determine any potential refinements to it. Members of the TRG include nominated representatives of the UNSW TARS Unit and the Federal Chamber of Automotive Industries.

## Product safety recalls

**Table 6: Recalls—1 October to 31 December 2017**

Recalls assessed by regulator	
General consumer goods—ACL regulators including the ACCC	62
Motor vehicles – DIRD	53
Food – FSANZ	12
Therapeutic goods – TGA	5
TOTAL	132

*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***

- 2.61. A national recall is underway to remediate premises that have been installed with substandard Infinity electrical cable.
- 2.62. The ACCC has audited individual suppliers to assess their communication strategies and recall efforts. The audit has identified 4721 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.
- 2.63. As at 30 November 2017, 2473 km (52 per cent) of the voluntarily recalled cable is accounted for via remediation or scheduled remediation. For further information on the recall, visit [the ACCC website](#).

### ***Samsung top-loading washing machines recall***

- 2.64. 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.
- 2.65. 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 reporting period in December the recall was approximately 87 per cent complete.
- 2.66. The ACCC is currently considering whether any Australian government agencies can assist Samsung with identification of addresses of consumers who have changed address since purchasing their washing machine. The ACCC has initially recommended that Samsung should explore an exemption or ruling via the Information Commissioner to enable publishing of purchase information that may include private information.
- 2.67. Clear ACCC advice about consumer rights in relation to the faulty machines has helped consumers seek their choice of remedy. Visit the ACCC [website](#) for more information on the recall.

### **Mandatory injury reports**

- 2.68. 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 787. Of these, 421 were out of jurisdiction or were referred to another agency for assessment. Eighteen were progressed for investigation, eleven were closed and assessed as part of an ongoing investigation and 337 were assessed as requiring no further action by the ACCC.

- 2.69. In this quarter the ACCC received 202 reports of unsafe products and related enquiries that were escalated for hazard analysis and assessment.

### **Supplier and consumer education**

- 2.70. During the December quarter the ACCC assessed more than 70 products containing button batteries against the voluntary safety principles contained in the Industry Code for consumer goods that contain button batteries. The ACCC contacted suppliers of the products identified as 'non-compliant' with the code to educate them about button battery hazards and to outline actions they could take to ensure the supply of safer products, including recall action. The ACCC also continued to assist the Industry working group with revision of the Industry Code for businesses supplying button battery products.
- 2.71. The ACCC's Product Safety Australia website promoted Takata airbag recalls via a media release urging drivers to check if they are affected by the recall ahead of the holiday period.
- 2.72. In this quarter the ACCC also focused on communication about the hazards of toppling furniture. In November the ACCC, Health Canada and the Organisation for Economic Co-operation and Development (OECD), jointly led a week-long global toppling furniture and television safety campaign. The campaign ran in 18 other jurisdictions and released multi-lingual videos, infographics, fact cards and informative web content.
- 2.73. Australian coverage of the campaign included social media, newspapers, product safety advocacy websites and radio interview broadcasts. The ACCC's Product Safety Facebook page reached more than 200,000 views during the week of the campaign.
- 2.74. The ACCC also corresponded with 38 major Australian furniture and television retailers (accounting for approximately half of each sector by market share) acknowledging suppliers' commitment to adopt the safety initiatives of the National Retail Association's (NRA) Best Practice Guidelines, informing them of the OECD campaign, and inviting them to use the campaign materials in their own communication strategies.
- 2.75. In November the ACCC commenced a Safe Summer social media campaign. It includes advice on products and issues that commonly cause problems over the summer holidays, such as trampolines, sunglasses, Christmas toys, returns of goods, quad bikes, button batteries, charging and using powered toys, ladder safety, and portable swimming pools. To date the campaign has reached 81 200 consumers through Facebook, and it will conclude in the last week of February 2018.

### **Mandatory safety standard reviews**

- 2.76. The ACCC is responsible for administering and enforcing mandatory safety standards for consumer products. These standards are made by the Minister responsible for Consumer Product Safety and specify the minimum safety requirements that products must meet before they are supplied, to prevent the risk of death or serious injury to consumers.

- 2.77. The ACCC is committed to a program to review all mandatory safety standards. Reviews consider a wide range of stakeholder views, including those of other safety regulators, industry participants, test laboratories and safety and consumer advocates to provide for consumer safety. Recommendations to the Minister 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.
- 2.78. 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 the [ACCC](#) website.
- 2.79. During this quarter the ACCC conducted analysis and formulated recommendations for the Minister from the reviews of the mandatory safety standards for balloon-blowing kits and motor vehicle recovery straps. The Minister made decisions on the following standards:
- portable ramps for vehicles
  - vehicle support stands
  - motor vehicle recovery straps, and
  - balloon-blowing kits.
- 2.80. We also worked on progressing reviews for the following mandatory safety standards for consumer products:
- bunk beds
  - children's toys (includes aquatic toys, projectile toys, toys containing lead and other elements, toys containing magnets and toys for children up to and including 36 months of age)
  - cots (household and folding)
  - pedal bicycles
  - prams and strollers
  - bicycle helmets
  - disposable cigarette lighters, and
  - self-balancing scooters.

### **Consumer product safety compliance**

- 2.81. The ACCC uses an established risk-based assessment method to identify priorities for safety inspections of consumer products offered in the market. Before choosing target sectors or products, the ACCC also considers intelligence about market place problems, the length of time since a sector or product was last inspected and the opportunities to undertake activities jointly with other agencies. Inspections generally involve:
- visual inspections of products in-store and online, and
  - performance testing by independent laboratories to check performance requirements mandated by the regulations.

- 2.82. The ACCC also conducts inspections to gauge the effectiveness of particular safety regulations. During this quarter we undertook surveillance for the following regulated and non-regulated products: children’s toys, blinds, curtains and window fittings, pedal bicycles, portable swimming pools, pools and spas with unsafe design features, and products containing button batteries. As a result of this proactive surveillance program eight bicycles, nine portable pools and one toy were identified as being non-compliant. The ACCC is currently in discussions with the suppliers about remedial actions.
- 2.83. In the December quarter the ACCC completed negotiations with businesses whose products were inspected during surveillance activities in the previous quarter. This achieved 10 voluntary recalls of unsafe or non-compliant products, including: a bicycle helmet, three children’s nightwear items, two ethanol burners and four mini jelly cup products containing konjac.

