

part two
performance



achieving outcome one

enhancing social and economic welfare of the Australian community by fostering competitive, efficient, fair and informed Australian markets

Australian Competition and Consumer Commission

overall outcome

To bring about greater competitiveness in every sector of the economy

outcome one

To enhance the social and economic welfare of the Australian community by fostering competitive, efficient, fair and informed Australian markets



output group 1.1

output 1.1.1

Compliance with competition, fair trading and consumer protection laws and appropriate remedies when the law is not followed

output 1.1.2

Competitive market structures and informed behaviour

To achieve outcome one through appropriate outputs the ACCC seeks to:

- > promote effective competition and informed markets
- > encourage fair trading and protect consumers
- > regulate infrastructure service markets and other markets where competition is restricted

how we do it

outcome one:

to enhance the social and economic welfare of the Australian community by fostering competitive, efficient, fair and informed markets

financial results

The ACCC's financial statements, both administered and departmental, are in part four of this report. The outcome summary in this part of the report contains a resource summary of the price for the ACCC's two outputs.

resource table

	output 1.1.1			output 1.1.2			output group 1.1		
	compliance with competition, fair trading and consumer protection laws			competitive market structures and informed behaviour					
	2005-06	2006-07	2007-08	2005-06	2006-07	2007-08	2005-06	2006-07	2007-08
budget \$'000	56 627	67 598	68 705	33 167	39 920	45 100	89 794	107 518	113 805
additional revenue \$'000	760	232	345	636	267	230	1 396	499	575
revenue from gains \$'000	56	62		38	26		94	88	
total revenue \$'000	57 443	67 892	69 050	33 841	40 213	45 330	91 284	108 105	114 380
actual expenditure \$'000	52 955	64 747		31 213	38 323		84 168	103 070	
net surplus \$'000	4 488	3 145		2 628	1 890		7 116	5 035	

average staffing levels

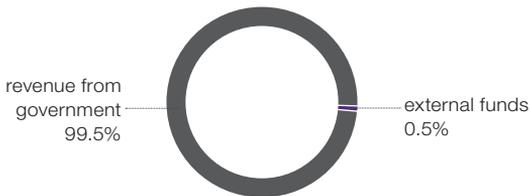
(portfolio budget statements/portfolio additional estimates statements)

	total
2005-06	533
2006-07	588
2007-08	606

revenue

The main source of revenue for the ACCC is government appropriation with a small proportion of departmental revenue. In 2006–07 the ACCC had total revenue of \$108.1 million, with \$107.5 million being appropriation funding and the remaining \$0.6 million being external funds (refer to figure below). This compares to the previous year's external revenue of \$1.4 million.

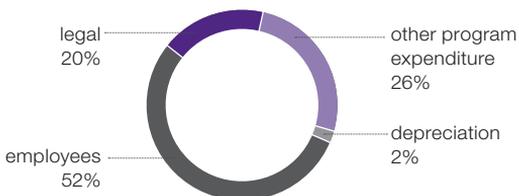
figure 1 ACCC revenue 2006–07



expenditure

The ACCC is a knowledge-based organisation and as such spends approximately 52 per cent of total expenditure on employee costs. This is a slight decrease from 57 per cent in 2005–06. Other program expenditure is the second largest expenditure category at 26 per cent, unchanged from the previous year. Legal expenditure is subject to volatility depending on the timing and outcome of litigation proceedings. This has resulted in an increase in the legal expenditure proportion from 16 per cent in 2005–06 to 20 per cent in 2006–07. The depreciation proportion has remained unchanged from last year at 2 per cent of total expenditure.

