



Enduring Perspectives and 2012 Objectives

Australia-Israel Chamber of Commerce

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The Chamber runs well organised and attended events, which I have been to many times, so I am delighted to be here

Today I want to set out the high level objectives for the Australian Competition and Consumer Commission (ACCC) for 2012. I am also formally releasing the ACCC's updated Compliance and Enforcement Policy to accompany this speech.

Before doing so, however, I need to set these 2012 objectives against the background of our enduring goal and beliefs. Each year's objectives should change, but they must always be understood in the context of a range of enduring perspectives.

The enduring goal of the ACCC is to serve the long term interests of consumers through enforcing compliance with the *Competition and Consumer Act 2010*. This is a powerful statement. It does not, for example, mean we will seek unsustainable prices or rates of return in any sector for short run gain, only to see investment levels dry up.

Indeed, this goal is underpinned by a belief that an effectively functioning market economy is in the best interests of consumers, and that the ACCC's role is crucial in ensuring this market economy runs well. The profit motive is a powerful tool for good, providing it works within clear rules or boundaries, which are largely set and enforced by the ACCC.

Under the Competition and Consumer Act the ACCC has three crucial roles:

- first, to maintain and enhance competition in Australia by, for example, preventing mergers or arrangements that substantially lessen competition, or by addressing the misuse of market power or anti-competitive agreements and cartels
- second, to protect consumers (whether they are individuals or businesses) and ensure they are properly engaged in the market economy, for example by promoting product safety, preventing misleading and deceptive conduct or unconscionable conduct, and by educating people concerning scams

- third, to regulate monopolies effectively, whether they be in telecommunications, water or transport and, through our sister organisation the AER, in energy.

Our approach is also enduring. There are five elements.

First, we must be proactive and strategic rather than reactive. We are not resourced to investigate all potential breaches of the Consumer and Competition Act. We must, therefore, make choices about which activities will best help us meet our goal.

Second, while we must always be professional and responsive, and work within the legal framework, we should also not be too conservative. In the enforcement area this means taking on more cases where the outcomes may be less certain.

To put it another way, we are not doing our job if we are only seeking to second guess what the court will say in an area where the law is complex and open to interpretation.

If there is consumer detriment or damage to competition we must take appropriate action.

Third, we must communicate well so people know what we are and are not doing, and most important, why. The ACCC is principally an enforcement and compliance agency. We work through the courts. We, for example, cannot control prices or tell business how to run their operations and nor should we be able to.

Effective communication can change the way our economy works:

- business needs to understand better the importance of well engaged and informed consumers;
- consumers and small business need to understand their rights so they can assert them themselves, and
- there needs to be a better understanding of why and how monopolies should be regulated.

Fourth, we should give our opinion where we see the need for law or policy changes. We are at the coal face; we gain perspectives others cannot. And where we see a need for change it is important that as a strong independent statutory authority we say this publicly so that other stakeholders are aware of our views, rather than having us state them behind closed doors.

Finally, we need to keep attracting the best people to the ACCC. We need to continue to encourage our staff across the country to be both intellectually curious and completely professional.

The ACCC is in the fortunate position of having 800 plus staff with these characteristics, but we must keep striving to improve in all these areas. As in all things in life you are either improving or going backwards; there is no standing still.

Against this important background, let me now outline the ACCC's high level objectives for 2012. These are:

- Make full use of the profound changes in Australian Consumer Law (ACL), including by working more closely with state fair trading agencies.
- Put particular focus on vulnerable consumers.
- Maintain or enhance competition in concentrated markets.
- Invigorate the debate on the effective regulation of monopolies.
- And finally, increase the ACCC's engagement internationally, particularly in our region.

1. Make full use of the profound changes in Australian Consumer Law, including by working by more closely with the states

There have been profound changes in Australian Consumer laws recently that are not fully appreciated. In effect there have been four areas of change.

First, we now have one consumer law in Australia that replaces many. That is, we have one set of laws covering product safety and unfair contract terms and the like. Australian companies are now complying with the same laws whether they are conducting business in Barwon Heads, Bundaberg or Bourke.

Second, we now have improved laws in a number of areas, such as unfair contract terms and consumer guarantees.

Third, we now have new penalties for breaches of the Australian Competition Law. This allows the ACCC to seek civil pecuniary penalties before the courts for breaches of the consumer laws, and also to issue infringement notices in relation to issues that do not need to go before the courts.