**Table 8: Quarterly surveillance snapshot**

Total number of retailers/sites surveyed	514
Total number of product lines inspected	4 313
Total number of products requiring further assessment	29

## 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**

#### **Domestic mobile roaming declaration - final decision**

- 3.2. Following a public inquiry, on 23 October 2017 the ACCC decided not to declare a domestic mobile roaming service.
- 3.3. The ACCC's inquiry examined competition in the mobile services market and found that declaration would not lead to lower prices, better coverage or quality of services for consumers. The inquiry also examined incentives for mobile operators to make investments to expand coverage and improve their networks in regional Australia. It found that declaration could harm the interests of consumers by undermining the incentives of mobile operators to make investments to compete with each other in regional areas.
- 3.4. Following the inquiry, the ACCC has identified a number of regulatory and policy measures that could potentially address inadequate mobile coverage in regional Australia. These include establishing better transparency about network coverage, quality and operators' investments, reducing the cost of deploying mobile infrastructure in regional areas, and ensuring that competition considerations are properly taken into account in the spectrum management framework.
- 3.5. The ACCC's proposed actions to implement these measures include commencement of a review of the Facilities Access Code to identify barriers to co-location or infrastructure deployment and a review of the ACCC's Infrastructure record keeping rules (RKR) to improve the information that the ACCC collects about mobile networks. The ACCC will also actively engage with industry and governments to facilitate a collaborative approach to addressing the regional mobile issues the inquiry identified.
- 3.6. The domestic mobile roaming inquiry commenced in September 2016 and involved an extensive consultation process. Following the ACCC's draft decision in May 2017 proposing not to declare a domestic mobile roaming service, Vodafone Hutchison

Australia (VHA) applied to the Federal Court seeking judicial review of the ACCC's conduct in holding the inquiry, and orders to quash the draft decision and restrain the ACCC from proceeding with the inquiry on the basis of the draft decision.

- 3.7. The ACCC decided to proceed with the inquiry while also responding to VHA's application for judicial review. On 21 December 2017 the Federal Court dismissed VHA's application for judicial review.

### **Measuring Broadband Australia**

- 3.8. On 1 December 2017 the ACCC announced SamKnows as the successful tenderer to undertake its \$6.5 million broadband speeds monitoring program (Measuring Broadband Australia program), which will see broadband speeds recorded across 4000 Australian homes over the next four years. The appointment follows the conclusion of a competitive open tender process conducted in accordance with Commonwealth government requirements.
- 3.9. During December 2017 the ACCC progressed the development of our volunteer testing panel and over the first year of the program 2000 households will receive testing devices. The ACCC will begin publishing data by the end of the first quarter of 2018. More than 8000 households signed up to take part in the program.
- 3.10. On 7 April 2017 the Federal Government announced that it will fund the ACCC to implement a four-year national broadband performance monitoring and reporting program to provide Australian consumers with accurate and independent information about broadband speeds.

### **Broadband Speed Claims - industry guidance**

- 3.11. On 1 December 2017 the ACCC also commented on the change in the marketing practices of broadband retail service providers (RSPs) following the publication of its industry guidance in August 2017. The guidance is intended to improve the information and support available to broadband consumers and to promote competition among RSPs.
- 3.12. The ACCC noted that Telstra and Optus have recently changed their marketing information to provide customers with comparable information about the typical busy period broadband speeds that they can expect on various plans.
- 3.13. The ACCC also noted that the rest of the industry continues to advertise internet plans using unhelpful speed ranges, referencing off-peak speeds or failing to provide consumers with any information about the speed of their services during busy hours. The ACCC has serious concerns about consumers trying to compare internet services of these providers and will be considering whether there is potential for misleading conduct that would constitute a contravention of the ACL.

### **Communications sector market study - draft report**

- 3.14. The ACCC released its draft report of the communications sector market study on 30 October 2017, outlining 29 recommendations to cover a wide range of competition and consumer issues in the Australian communications sector.
- 3.15. The market study draft report found that there is strong price competition between the major service providers despite considerable concentration in both fixed and mobile retail markets. Market competition is likely to increase in the near future with TPG launching its own mobile network and VHA offering services over the NBN.

- 3.16. Key recommendations from the draft report address connection and activation issues for consumers as they transition to the NBN, including a review of NBN wholesale service standards, NBN wholesale access pricing, competition in NBN wholesale aggregation markets and developments in emerging areas such as the Internet of Things.
- 3.17. While the market study has highlighted a number of areas of NBN related issues which will benefit from some immediate actions, overall, the market study found that the current regulatory framework remains fit for purpose in addressing current and emerging issues and ensuring that the long term benefits of competition are realised.
- 3.18. The ACCC is currently considering the submissions received in response to the draft report and expects to release its final report in early 2018. Submissions are listed on the ACCC [website](#).
- 3.19. The ACCC has undertaken the market study to deepen its understanding of developments in the Australian communications sector and to ensure it is well placed to continue to address market failures, promote competition and benefit consumers into the future.

### **NBN wholesale service standards inquiry**

- 3.20. Following an announcement in November 2017, the ACCC released a discussion paper on 18 December 2017 inviting submissions to determine whether NBN wholesale service standards are appropriate, and to consider whether regulation is necessary to improve customer experiences. Further examination of non-price terms of access, particularly the service standards for access to NBN services, was one of the proposed actions arising from the communications sector market study draft report.
- 3.21. Wholesale service standards are currently set out in commercial agreements that have been negotiated by NBN Co with its wholesale customers (RSPs). The ACCC is examining whether these service levels are appropriate and effective. In particular, the inquiry is considering whether there are appropriate incentives for NBN Co to remedy service failures, along with the adequacy of compensation available to wholesale customers to ensure consumers in turn are provided appropriate redress when things go wrong.
- 3.22. While the ACCC's inquiry will focus on NBN wholesale service levels, the ACCC will examine them in the context of the supply chain. The ACCC will closely liaise with the Australian Communications and Media Authority (ACMA), which is also considering NBN supply chain issues to determine how they affect outcomes at the retail level.
- 3.23. Submissions are due by 16 February 2018.

### **ACCC takes Optus to court for allegedly misleading customers about moving to the NBN**

- 3.24. On 15 December 2017 the ACCC instituted proceedings in the Federal Court against Optus alleging it misled its customers about the need to move quickly from its existing hybrid fibre coaxial (HFC) cable network to the NBN.
- 3.25. The ACCC alleges that between October 2015 and March 2017 Optus made false and misleading representations to its customers that it would disconnect their HFC services within a specified time due to the rollout of the NBN. The ACCC alleges that these representations put pressure on customers to move to the NBN sooner than

they were required to and also expedited payments from NBN Co to Optus for each customer that migrated to the NBN network.

- 3.26. The ACCC is also concerned that Optus created the impression that its customers were required to obtain NBN services from Optus when they could have chosen another provider.
- 3.27. The ACCC is seeking declarations, injunctions, pecuniary penalties, a publications order, compliance orders and costs.