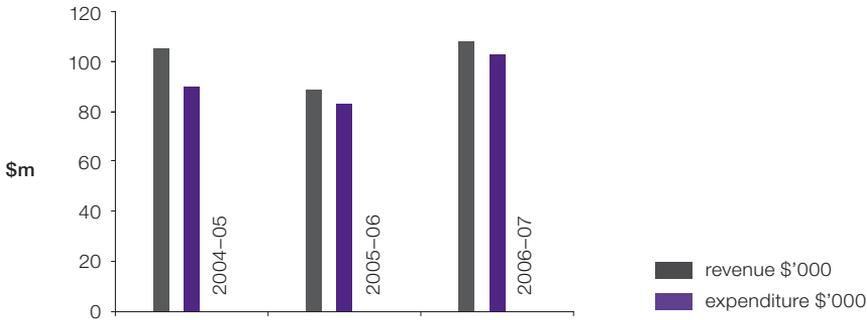
figure 2 ACCC expenditure 2006–07



operating statement

The ACCC operating result for 2006–07 was a \$5.0 million surplus. The surplus was largely generated by the deferral of expenditures due to delays in the passage of legislation.

figure 3 ACCC revenues and expenditure 2006–07



balance sheet

The ACCC's net assets as at 30 June 2007 was \$44.1 million (up from \$35.1 million in 2006). Total assets increased by \$15.1 million to \$64.1 million. The increase was largely driven by the increase in appropriation receivable due to lower than expected expenditure and an equity injection to fund the Canberra office fit-out. This has further improved the liquidity of the ACCC.

administered revenue

Revenues administered on behalf of the government during 2006–07 amounted to \$23.4 million, which is an increase of 11 per cent from last year (2005–06: \$21.1 million). This amount includes court-imposed fines and costs for the following cases: Woolworths Ltd, Jurlique International, Fila Sports, Leahy Petroleum and Barton's Mines Corporation.

administered expenditure

Expenses administered on behalf of the government increased in 2006–07 by \$1.3 million to \$5.4 million (2005–06: \$4.1 million), as a result of the increased write-off of debts not recoverable.

enforcement and compliance

**promoting effective competition and informed markets
encouraging fair trading and consumer protection**

The Enforcement and Compliance Division's core business is to ensure compliance with the Trade Practices Act. We do this by promoting competition and informed markets, encouraging fair trading and protecting consumers. The enforcement function, including litigation, remains the cornerstone of the division, well supported by its liaison, analysis, outreach and compliance arms.

In undertaking our enforcement activity the division remains committed to conduct its work in a timely, professional and determined manner. We manage our enforcement processes to achieve effective outcomes and use of ACCC resources.

Our commitment to strong liaison, outreach and advocacy programs continues as evidenced in the wide range of activities undertaken. The division has developed a strong intelligence and analytical capability by establishing the Information, Research and Analysis Branch. The branch is assisting the division to identify and address conduct that causes major competition and consumer harm.

The ACCC has continued this year with its strong litigation stance as seen by the increasing number of cases filed and significant penalties awarded for parts IV and V conduct. We also pursued instances of resale price maintenance in the Australian economy, including cases in the areas of new and emerging consumer electronic goods and some more established markets.

The Federal Court of Australia has reinforced the seriousness of this conduct by imposing record penalties totalling \$3.4 million against Jurlique Pty Ltd & ors. Other resale price maintenance cases concluded during the year dealt with conduct affecting premium kitchenware, power tools and digital set-top boxes.

During the year the ACCC successfully reinforced the seriousness of price fixing and market sharing, concluding litigation affecting the grocery sector, timber supplies, cardiothoracic surgeons, sporting goods and garnet supply.

The ACCC was also active in relation to secondary boycotts. Action against the CFMEU in Western Australia was concluded with penalties of \$100 000 imposed. Other cases are under way against the CFMEU for conduct in the Canberra construction industry and against the CEPU which has appealed against the Federal Court decision to impose a penalty of \$125 000.

As foreshadowed in public announcements during the course of the years the ACCC undertook criminal prosecutions in cases where the breaches of the consumer protection provisions were particularly egregious. Priority was also given to those instances where the ACCC was concerned that parties were obstructing its investigation processes. Charges were laid against four people for non-compliance with s. 155 notices.

The Enforcement and Compliance Division also continued its strong commitment to educational, compliance and liaison activities. During the year industry associations played a key role in helping to disseminate information and draw industry issues to our attention.

The ACCC has settled into its expanded product safety role and has been active in enforcement, monitoring and standard setting. We have brought a number of actions in areas as diverse as vehicle jacks, toys, bicycles, sunglasses and novelty items. We continue to run an active testing program and are increasingly acting with the support of our state, territory and international counterparts.