Fourth, the ACCC has new powers such as the ability to issue substantiation notices whenever traders make claims about their products or services.

These changes take Australia's consumer laws from a status of lagging the rest of the world to now providing among the strongest protections for consumers.

I can well understand, however, that some businesses may not like this enhancement to our consumer laws, but I believe it is in their long term interest. The Australian communities' belief in a market economy must be protected and the ACL is a large step forward in ensuring that Australian consumers can maintain and enhance their belief in the benefits that a market economy provides them.

A key objective for the ACCC in 2012 is not only to make full use of the Australian Consumer Law but to do so by working closely with the states and territories in enforcing that law. Of course the states do not have a role in the parts of the Consumer and Competition Act that deal with competition issues.

Under the single law multi regulator model, the ACCC works closely with our State and Territory counterparts in a much more integrated way which results in greater protection for all Australian consumers.

The role of the state fair trading agencies is not well understood. Combined they have more than 4000 employees and they engage in a wide range of activity in addition to working with us to enforce the Australian Consumer Law. For example, business registration and licensing requirements, as well as consumer dispute resolution.

As I have mentioned, communication is critical, so exploring the full potential of the Australian Consumer Law will in part involve improving our education activities. For example, if consumers can understand their rights under the new consumer guarantees then they can enforce these laws themselves by asking retailers, for example, for refunds or replacement of goods when they are not up to standard.

There will, however, be an important enforcement focus by the ACCC in 2012. At the end of the day laws are only effective if they are enforced and seen to be enforced. Fortunately so far the courts have been prepared to use the new penalties available to them for breaches of the ACL.

In 2012 we will continue our focus on misleading and deceptive conduct in general. In 2011, for example, we achieved penalties of:

- \$1.25 million for advertising that contained fundamental information in the fine print of a catalogue which contradicted the advertisements key message.
- \$2.7 million awarded against a company which attempted to scam other companies in relation to buying goods that either weren't delivered or as described.
- and \$430,000 against a company that claimed that its goods were made in Australia, and of 100% wool, when they were not.

It is important to stress that the ACCC's ability to seek such penalties did not exist prior to the introduction of the new consumer laws. These provide a real incentive for traders to improve their compliance with the law.

The ACCC will also examine closely the telecommunications sector. This is because there is increasing complexity of products that bring with it additional ways that consumers can be misled about what they are purchasing. For example, in 2011 the courts delivered important findings against

advertisements in the communications sector that were held to have misled consumers on what they were getting for their money. The penalties in one case were for \$5.25 million, but these are under appeal. In 2012 we will continue to work on greater transparency for consumers in this sector.

Another area of focus will be the energy industry, where rapidly raising prices are causing new activity that can mislead customers. For example, customers are being urged to save money on their bills, but it is often unclear from what base these savings will be made. They may also be offered services to find the best available prices when in fact these services can be promoting supply only from a limited number of companies.

Of course, we will also see considerable attention this year on carbon pricing. The ACCC has been pointing out that firms can increase their prices at any time. What they can't do is mislead customers by attributing a price increase to carbon when this is not the case. This falls squarely within misleading and deceptive conduct, and we will not hesitate in taking action where it's warranted. People should not be pressed into accepting a price rise they might otherwise question.

2. Put particular focus on vulnerable consumers

It is extremely important in a market economy that vulnerable consumers are not taken advantage of. Indeed, every business person I know would be equally appalled as I am at some of the behaviour that I see occurring against our most vulnerable consumers.

We see, for example, sometimes egregious behaviour in relation to elderly consumers. I have read of many cases of elderly people being put under enormous pressure in their homes so that they eventually sign up just to get a door to door seller to leave. This behaviour is not only against the law but it is also unconscionable.

We will also focus on Indigenous consumers. We have seen in the past that they can be sold products in remote areas that simply can't work there. They have also been signed up to direct debits for goods or services that do not arrive while the money keeps going out of their bank accounts.

3. Maintain and enhance competition in concentrated markets

Australia has many concentrated markets. This is partly a function of our geography – the sheer size of the country and the distance from other markets. Indeed, most market sectors are dominated by two to three main players, and in a few sectors there is only one dominant player.

These sectors in particular are ones that need to be watched carefully to ensure that there are not mergers or arrangements that substantially lessen

competition, or where the obvious market power is not misused to prevent or damage competition.