### **NBN Co's SAU variation decision on hold**

- 3.28. NBN Co is currently seeking to vary its special access undertaking (SAU) primarily to incorporate fibre to the node, fibre to the basement (FTTB) and HFC technologies into the SAU to reflect the current multi-technology mix (MTM) NBN model. The SAU sets out the key price and non-price terms and conditions upon which NBN Co will supply its services to access seekers until 2040.
- 3.29. On 22 June 2017 NBN Co withdrew its originally proposed variation and lodged a revised version. The ACCC consulted on the proposal in August 2017 seeking submissions on the application of the SAU pricing framework to MTM services as well as other key changes.
- 3.30. On 9 October 2017 the ACCC announced it would not make a decision on the SAU variation until NBN Co further progressed its consultation with customers on its pricing model. The ACCC considered that it was not appropriate to make a decision on the SAU variation at the time since NBN Co's consultation may have resulted in changes to the current pricing model.

### **NBN wholesale market report - September 2017 quarter**

- 3.31. The ACCC released its NBN Wholesale Market Indicators Report for the September quarter 2017 on 9 November 2017. The report noted that competition is increasing as more access seekers have built sufficient scale to directly connect with the NBN at more points of interconnection (POIs). The key findings of the reports are:
  - NBN Co was supplying a total of 3,038,483 wholesale broadband access services (up from 2,511,392 services in the June quarter).
  - demand for aggregate network capacity (connectivity virtual circuit (CVC)) continues to increase with NBN Co contracted to supply 3,452 gigabits per second (up from 2,820 in the June quarter).
  - the amount of CVC acquired per user increased to 1.11 megabits per second (up from 1.09 megabits per second per user in the June quarter) and the number of premises connected via HFC almost doubled.
  - there are 26 access seeker groups directly connected to NBN Co's network. Of these, the top four (Telstra, Optus, TPG Group and Vocus) are connected at all 121 POIs and at all 121 POIs there is at least one additional access seeker.
- 3.32. The most popular speed tier on the NBN remains 25 megabits per second speed tier, accounting for 55 per cent of all services connected.

### **Record keeping rules**

- 3.33. A number of RKR's were reviewed by the ACCC during the quarter. Through RKR's the ACCC collects a range of information from relevant market participants to monitor competition, market developments and inform regulatory decisions.

### ***NBN services in operation RKR***

- 3.34. Following two public consultation processes, on 18 September 2017 the ACCC extended the operation of the NBN services in operation (SIO) RKR for a further three years to 2020. The ACCC then amended the RKR on 18 December 2017 to include more detailed reporting requirements on CVC information.
- 3.35. On 19 December 2017 the ACCC also commenced consultation on a revised NBN SIO RKR Disclosure Direction. The Disclosure Direction forms the basis of the NBN Wholesale Market Indicators Report which is published by the ACCC on a quarterly basis. The proposed changes to the NBN SIO RKR Disclosure Direction would require additional information be reported for inclusion in the Market Indicators Report. Submissions on the revised Disclosure Direction are due in February 2018.

### ***Broadband performance monitoring and reporting RKR***

- 3.36. To validate and assist in the reporting of the results of the ACCC's Measuring Broadband Australia program, the ACCC made the Broadband performance monitoring and reporting RKR on 18 December 2017. The RKR requires NBN Co to report certain information quarterly to the ACCC about the broadband services provided to residential customers who have volunteered to participate in the program.

### ***Infrastructure RKR***

- 3.37. On 19 December 2017 the ACCC amended the Audit of Telecommunications Infrastructure Assets (Infrastructure RKR) following a consultation process. The amendments update the list of parties required to report under the RKR and clarify the information required to be reported on mobile and FTTB infrastructure, and geographic boundaries for customer access networks.

### ***Regulatory Accounting Framework RKR***

- 3.38. The ACCC revoked the Regulatory Accounting Framework RKR (RAF RKR) on 20 October 2017. The RKR had become redundant due to changes in telecommunications markets and the availability of more recent record keeping and reporting frameworks administered by the ACCC.
- 3.39. The RAF RKR was a vertical and horizontal accounting separation model established in 1999 to provide for auditing and reporting for regulatory purposes of asset, revenue and cost information for Telstra's wholesale and retail activities.

### ***Telstra's proposed FTTC Migration Plan consultation***

- 3.40. The ACCC consulted on Telstra's proposed variation to its Migration Plan to facilitate the rollout of fibre to the curb (FTTC) by NBN Co as an access technology.
- 3.41. The ACCC released a discussion paper on 1 December 2017 which considered whether the proposed changes offer adequate protections for customers to maintain access to the services they value during migration to the NBN.
- 3.42. Once the FTTC technology is ready to be deployed, the migration plan is intended to promote efficient disconnections and minimal disruption in the switchover to NBN-based services.
- 3.43. The Migration Plan sets out the steps that Telstra will take to progressively migrate voice and broadband services from its copper and HFC networks to the NBN as it is rolled out across Australia.

- 3.44. The ACCC's consideration of the proposed variation is limited to whether or not the Migration Plan, as varied, complies with Migration Plan Principles issued by the Australian Government in 2015.
- 3.45. Submissions closed on 5 January 2018 and the ACCC is currently considering the submissions.

### **Telstra request for regulatory forbearance regarding cease sale obligations impacted by NBN Co HFC decision**

- 3.46. On 28 November 2017 Telstra requested regulatory forbearance regarding its Migration Plan cease sale obligations. This is in respect of the supply of new legacy copper and HFC services to customers impacted by NBN Co's 27 November 2017 decision to stop connecting premises to NBN services through HFC lines for 6-9 months.
- 3.47. Telstra's proposal enables customers requesting new broadband services at their current premises or because they are moving premises in the HFC service footprint to have the option to buy new legacy copper and HFC services from Telstra or its wholesalers, or request an NBN-based HFC service. In the absence of regulatory forbearance, Telstra would be in breach of Migration Plan clause 17 if it adopted this approach.
- 3.48. On 30 November 2017 the ACCC agreed to Telstra's request on the condition that Telstra submits a formal variation to the Migration Plan as soon as practical. The ACCC will consider the variation in accordance with the Migration Plan principles and consult publicly when Telstra submits the proposed variation.