Developing our relationship with our overseas counterparts remains important, especially in the area of cartel investigations. The division represented the ACCC as co-chair of the ICN cartel working group and as a member of the unilateral conduct working group. We also undertook a wide range of capacity building projects in conjunction with the OECD and AusAID. Special focus was given to working with our neighbours, such as Indonesia, and we will continue to provide support for countries in our region with emerging competition authorities.

To ensure our relevance to the Australian community we will continue to work on our market intelligence, bringing to the division a proactive national model of enforcement and rigorously assessing proposed approaches to non-compliance.

Mark Pearson, executive general manager, enforcement and compliance division

communicating with businesses and consumers

output 1.1.1

compliance with competition, fair trading and consumer protection laws and appropriate remedies when the law is not followed

this year the ACCC

performance indicator

publicise litigation and education activities

- > issued 378 media releases—of these, 82 explained the institution and/or outcome of specific enforcement activities, 15 related to product safety issues, including educational material
- > undertook 173 speaking engagements and extensive briefings, both private and public, by the chairman, commissioners and senior staff
- > produced 93 consumer and small business articles for external publications

Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

this year the ACCC

performance indicator

liaise with and inform business and consumers about the law so that they can, in turn, inform their members and customers

- > held 485 meetings with business and consumer groups on Trade Practices Act issues, including consumer and small business education and proposed amendments to the Act
- > delivered 86 presentations (many in rural and regional areas) on business issues and scams at events such as the Australian Chamber of Commerce and Industry Small Business Coalition annual meeting, the Council of Small Business Organisations Association annual summit and the Victorian Business Law Society Small Business Working Party session
- > attended the minister's Small Business Forum
- > attended 43 expos, field days and workshops, providing participants with information on the ACCC and the Trade Practices Act
- > continued the ACCC's disadvantaged and vulnerable consumer program, designed to ensure that the special needs of these groups are identified and addressed
- > provided regular contributions to the Consumer Telecommunications Network (CTN) bulletins and to each Consumer Federation of Australia (CFA) quarterly newsletter, including details of completed consumer-related enforcement activity and education and information programs
- > responded to 505 email inquiries about product safety and product recalls (in addition to those answered by the ACCC Infocentre)
- > provided the Insolvency Practitioners Association of Australia with the ACCC's view on the application of the Franchising Code of Conduct to company administrators in the event of voluntary or court-ordered administration
- > assisted the Real Estate Institute of Australia to develop initiatives to educate real estate agents about the risk of breaching the Trade Practices Act if they engage in activities that exploit market conditions—e.g. where prospective tenants place competing offers for vacant premises
- > continued to update and implement the Franchising Awareness Strategy, focusing (in collaboration with sector representatives and organisations) on encouraging prospective franchisees and small business owners to exercise due diligence

Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

this year the ACCC

performance indicator

liaise with and inform business and consumers about the law so that they can, in turn, inform their members and customers

- > continued to work with fruit and vegetable growers to help ensure competition in the industry
- > hosted 2 meetings of the Small Business Advisory Group and the Franchising Consultative Panel and held roundtable discussions on unconscionable conduct in business transactions and on retail tenancy
- > hosted 3 meetings of the Consumer Consultative Committee
- > held the inaugural meeting of the ACCC Health Sector Consultative Committee

Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

this year the ACCC

performance indicator

issue publications and media releases, speak to the public, conduct public meetings and conferences and use the latest technology to reach business and consumers throughout Australia