Some sectors have been the focus of considerable community interest, such as fuel and supermarkets. There are intense public concerns which I hear about daily. For example, there are concerns about co-ordinated price movements in fuel, and the way supermarkets may deal with their suppliers or increase their selling of home brands. The ACCC has not yet formed the view that there are breaches of the Act occurring; but our priority in 2012 will be to determine whether or not there are breaches in these important sectors.

Unconscionable conduct between businesses is another area of attention this year and one of particular concern to small business. In the past small business has sometimes felt their concerns were not given sufficient weight, and these feelings may well have had justification. Proving unconscionable conduct is, of course, a high hurdle, but where it occurs the ACCC will not hesitate in taking action.

The online world will be front and centre of our focus in 2012. As we all know it is growing exponentially with some fascinating effects where, for example, established businesses with otherwise high entry barriers can now be challenged. We must ensure this can be done without established companies breaching the Act to protect themselves from competition from these new and emerging online players.

The ACCC has also made recent efforts to improve its education and enforcement activity in relation to cartels. The available evidence suggests that many business people are not aware that price fixing, market sharing, bid rigging, agreeing restrictions on supply or output constitutes cartel activity. Unfortunately it may be that the ACCC needs to take enforcement action, including criminal prosecutions, to get the message across. Also, there are many managers, both in business and government who may not be picking up the signs of cartel conduct being practised against their interests.

We will also in 2012 engage in the debate about mergers. Merger policy in Australia works well. The vast majority of potential mergers are approved, or do not go ahead because it is widely understood that they would not achieve approval.

The Commonwealth Bank will not make a bid for ANZ, for example, and Origin Energy will not be seeking to merge with AGL because they know this would be against Australia's competition law.

The mergers that do get a lot of public attention are those very few mergers, say one or two a year, that involve uniquely complicated assessments. I have said publicly that we should be making commercial assessments and not relying on abstract theory, and this will be the case. It is also true, however, that the ACCC is often criticised after the event for not envisaging the consequences that flow from a merger.

4. Invigorate debate on the effective regulation of monopolies

This year will be a busy one on the regulatory front. There was, for example, considerable activity in 2011 on the assessment of Telstra's structural separation undertaking. 2012 will see us establishing the regulatory underpinnings of the future operation of the NBN.

We have also the important debate on what and how to regulate that will also occupy 2012. For example, the Productivity Commission is considering whether or not there is a need for regulation of Australia's main capital city airports. 2012 will also see consideration by the AEMC of the AER's rule change proposals that goes to how best to regulate electricity networks.

Looking forward, we also need to debate the role of our Part IIIA provisions relating to access to infrastructure, particularly how relevant they are to greenfield investment such as new railways in the Galilee basin and, say, new inter-modal transport facilities in our capital cities.

The key question is whether reliance on the current provisions in the Competition and Consumer Act provides an appropriate regulatory approach or whether some new investment facilities, that are intended to be common user facilities, should be declared up front by governments as open access facilities to provide investor and potential user certainty.

5. Increase the ACCC's engagement internationally, particularly in our region

Finally, the ACCC will be engaging with its international counterparts more broadly. This is important in at least two different ways.

First, with our counterparts in developed economies, international engagement is important because we need to work together on critical matters and also because we learn from each other's experience. A good example of international cooperation was the work of a number of international competition agencies in combating the airline freight cartel, which has seen the ACCC realise over \$50 million in penalties against eight airlines.

Second, in relation to developing countries, particularly in our region, we need to do all we can to help their new competition entities. As we've seen here in Australia, their work can make a profound difference to economic growth.

The best regional example I can think of is the way the competition authority in Papua New Guinea facilitated the roll out of a new digital mobile network in competition with the established government owned monopoly. This new competition transformed the communications capacity of businesses and residential users across what is a very mountainous country, which is difficult to service through fixed line communications. As in many developing countries, mobile phone technology has significantly assisted micro traders to grow their businesses and helped increase income in many areas.

It is particularly important that the closer economic engagement Australia is enjoying with our Asian neighbours is increasingly reflected in the closer working relationship of the region's competition agencies.

Conclusion

I think these five objectives and the areas of focus I have described will provide for a fascinating year for the ACCC and its wider stakeholders. I am now keen to take your questions on these or other matters.