## **Fuel**

### **September quarter 2017 petrol monitoring report**

- 3.49. The ACCC released its September quarter 2017 petrol monitoring report on 6 November 2017. It found that average petrol prices in the five largest cities (i.e. Sydney, Melbourne, Brisbane, Adelaide and Perth) fell by 2.7 cents per litre (cpl) in the quarter. The average petrol price was 122.5 cpl in the September quarter 2017. Retail margins also decreased to their lowest levels in real terms since the March quarter 2016.
- 3.50. Retail prices in Brisbane were again the highest of the five largest cities, with an average price of 124.7 cpl, which was 2.7 cpl higher than the average across the other four largest cities.
- 3.51. The report revealed how much money motorists can save by avoiding buying petrol at the peak of the price cycle. If motorists in Sydney had avoided buying E10 on the six days around the price cycle peaks in the previous six months, they would have paid on average around 2.6 cpl less. Assuming similar savings for the other types of petrol, the estimated overall savings for Sydney motorists over a year would be in the region of \$85 million.
- 3.52. Analysis of other large cities shows estimated savings in Melbourne are in the region of \$75 million, with average regular unleaded petrol (RULP) prices 2.3 cpl lower. In Brisbane they are in the region of \$40 million, with average RULP prices 2.4 cpl lower, and in Adelaide they are in the region of \$30 million, with average RULP prices 3.3 cpl lower. The analysis about savings from price cycles was not undertaken for Perth because it has regular weekly price cycles.

- 3.53. Despite an increase in international refined petrol prices, influenced by the activities of the OPEC cartel, an increase in the AUD-USD exchange rate in the quarter meant that prices at the pump decreased to their lowest levels since late 2016.

### **Brisbane petrol market study**

- 3.54. The ACCC released the findings of its report on the Brisbane petrol market on 9 October 2017. It noted that petrol prices in Brisbane have been significantly higher than those in the other four largest cities in Australia for the last eight years. Between 2009–10 and 2016–17, Brisbane motorists paid on average 3.3 cents per litre (cpl) more for petrol than motorists in the other four largest cities.
- 3.55. The main factor influencing the higher prices in Brisbane is higher retail margins on petrol, which have contributed to profits in Brisbane being significantly higher than the average across Australia. The cost to motorists in Brisbane of higher petrol prices has been significant, at around \$50 million per annum.
- 3.56. Over the last 10 years the number of retail sites in Brisbane had been broadly stable, at around 400 sites. However, compared with Sydney, Brisbane has fewer independent chains operating in the retail market, and they do not price as aggressively.
- 3.57. Increased transparency and promotion of vigorous and effective price competition can lead to lower petrol prices. In Brisbane there is usually a wide range of prices at retail petrol sites across the city.
- 3.58. Readily available information about current retail petrol prices, from fuel price websites and apps, enables motorists to shop around and purchase petrol at relatively lower priced retail sites.

### **ACCC receives new petrol monitoring direction**

- 3.59. In December 2017 the Treasurer, the Hon Scott Morrison MP, issued a new petrol monitoring direction to the ACCC. The new direction requires the ACCC to monitor the prices, costs and profits relating to the supply of petroleum products and related services in Australia and is for two years.
- 3.60. Under the previous three-year direction, which expired in December 2017, the ACCC completed 12 quarterly reports and five petrol market studies (Darwin, Launceston, Armidale, Cairns and Brisbane).

## **Wheat**

### **Bulk Wheat monitoring report 2016-17**

- 3.61. The ACCC released its 2016-17 Bulk Wheat Ports Monitoring report on 13 December 2017. The report examines the nature and concentration of export activity and capacity allocation at Australia's bulk wheat port terminals. The report was first published in 2016 following a commitment by the ACCC to continue to monitor the industry after a number of decisions to reduce the level of regulation at certain port facilities in 2015.
- 3.62. The 2016-17 report found that industry continues to have concerns about the market structure of some of Australia's bulk grain export supply chains. The ACCC noted that over the years it has received numerous complaints regarding exporters' difficulties in accessing bulk handling services both at port and along related supply chains.

- 3.63. The report found that while competition is emerging at some ports, other regions remain characterised by vertically integrated port operators. This is particularly the case in SA and WA where Viterra and CBH dominate the bulk grain export market supply chains of each state and also compete in the export market.
- 3.64. The report also found no clear changes in exporter market shares held by owners of port infrastructure following exemption decisions.
- 3.65. The report highlighted the continuing importance of the Code, which is currently under review by the Department of Agriculture and Water Resources. The report noted the ACCC's view that the Code must be retained and improved.
- 3.66. The report is available from the [ACCC website](#).

### **Submission to the Bulk Wheat Code review**

- 3.67. On 12 December 2017 the ACCC published a submission in response to the Department of Agriculture and Water Resources issues paper on the Bulk Wheat Ports Code review.
- 3.68. The Department is due to publish a draft report and seek further industry feedback in March to May 2018.
- 3.69. The ACCC's submission notes that the Code plays an important role in ensuring port access for the exporters that buy grain from Australian growers. Despite emerging competition at some ports over the last four years the ACCC does not consider that fair and transparent access to bulk export grain export services across Australia would be assured in the absence of the Code. Without fair and transparent port access, exporters may reduce their participation in export markets, reducing the marketing options for growers and ultimately the price that they can secure for grain.
- 3.70. Given the current state of the Australian bulk grain export market, the ACCC considers that industry-specific regulation for bulk wheat port terminal services remains necessary and that the Code should be improved and strengthened.

## **Container Stevedoring**

### **Recent new entrants will increase competition at container ports**

- 3.71. The ACCC released its annual Container Stevedoring Monitoring Report for 2016-17 on 1 November 2017. The report revealed that while stevedoring operating profits per TEU (standard unit of measurement for shipping containers) rose by over 25 per cent in 2016-17, competition levels are set to increase now that three stevedores are competing at the nation's three largest container ports.
- 3.72. However this remains a critical period for sustainable competition to develop. New entrants Hutchison and VICT will need to go further than pushing the incumbents Patrick and DP World to lower prices in the short term and win a substantial share of the market.
- 3.73. Both DP World and Patrick either introduced or substantially increased 'infrastructure charges' to transport companies processing laden containers at their container terminals.
- 3.74. The ACCC is concerned that truck and rail operators face these higher charges but are limited in their ability to take their business elsewhere. Although some organisations approached the ACCC with allegations that the infrastructure charges

have been in contravention of the CCA, there are no provisions in the Act to deal with excessive pricing. However, in the 2017-18 monitoring report, the ACCC will fully examine the impact of the infrastructure charges, particularly the productivity benefits flowing to truck and rail operators

- 3.75. Other findings of the report included that the volume of containers passing through Australia's container ports is the highest level recorded. In 2016-17, Australian stevedores handled 7.2 million TEUs. Stevedoring revenue fell 4.5 per cent to \$138.80 per TEU, continuing a consistent trend with unit stevedoring revenue about a quarter less than a decade ago in real terms.
- 3.76. The report also noted that the stevedoring industry is not reporting the same level of productivity improvements seen in previous years and the ACCC will be looking for this productivity growth to return in the future.
- 3.77. The ACCC has monitored the container stevedoring industry since 1998-99 under a direction from the Australian Government. The ACCC currently monitors the prices, costs and profits of container stevedores at five Australian container ports.