- > produced 117 new publications; distributed in total 1 104 457 copies of publications; produced DVDs, videos and CDs on compliance issues
- > issued 378 media releases; 173 speeches delivered by commissioners and senior staff
- > distributed over 300 000 flyers, 2500 posters and 2000 identity theft kits as part of the ACCC's involvement in the Australasian Consumer Fraud Taskforce (ACFT) Scams Awareness Month
- > attended and presented at the National Consumer Congress in March 2007
- > used regional radio networks across Australia to promote a number of trade practices messages to businesses and consumers in rural Australia—topics covered included warranty and refund rights and obligations, the newly introduced mandatory product safety standard for babies dummies and new ACCC franchising publications
- > developed educational DVDs on two newly introduced mandatory codes of conduct—the Oilcode and the Horticulture Code of Conduct
- > conducted a direct mail safety campaign as a follow-up to the December 2006 warning notice for motor vehicles fitted with liquid petroleum gas (LPG) tanks; wrote to approximately 2400 licensed gas fitters throughout Australia, advising them of potential hazards associated with affected LPG tanks and seeking their cooperation in replacing problem pressure relief valves
- > launched the ACCC's new look SCAMwatch website (www.scamwatch.gov.au) in October 2006, designed to educate and assist consumers about scams, the steps they can take to protect themselves and how to report scams
 - > received over 250 000 visits to the new SCAMwatch site in its first 8 months, with usage growing at a steady rate
 - > sent 15 SCAMwatch radar email alerts to subscribers (currently around 3000) to highlight widespread or novel scams reported to SCAMwatch
 - > continued to operate the SCAMwatch website as the online portal for the annual ACFT scam awareness campaign in March 2007

Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

this year the ACCC

performance indicator

issue publications and media releases, speak to the public, conduct public meetings and conferences and use the latest technology to reach business and consumers throughout Australia

- > continued to maintain the consumers online website (www.consumersonline.gov.au) as a portal for consumer information
- > produced a product safety fact sheet on mandatory safety requirements for caravan jacks for publication by the Recreational Vehicle Manufacturers Association of Australia and for wider distribution
- > created *TPA matters for small business*, a CD compilation of all ACCC small business publications and a range of relevant web links, to provide a single source of trade practices information to small businesses
- > continued to deliver and maintain the product safety recalls website (www.recalls.gov.au), which provides consumers and state and territory regulators with up-to-date information on all Australian safety-related recalls; in 2006–07, 761 recalls were entered on the database and 249 general consumer product recalls were monitored and assessed; the ACCC product safety team also responded to 505 email inquiries about product safety and product recalls (in addition to those answered by the ACCC Infocentre)

Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

this year the ACCC

performance indicator

work with other competition, fair trading and consumer protection agencies in Australia and overseas

- > worked closely with the Office of Small Business and AusIndustry field officers to educate small business about the collective bargaining notification regime introduced by the Dawson amendments to the Trade Practices Act in late 2006
- > is a member of the National Indigenous Consumer Strategy (NICS) reference group, which has provided its first annual report to the Standing Committee of Officials on Consumer Affairs (SCOCA) and to the Ministerial Council on Consumer Affairs (MCCA) on the implementation of the NICS action plan, *Taking action gaining trust*; this action plan identifies specific actions to be taken by participating agencies under eight key national priorities
- > made solid progress towards priorities two (advocacy) and six (trading practice) of NICS action plan, and has developed a work program that will focus future activity on priorities one (Indigenous employment) and seven (Indigenous art) in 2007
- > developed an Indigenous employment plan that includes strategies targeted at increasing the number of Indigenous project officers as part of the ACCC's progress towards the NICS action plan
- > was the secretariat for, and chair of, the ACFT, representing federal, state and territory government consumer protection and related agencies—the ACFT works to prevent consumer scams and fraud; Scam Awareness Month (March 2007), a key focus of ACFT activity, coincided with the international Fraud Prevention Month and was coordinated by the International Consumer Protection Enforcement Network (ICPEN)
- > attended 2 meetings of the MCCA and 3 meetings of SCOCA, and contributed to 7 SCOCA working parties on matters such as industry codes, property investment advisers, false billing and Indigenous consumer strategies
- > attended and chaired 2 meetings and 8 teleconferences of the Consumer Product Advisory Committee (CPAC)
- > attended and chaired 2 meetings and 8 teleconferences of the Fair Trading Officers Advisory Committee (FTOAC)
- > attended 3 meetings of the Therapeutic Goods Advertising Code Council (TGACC)

Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

this year the ACCC

performance indicator

work with other competition, fair trading and consumer protection agencies in Australia and overseas