## **Rail**

### **2015 Annual Compliance of ARTC's Hunter Valley Access Undertaking**

- 3.78. On 15 September 2017 the ACCC released a consultation paper for the 2015 Annual Compliance of the Australian Rail Track Corporation's (ARTC's) Hunter Valley Access Undertaking. For 2015, ARTC submitted it had a \$40.5 million over-recovery of revenue in the Constrained Network, which is to be refunded to Access Holders.
- 3.79. On 23 October 2017 the ACCC received submissions from Anglo–American and Whitehaven Coal in response to this consultation paper.
- 3.80. On 7 December 2017 the ACCC notified stakeholders it had engaged WIK-Consult to assist in assessing the efficiency of ARTC's operating expenditure.

## 4. Market studies and research

### Second interim report on Australian east coast gas market

- 4.1. The ACCC provided its second interim report to the Treasurer as part of its new gas market inquiry role on 13 December 2017.
- 4.2. Whilst the second interim report finds a number of improvements in the gas market, prices remain higher than they would be in a well-functioning and competitive market. Improving supply into the domestic market has eased prices particularly for large commercial and industrial (C&I) users. Supply to smaller C&I users is less competitive, with these users generally facing higher prices due to fewer competing offers.
- 4.3. The ACCC's first interim report of 25 September 2017 projected a shortfall of gas in the east coast gas market of 55 PJ and up to 108 PJ if domestic demand reaches the upper limit of the Australian Energy Market Operator's forecasts.
- 4.4. Since the first interim report, the Government signed a heads of agreement with the three Queensland liquefied natural gas (LNG) exporters on 3 October 2017. The LNG producers agreed to offer sufficient gas on reasonable terms to meet any domestic market shortfalls over 2018 and 2019.
- 4.5. Under the heads of agreement the ACCC will monitor the LNG exporters' compliance, as well as the sales, offers to sell and bids declined of the other suppliers. With the signing of this agreement, the Government has, at this stage, decided not to invoke formal export controls.
- 4.6. The second interim report finds that there is now a lower likelihood of a supply shortfall in 2018 across the east coast gas market. However southern states continue to use more gas than they produce which is contributing to higher prices.
- 4.7. The reports follow 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.

### Northern Australia Insurance Inquiry

- 4.8. In May 2017 the Australian Government directed the ACCC to hold an inquiry into the supply of residential building (home), contents and strata insurance products to consumers in northern Australia. The inquiry will help to address concerns about insurance affordability and availability, promote more informed and more competitive insurance markets, and make a difference for consumers in northern Australia.
- 4.9. The ACCC released an issues paper for consultation in October 2017 seeking comments on a range of issues, including:
  - insurance pricing, the key cost components of insurance, and insurer profitability
  - competitiveness of markets for insurance in northern Australia
  - how consumers interact with insurance markets including any barriers to consumers making well informed choices, and
  - other regulatory issues relevant to the insurance industry, and the role that mitigation can play in improving affordability.

- 4.10. The ACCC also released a short version of the issues paper focusing on consumer issues. The short version is available on the ACCC Consultation Hub and makes it easier for local residents and property owners to have a say.
- 4.11. During November and December 2017 the ACCC held eight public forums in Townsville, Cairns, Alice Springs, Darwin, Karratha, Broome, Rockhampton, and Mackay. The forums provided local communities with an opportunity to raise their concerns directly with ACCC Commissioners and staff.
- 4.12. In December 2017 the ACCC issued information requests to eight insurers supplying residential building, contents and strata insurance in northern Australia. The notices require the insurers to provide detailed information on the pricing of insurance, claims data, how premiums for the relevant insurance products are set, and a range of other information to assist the inquiry.
- 4.13. The ACCC requested submissions to its issues paper until 19 January 2018 and its first report to the Treasurer is due by 30 November 2018. The inquiry will run until 30 November 2020.

## **Dairy Inquiry**

- 4.14. In the December quarter, the ACCC Dairy inquiry interim report regarding the competitiveness of prices, trading practices and the supply chain in the Australian dairy industry was released. The interim report makes eight recommendations arising from its analysis of the industry to date, including the introduction of a mandatory code to address bargaining power imbalances, improve price and production signals, stop practices that transfer risk inappropriately, and enhance the competition for farmers' milk.
- 4.15. The interim report notes that while the supermarkets' decision to sell \$1 per litre private label milk is a source of great concern for many dairy farmers, farmers earn the same regardless of whether their milk ends up as private label, or more expensive branded milk. The interim report recommends strengthening the bargaining power of farmers, and limiting the extent to which processors can simply transfer risk onto farmers as one of the best ways to address bargaining power imbalances in the dairy supply chain.
- 4.16. The ACCC will consult on this interim report with submissions due by 31 January 2018. The final report will be submitted to the Treasurer by 30 April 2018.

## **Residential mortgage products price inquiry**

- 4.17. In the December quarter the ACCC continued to conduct its inquiry into the prices charged by the five banks affected by the Major Bank Levy in relation to residential mortgage products. The ACCC has reviewed information and documents received from the five banks subject to the notices issued under section 95ZK of the CCA.
- 4.18. The ACCC is proposing to deliver an interim report in the first quarter of 2018. A final report will be provided to the Treasurer at the conclusion of the inquiry, after 30 June 2018.

## **New car retailing industry market study**

- 4.19. On 14 December 2017 the ACCC released its final report for the new car retailing industry study. The report detailed its findings of nearly 18 months of investigation, consultation and research. It identified a number of problems that are harming consumers and hindering effective competition in the industry. The ACCC will now

work with industry to implement actions arising from the report, including the creation of an industry guide and point of sale consumer guide to clarify rights and obligations under the ACL.

## **Electricity supply and prices inquiry**

- 4.20. 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).
- 4.21. 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. The ACCC received 45 submissions in response to our preliminary report, which are available on the ACCC website.
- 4.22. The ACCC is now focused on developing practical recommendations to improve the market and the ability of consumers to engage effectively in it. The recommendations and findings from the remainder of the inquiry will be included in the final report which is due to the Treasurer by 30 June 2018.

## 5. Advocacy and legislative and legal developments

### Australian Consumer Law Review

- 5.1. On 24 November and 15 December 2017 the ACCC participated in meetings of Consumer Affairs Australia and New Zealand (CAANZ). The November meeting included the annual Budget and Planning meeting. During the meetings CAANZ agreed to fund several projects in the next financial year, including projects which will progress some of the ACL Review recommendations.
- 5.2. In the December quarter the ACCC also participated in a number of CAANZ sub-committees, advising CAANZ on how it should progress the proposals and actions arising from the ACL Review Final Report including:
  - Working with CAANZ members on development of guidance on the application of the ACL to the activities of charities, not for profits and fundraisers. The guidance was published by CAANZ on 15 November 2017.
  - Working with CAANZ members to progress work into the feasibility of further guidance on 'unsafe' goods and 'reasonable durability'.
- 5.3. The Productivity Commission (PC) separately examined the multi-regulator model. 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 four recommendations in the areas of, for example, product safety and enforcement tools and remedies.
- 5.4. In the quarter the ACCC led a sub-committee of CAANZ members advising CAANZ on how it might respond to, and progress findings and recommendations arising from the PC's Consumer Law Enforcement and Administration study. The majority of the sub-committee's recommendations on how to respond to the report were endorsed by CAANZ at the August 2017 meeting. Responses to the outstanding items of the PC Report were endorsed by CAANZ at the 24 November meeting.

### Product safety advocacy

#### ACL Review and Productivity Commission Study

- 5.5. During this 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.
- 5.6. The ACCC also worked with the PC Research Study sub-committee to progress the PC Research Study recommendations and findings regarding electrical goods safety and specialist regulators.
- 5.7. The ACCC attended the CAANZ Budget and Planning meeting on 24 November 2017, where Members agreed to fund product safety-related project proposals, including a general safety provision research study and product safety incidents database scoping study.

#### Illicit tobacco

- 5.8. On 2 December 2016 the Joint Committee on Law Enforcement (the Committee) commenced an inquiry into illicit tobacco. The inquiry aims to examine and report on the prevalence and nature of illicit tobacco in Australia; importation, distribution and

use of illicit tobacco; and the role of Commonwealth enforcement and effectiveness of relevant legislation to combating supply of illicit tobacco.

- 5.9. The ACCC has regulatory oversight of the requirement for cigarettes in Australia to be 'reduced fire risk' and the graphic health warnings on tobacco products. The ACCC is a participating member of the Interdepartmental Committee (IDC) on Tobacco Control which last met on 6 December 2017. The IDC on Tobacco Control aims to coordinate the whole of government approach to Australia's implementation of the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC); provide a platform for Australian Government agencies to continue to work collaboratively in combating illicit tobacco; and to consider the final inquiry report once it is released in 2018.

## Competition Policy Review

- 5.10. On 14 August 2017 the Competition and Consumer Amendment (Misuse of Market Power) Bill 2016 (MMP Bill) was passed by the Parliament. As a result, the misuse of market power provision in the CCA has been amended to prohibit corporations with substantial market power from engaging in conduct with the purpose, effect or likely effect of substantially lessening competition in markets in which they directly or indirectly participate.
- 5.11. Schedule 2 of the MMP Bill repealed 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.
- 5.12. On 18 October 2017 the Competition and Consumer Amendment (Competition Policy Review) Bill 2017 (CPR Bill) was passed by Parliament. 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
  - those relating to mergers and authorisations, and
  - the National Access Regime under Part IIIA.
- 5.13. The CPR Bill and MMP Bill both came into effect on 6 November 2017. On the same date, the ACCC published interim guidelines on our approach to the reformed misuse of market power provision and the new concerted practices provision. The ACCC also published guidelines relating to authorisation and notification provisions which had been amended by the CPR Bill.

## Inauthentic Indigenous 'Style' Art and Craft

- 5.14. The House of Representatives Standing Committee on Indigenous Affairs is conducting an inquiry on the growing presence of inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products and merchandise for sale across Australia. This Inquiry is examining issues including the prevalence of inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products and merchandise, options to promote authentic products, and options to restrict the prevalence of inauthentic products.
- 5.15. On 3 November 2017 the ACCC made a submission to the Inquiry. The submission will be published on the ACCC website once the Inquiry releases all submissions publically.

## Global internet based competition

- 5.16. The House of Representatives Standing Committee on Industry, Innovation, Science and Resources is conducting an inquiry on the impacts on local businesses in Australia from global internet-based competition. The Inquiry is considering the impact of global online businesses on the existing retail industry and on small businesses and employment. It is also examining the uptake by small business of new digital business services, and the appropriate role of the Commonwealth Government and Parliament.
- 5.17. On 30 November 2017 the ACCC made a submission to the Inquiry. The submission is published on the Committee's website at [https://www.aph.gov.au/Parliamentary\\_Business/Committees/House/Industry\\_Innovation\\_Science\\_and\\_Resources/InternetCompetition/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Industry_Innovation_Science_and_Resources/InternetCompetition/Submissions).

## 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.

### Cooperation and assistance

- 6.3. During the December 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, Singapore, New Zealand, and the USA
  - made requests for information to agencies from Indonesia, the Netherlands, the UK and the USA
  - conducted witness statements, Auckland NZ
  - met with delegations from the China General Administration of Quality Supervision, Inspection & Quarantine, China Inspection & Quarantine and Chinese Energy Policy Makers
  - participated in regular bilateral enforcement teleconferences with the New Zealand Commerce Commission officials
  - continued a 12 month executive exchange program with the Competition Bureau of Canada
  - commenced regular teleconferences with the US Consumer Product Safety Commission to organise a joint Buyer Training Event to be held in Vietnam in March 2018, and
  - jointly led a week-long global safety campaign on the hazards of toppling furniture and televisions in November 2017 (see paragraph 2.72).
- 6.4. The ACCC continued to deliver capacity building assistance to countries in the Association of South East Nations through Competition Law Implementation Program (CLIP) with funding from the Australian and New Zealand aid programs. During its second phase, CLIP aims to build the capacity of the region's competition agencies to enforce relevant laws effectively and fairly.
- 6.5. In the December quarter, the ACCC delivered a number of CLIP activities including:
  - placing a secondee from the Cambodia Ministry of Commerce at the New Zealand Commerce Commission for six weeks in their competition investigation team
  - a workshop on Agency Design for officials from Cambodia, Lao PDR, Myanmar and Vietnam, for ASEAN Member States who are yet to create their national competition law enforcement agency and to anticipate some of the challenges and opportunities associated with establishment

- placing an ACCC officer in the Cambodia Ministry of Commerce for three weeks to provide guidance and assistance in the drafting of an Explanatory Note to accompany the draft competition law, and
- a regional sector regulators workshop on Aviation and Competition regulation for competition and aviation officials from ASEAN Member States.