- > is an active member of ICPEN; the ACCC was a central member of the review of ICPEN's memorandum of understanding, the organisation's operational framework
- > has regular liaison with a number of international competition and consumer protection authorities to coordinate activities and cooperate with respect to enforcement activities
- > continues to coordinate the annual ICPEN internet sweep; the sweep day previously coincided with International Consumer Awareness Month (February), but has been moved and will now be held in September each year
- > co-chaired the International Competition Network (ICN) cartels sub-group, which is responsible for enforcement techniques; led the development of the best practice chapter for 'Cartel case initiation' for the ICN cartels work manual on enforcement techniques; and made strong contributions to the ICN cartels workshop, with a number of ACCC representatives participating as panellists during the workshop
- > is a member of the ICN's 2 merger sub-groups and attended the ICN mergers workshop
- > was also a member of the ICN unilateral conduct working party
- > was a member of an OECD competition committee working party, which developed a workshop on the interaction between competition authorities and public prosecutors
- > received 65 requests for information from 21 countries and made 54 requests to 14 countries
- > conducted staff exchanges with New Zealand, the United Kingdom and Chinese Taipei

Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

output 1.1.2

competitive market structures and informed behaviour

this year the ACCC

performance indicator

Develop and administer industry specific codes of conduct

Two new mandatory codes of conduct commenced in 2006–07, the Oilcode and the Horticulture Code of Conduct. The ACCC is responsible for promoting compliance with these mandatory codes. To achieve industry compliance with these codes the ACCC's compliance strategy includes educating industry participants about the rights and obligations imposed by these codes, liaising with industry stakeholders and taking enforcement action where necessary.

The Horticulture Code of Conduct

- > The Horticulture Code commenced on 14 May 2007 and aims to regulate the conduct of growers and traders when trading in horticulture produce. The ACCC:
 - > provided technical assistance to the Department of Agriculture, Fisheries and Forestry regarding the development and implementation of the prescribed code
 - > gave 119 presentations nationally to industry stakeholders about their rights and obligations under the code
 - > published and distributed 35 282 copies of code publications to stakeholders in the horticulture industry outlining growers and traders' compliance obligations under the code; 14 Horticulture Code compliance articles were published in peak industry journals
 - > developed a code information network—currently with 387 subscribers, including peak industry associations and other stakeholders—who receive regular ACCC Horticulture Code compliance-related information

Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

this year the ACCC

The Oilcode

- > The Oilcode commenced on 1 March 2007 and regulates the conduct of suppliers, distributors and retailers in the downstream petroleum retail industry. The ACCC:
 - > provided technical assistance to the Department of Industry Tourism and Resources regarding the development and implementation of the prescribed Oilcode
 - > liaised nationally with state governments and industry stakeholders regarding the rights and obligations of stakeholders under the Oilcode
 - > published and distributed 4823 copies of Oilcode—publications to stakeholders in the downstream petroleum industry; 5 Oilcode compliance articles have been published in peak industry journals
 - > developed an Oilcode information network—currently 139 subscribers, including peak industry associations and other stakeholders—who receive regular ACCC Oilcode compliance-related information

- > *Activity relating to non-mandatory codes*
 - > provided technical assistance to 18 industry bodies engaged in developing and reviewing voluntary industry codes of conduct
 - > provided comments on 8 reviews of telecommunications industry and consumer codes in fulfilment of the ACCC's regulatory responsibilities
 - > provided comments on the draft Telecommunications Consumer Protection Code, currently under development by the Communications Alliance
 - > provided comments to the Australian Communications and Media Authority (ACMA) on amendments to the rules governing the provision of mobile premium services
 - > provided comments on the review of the Electronic Funds Transfer Code of Conduct, being undertaken by the ASIC

Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

this year the ACCC

performance indicator

assist parliamentary inquiries and government agencies to develop policies and processes that are consistent with the competition, fair trading and consumer protection laws