## Participation in international forums

- 6.6. The ACCC continued to collaborate with our international counterparts through international forums including the International Consumer Protection Enforcement Network, the International Competition Network and various OECD Competition Committees including, regulatory policy and consumer policy committees.
- 6.7. Specific events in which the ACCC has participated and worked closely with international counterparts on matters of regulatory practice and policy, include:
- the ICN Cartel workshop 'Combatting Cartels in Public Procurement' in Ottawa, Canada
  - the APEC workshop on 'the Use of Economic Evidence in competition law matter' in Nha Trang, Vietnam
  - the Global Competition Review Live East Asia Summit held in Seoul, Korea
  - the KPPU international competition forum: Disruptive Innovation, Competition Policy & Challenge to Emerging Markets, held in Jakarta Indonesia
  - a Regional Trade Mainstreaming Seminar in Nadi, Fiji
  - the OECD working party on consumer product safety and committee for consumer policy in Paris, France
  - the OECD Regulatory Policy Committee and Network of Economic Regulators meeting in Paris, France
  - the ICPEN Best Practices Workshop and spring conference in Antalya, Turkey
  - the OECD Korea Policy Centre workshop on market studies in Seoul, Korea
  - the ICN Unilateral Conduct workshop in Rome, Italy
  - the OECD Competition Committee meetings in Paris, France
  - the 2nd Hong Kong anniversary competition law conference in Hong Kong, and
  - the ICN merger workshop in Mexico City, Mexico.

# Appendices

## A Reports and enquiries

During the December 2017 quarter the ACCC served or received reports from 69 639 businesses and consumers (17 156 phone calls, 52 305 emails and 178 letters). Of these, 78 were escalated for assessment.

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

Category	December 2017 quarter
Contacts received (phone, email and letters)	<b>69 639*</b>
Contacts recorded in the database	62 612
Under assessments commenced	102
Initial investigations commenced	55
In-depth investigations commenced	28
First instance litigation commenced	4

*\*In ACCCount reports prior to the June 2017 quarter, this figure reflected all contacts received including phone calls not answered. The methodology 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	5 479	11 749	17 228	114	31	1 157	18 530
QLD	4 169	8 784	12 953	72	37	839	13 901
VIC	4 882	8 446	13 328	92	25	971	14 416
WA	1 896	3 588	5 484	23	14	342	5 836
SA	1 442	3 251	4 693	22	7	255	4 977
ACT	552	1 075	1 627	15	2	108	1 752
TAS	391	887	1 278	6	1	76	1 361
NT	173	388	561	5	0	32	598
Overseas	170	1 170	1 340	1	1	70	1 412
Not specified	101	96	197	11	4	74	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
Non-Store Retailing	1 960
Car Retailing	1 656
Electrical, Electronic and Gas Appliance Retailing	1 613
Other Personal Services	1 476
Other Administrative Services	1 067
Cafes and Restaurants	624
Internet Service Providers and Web Search Portals	544
Clothing Retailing	532
Other Telecommunications Services	477
Furniture Retailing	473

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

Scam category	Contacts
Buying, selling or donating (classifieds, business listings, auction, health, fake business etc.)	12 220
Attempts to gain your personal information (fake bank or telco, computer hacking, ID theft)	10 478
Unexpected Prizes (lottery, travel, scratchie)	4 943
Unexpected money (inheritance, helping a foreigner, fake government or bank, loan opportunity)	4 573
Threats & extortion (malware and software by email, malware and software by phone, hitman etc.)	3 654
Jobs & investment (sport, high return, pyramid scheme, employment)	2 614
Dating and Romance (Including Adult Services)	926

## B Enforcement outcomes & matters in court as at 31 December 2017

### Proceedings commenced

Competition		
	Nil	
Consumer protection		
Consumer - health	<b>Ashley &amp; Martin Pty Ltd</b>	
	commenced jurisdiction	29 November 2017 Federal Court Perth
False or misleading representation - health	<b>GlaxoSmithKline Consumer Healthcare Australia Pty Ltd &amp; Novartis Consumer Health Australasia Pty Ltd</b>	
	commenced jurisdiction	5 December 2017 Federal Court Sydney
Unconscionable conduct, vulnerable consumers Consumer guarantees	<b>Jayco Corporation Pty Ltd</b>	
	commenced jurisdiction	29 November 2017 Federal Court Melbourne
Consumer - telecommunications	<b>Optus Internet Pty Ltd</b>	
	commenced jurisdiction	15 December 2017 Federal Court Melbourne

### Proceedings ongoing

Competition		
Cartel	<b>Air New Zealand Ltd (HC appeal)</b>	
	commenced jurisdiction	18 April 2016 High Court of Australia
Cartel	<b>Cascade Coal Pty Ltd &amp; Ors</b>	
	commenced jurisdiction	25 May 2015 Federal Court Sydney
Secondary boycott	<b>Construction Forestry Mining and Energy Union (CFMEU)</b>	
	commenced jurisdiction	20 November 2014 Federal Court Melbourne
Anti-competitive	<b>Flight Centre Ltd (HC appeal)</b>	

agreements/practices	commenced jurisdiction	11 March 2016 High Court of Australia
Cartel	<b>Kawasaki Kisen Kaisha Ltd</b>	
	commenced jurisdiction	November 2016 Downing Centre Local Court Sydney
Cartel – anti competitive agreements	<b>Oakmoore Pty Ltd</b>	
	commenced jurisdiction	23 June 2016 Federal Court Brisbane
Cartel	<b>P.T. Garuda Indonesia Ltd (appeal)</b>	
	commenced jurisdiction	18 April 2016 High Court of Australia
Misuse of market power and exclusive dealing	<b>Pfizer Australia Pty Ltd (appeal)</b>	
	commenced jurisdiction	18 March 2015 Full Federal Court Sydney
Cartel	<b>Prysmian Cavi e Sistemi Energia S.R.L (appeal)</b>	
	commenced jurisdiction	14 August 2017 Full Federal Court Adelaide
Health	<b>Ramsay Health Care Australia Pty Limited</b>	
	commenced jurisdiction	1 May 2017 Federal Court Sydney
Cartel	<b>Yazaki Corporation &amp; Australian Arrow Pty Ltd (appeal)</b>	
	commenced jurisdiction	30 May 2017 Full Federal Court Adelaide
<b>Consumer protection</b>		
Scam	<b>ABG Pages Pty Ltd</b>	
	commenced jurisdiction	15 December 2016 Federal Court Brisbane
Unconscionable conduct, vulnerable consumers	<b>ACM Group Ltd</b>	
	commenced jurisdiction	2 June 2016 Federal Court Sydney
Truth in advertising (Large Business)	<b>Apple Pty Ltd and Apple Inc</b>	
	commenced jurisdiction	6 April 2017 Federal Court Melbourne

Unconscionable conduct vulnerable consumers	<b>Australian Institute of Professional Education Pty Ltd</b>	
	commenced jurisdiction	31 March 2016 Federal Court Sydney
Unconscionable conduct vulnerable consumers	<b>Clinica Internationale Pty Ltd &amp; Ors</b>	
	commenced jurisdiction	9 December 2015 Federal Court Sydney
Unconscionable conduct vulnerable consumers	<b>Cornerstone Investment Australia Pty Ltd t/a Empower Institute</b>	
	commenced jurisdiction	9 December 2015 Federal Court Sydney
Scams disruption	<b>Domain Name Corp Pty Ltd &amp; Ors</b>	
	commenced jurisdiction	4 August 2017 Federal Court Western Australia
Car retailing	<b>Ford Motor Company of Australia Limited</b>	
	commenced jurisdiction	26 July 2017 Federal Court Melbourne
Industry Codes Franchising	<b>Geowash Pty Ltd</b>	
	commenced jurisdiction	26 May 2017 Federal Court Perth
False or misleading representations -- health	<b>HJ Heinz Company Australia Ltd</b>	
	commenced jurisdiction	21 June 2016 Federal Court Adelaide
Truth in advertising	<b>Kimberly-Clark Australia Pty Ltd</b>	
	commenced jurisdiction	12 December 2016 Federal Court Sydney
Consumer guarantees	<b>LG Electronics Australia Pty Ltd (appeal)</b>	
	commenced jurisdiction	25 September 2017 Full Federal Court Sydney
False or misleading representations - consumer guarantees	<b>MSY Technology Pty Ltd</b>	
	commenced jurisdiction	1 December 2016 Federal Court Sydney
False or misleading	<b>Medibank Private Ltd (appeal)</b>	

representations and unconscionable conduct – health	commenced jurisdiction	21 September 2017 Full Federal Court Melbourne
False or misleading representations	<b>Meriton Property Services Pty Ltd</b>	
	commenced jurisdiction	24 November 2016 Federal Court Melbourne
Agriculture sector	<b>Murray Goulburn Cooperative Co. Limited &amp; Ors</b>	
	commenced jurisdiction	28 April 2017 Federal Court Melbourne
Vulnerable consumers - health	<b>NIB Health Funds Limited</b>	
	commenced jurisdiction	30 May 2017 Federal Court Melbourne
Truth in advertising	<b>Pental Limited &amp; Ors</b>	
	commenced jurisdiction	12 December 2016 Federal Court Sydney
Unconscionable conduct vulnerable consumers	<b>Phoenix Institute of Australia Pty Ltd &amp; Anor</b>	
	commenced jurisdiction	24 November 2015 Federal Court Sydney
Small business – unfair contract terms	<b>Servcorp Ltd &amp; Ors</b>	
	commenced jurisdiction	14 September 2017 Federal Court Sydney
Product safety	<b>Thermomix in Australia Pty Ltd</b>	
	commenced jurisdiction	16 June 2017 Federal Court Melbourne
Industry Codes Franchising	<b>Ultra Tune Australia Pty Ltd</b>	
	commenced jurisdiction	19 May 2017 Federal Court Sydney
Unconscionable conduct - vulnerable consumers	<b>Unique International College Pty Ltd</b>	
	commenced jurisdiction	27 October 2015 Federal Court Sydney
False or misleading representations - consumer guarantees	<b>Valve Corporation Pty Ltd (appeal)</b>	
	commenced jurisdiction	14 February 2017 Full Federal Court Sydney
Consumer - Online	<b>Viagogo</b>	

	commenced jurisdiction	28 August 2017 Federal Court Sydney
False or misleading representations – car retailing	<b>Volkswagen Aktiengesellschaft and Volkswagen Group Australia Pty Ltd</b>	
	commenced jurisdiction	31 August 2016 Federal Court Sydney
False or misleading representations	<b>We Buy Houses Pty Ltd and Rick Otton</b>	
	commenced jurisdiction	2 March 2015 Federal Court Sydney

## Proceedings concluded

<b>Competition</b>		
Anti-competitive agreements/practices	<b>Cement Australia Pty Ltd &amp; Ors (appeal)</b>	
	commenced jurisdiction	6 June 2016 Full Federal Court Brisbane
<b>Consumer Protection</b>		
Consumer Online	<b>Aveling Homes Pty Ltd</b>	
	commenced jurisdiction	9 March 2017 Federal Court Perth
Small business – unfair contract terms	<b>JJ Richards &amp; Sons Pty Ltd</b>	
	commenced jurisdiction	6 September 2017 Federal Court Melbourne
Industry Codes Franchising	<b>Morild Pty Ltd</b>	
	commenced jurisdiction	21 September 2016 Federal Court Perth
False or misleading representations – consumer guarantees	<b>MSY Technology Pty Ltd</b>	
	commenced jurisdiction	1 December 2016 Federal Court Sydney
Consumer guarantees	<b>Valve Corporation Pty Ltd (appeal)</b>	
	commenced jurisdiction	14 February 2017 Full Federal Court Sydney

## Section 87B undertakings

<b>Competition</b>		
Anti-competitive agreement/practices	BHP Billiton Petroleum (Bass Strait) Pty Ltd	18 December 2017
Anti-competitive agreement/practices	Eso Australia Resources Pty Ltd	18 December 2017
<b>Consumer Protection</b>		
Consumer – health	Advanced Hair Studio Pty Ltd	10 October 2017
Consumer - health	Australian Unity Health Limited	2 November 2017
Consumer – NBN consumer issues	Telstra Corporation Limited	7 November 2017
Consumer – NBN consumer issues	Optus Internet Pty Ltd	11 November 2017
Small business – industry codes	West Aust Couriers Pty Ltd	27 November 2017
Consumer – online	BXT International Limited	12 December 2017
Consumer – online	TCF Global Limited	12 December 2017
Consumer – online	101 Residential Pty Ltd	15 December 2017
Consumer guarantees	Belkin Limited	18 December 2017
Consumer – NBN consumer issues	TPG Internet Pty Ltd	20 December 2017

## C Use of compulsory information gathering powers

During the December 2017 quarter the ACCC issued:

- 35 notices pursuant to sections 155(1)(a)&(b)
- 13 notices pursuant to section 155(1)(c)
- 3 notices pursuant to section 155AAA
- 56 notices pursuant to section 95ZK
- 23 notices pursuant to section 51ADD, and
- 11 notices issued pursuant to sections 60H or 133D.

Under section 155 of the CCA the ACCC may in certain cases issue a notice requiring the provision of information (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 December 2017 quarter, the ACCC took part in 47 speaking events and panel discussions, including:

### [Populism and the CCA](#)

Chairman Rod Sims  
RBB Economics  
30 November 2017

### [MLA Red Meat Industry Forum](#)

Commissioner Mick Keogh  
Meat and Livestock Australia  
21 November 2017

### [The ACCC's approach to colluding robots](#)

Chairman Rod Sims  
Seminar on competition issues and policy in the digital market (Gilbert+Tobin)  
16 November 2017

### [Evolution or revolution? Why competition matters for 5G](#)

Chairman Rod Sims  
RadComms 2017  
1 November 2017