- > made a submission to the Productivity Commission's review of Australia's consumer protection framework
- > provided written submissions, oral evidence and other materials to the Senate inquiry into Australia's Indigenous visual arts and craft sector
- > made a submission to the House of Representatives inquiry into Older People and the Law and appeared at a public hearing
- > provided a submission to the Allen Consulting Group in its review of the Telecommunications Industry Ombudsman scheme
- > provided the Franchising Code of Conduct Review Committee with the ACCC submission on Part 2—Disclosure, and actively assisted with the review process
- > participated in the interdepartmental committee formed to coordinate Australian Government strategies to address issues in the Indigenous visual arts industry, and convened by the Department of Communication, Information Technology and the Arts (DCITA)
- > provided comments to ACMA on the development of an industry standard for the making of telemarketing calls, which supported the establishment of the national Do Not Call Register
- > provided comment on the draft Indigenous intellectual property toolkit, a project funded by the Cultural Ministers Council (CMC) and managed by the West—Australian Department of Culture and the Arts (DCA), to address Indigenous intellectual property issues
- > commenced the regulation impact statement process for proposed product safety standards for prams and strollers, hot water bottles, portable cots and lead and heavy metals in children's toys.
- > commenced or continued the preparation of regulation impact statements relating to the review of mandatory product safety or information standards covering bean bags, bicycle helmets, cosmetics ingredient labelling, flotation toys and swimming aids, trolley jacks and vehicle support stands
- > completed regulation impact statements that resulted in an updated safety standard for motor vehicle child restraints, a revised mandatory standard for children's nightwear and paper patterns for children's nightwear and a new mandatory safety standard for babies dummies

Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

this year the ACCC

performance indicator

assist parliamentary inquiries and government agencies to develop policies and processes that are consistent with the competition, fair trading and consumer protection laws

- > contributed to government amendments to the Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations concerning new graphic warnings for tobacco products
- > drafted warning notices under s. 65B of the Trade Practices Act on: the dangers associated with abrus precatorius toxic seeds contained in a 'Message in a Bottle' glass container (December 2006), the possibility of rupture of the LPG tank in motor vehicles fitted with liquid petroleum gas (December 2006); the potential for serious eye injury from the incorrect use of cosmetic contact lenses (February 2007); and the dangers associated with imported toothpaste containing diethylene glycol (DEG) (June 2007)
- > introduced 18-month bans under s. 65(C)5 of the Trade Practices Act on the following products which had been associated with serious injury: 'Woofaz Pet Products' 3-metre retractable dog leash and toys, novelties or similar items containing abrus precatorius toxic seeds
- > investigated complaints about the safety of several consumer products including cots, baby walkers, dog leads, various toys, imported toothpaste, blankets, bicycles and air conditioners
- > provided the Australian Senate with the ACCC's eighth report on *Anti-competitive and other practices by health funds and providers in relation to private health insurance*
- > participated from June 2006 to April 2007 in the food labelling strategies high level working group chaired by the Hon. Peter McGauran, Minister for Agriculture, Fisheries and Forestry; the labelling scheme to promote Australian grown produce to the consumer was officially launched by the minister on 1 June 2007—the 'Australian Grown' logo is administered by the Australian Made Campaign Limited
- > contributed as a member of the Standing Committee of Officials of Consumer Affairs (SCOCA) working party on the need for civil pecuniary penalties for contraventions of Australia's consumer protection laws

Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

this year the ACCC

performance indicator

liaise with other regulators, business and consumer associations, speak to the public, participate in meetings and conferences, nationally and internationally

- > collaborated and shared information on consumer protection and other common interests and held quarterly liaison meetings with ASIC
- > participated in 4 regulator's roundtable meetings with representatives from the Australian Communication and Media Authority (ACMA) and the Telecommunications Industry Ombudsman (TIO) focusing on consumer issues specific to the telecommunications industry and the development of coordinated mechanisms to address them
- > participated in 4 meetings of the Consumer Interest Reference Panel of the Communications Alliance to discuss consumer issues in the telecommunications industry
- > presented at the June meeting of the Public Relations Advisory Council (PRAC) to inform ombudsman schemes of the ACCC's role in the National Indigenous Consumer Strategy
- > participated in the TIO Digital Subscriber Line Access Multiplexer (DSLAM) forum to discuss consumer issues arising from the mass-migration of telecommunications services to new DSLAM networks
- > provided strategic advice as part of the steering committee of the Indigenous Consumer Assistance Network (ICAN), an organisation based in Cairns that provides consumer education, advocacy and assistance services to Indigenous consumers across the nation
- > participated in Standards Australia committee meetings and contributed significantly to reviews of Australian/ New Zealand standards for babies dummies, bunk beds, children's cots, fire extinguishers, motorcycle helmets, nursery furniture, toys for children under 3 and vehicle jacks
- > liaised with Kidsafe, the Australian Consumers Association, the Australian Toy Association and the Infants and Nursery Products Association of Australia on current or proposed mandatory safety and information standards and other product safety matters
- > fostered the development of and provided a regulatory perspective on a 12-month trial of the Product Safety Framework for nursery furniture—this is a joint initiative of Standards Australia and the Infants and Nursery Products Association of Australia to develop a framework for a horizontal standards approach to hazard identification, risk assessment and risk management in nursery furniture design

Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

this year the ACCC

performance indicator

liaise with other regulators, business and consumer associations, speak to the public, participate in meetings and conferences, nationally and internationally

- > attended and addressed the first Asian conference of the International Consumer Product Safety and Health Organisation (ICPHSO), the International Consumer Product Safety Caucus (ICPSC) and the Asia-Pacific Economic Cooperation (APEC) market surveillance workshop; attended the National Consumer Congress and the Queensland Safe Communities Conference
- > liaised with overseas government product safety authorities, including New Zealand authorities and the United States Consumer Product Safety Commission on product safety issues
- > participated in 27 international events such as International Bar Association conferences, meetings with international regulators, international energy and telecommunications conferences and various competition and consumer protection forums including OECD, ICPEN and ICN
- > liaised with the Australian Government Department of Health and Ageing (DoHA) and the national Quit network regarding the ACCC's 'light' and 'mild' cigarettes consumer awareness campaign
- > provided ongoing assistance on trade practices issues to Food Standards Australia New Zealand (FSANZ), particularly in relation to the development of FSANZ publications on country of origin labelling and food; attended quarterly meetings of the Commonwealth Food Regulatory Officials Group organised by the Food Regulation Secretariat Department of Health and Ageing
- > in conjunction with the Commonwealth Director of Public Prosecutions developed and participated in an OECD workshop between competition authorities and public prosecutors
- > held a joint meeting at commissioner level with the New Zealand Commerce Commission to discuss key issues of operation between the two organisations

Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

this year the ACCC

performance indicator

help overseas trading partners to develop and implement effective competition regimes to benefit Australian industry

- > continued with an AusAID-funded program for the Independent Consumer and Competition Commission (ICCC) in Papua New Guinea (PNG), assessing ICCC infrastructure and preparation of tender specifications to introduce a computer-based records management system within the ICCC
- > provided capacity building assistance to officials from: China, Chinese Taipei, Hong Kong, Indonesia, Malaysia, Mongolia, Papua New Guinea, Philippines, Singapore, Thailand and Vietnam
- > contributed as a member of APEC Competition Policy Deregulation Group to APEC's promotion of competition principles among APEC member economies
- > as a regular contributor to a Joint Regional Centre on Competition operated by the OECD and the Korean Fair Trade Commission, the ACCC has sent various staff to deliver capacity building seminars on mergers, cartels and abuse of dominance investigations
- > hosted study visits by officials from Bangladesh, Chile, China, Egypt, Indonesia, France, Japan, Malaysia, New Zealand, South Africa, South Korea, Singapore, Thailand, United Kingdom, United States of America and Vietnam
- > attended free trade agreement negotiation rounds between Australia and the Gulf Cooperation Council, NZ/ASEAN countries, Malaysia and China, including the delivery of presentations on competition policy and the ACCC's role as a national regulator
- > the ACCC has assisted in the preparation of material for feasibility studies for free trade agreements with Japan and Chile
- > presented to a group of Chinese officials on Australia's competition regime regarding Australia's free trade agreement negotiations with China

Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

liaison activities

- > continued as secretariat for the TPA Consumer Trust, established by the ACCC to disburse money arising from enforcement outcomes for research on consumer issues of relevance to the Act
- > the ACCC **Consumer Consultative Committee** met in July and November 2006 and March 2007—key consumer stakeholders in Australia provide feedback on current consumer issues and the ACCC provides information on its consumer protection activities, and works together with consumer groups to address issues raised at the meetings

- > meetings of the **Small Business Advisory Group** (November 2006 and May 2007) and the **Franchising Consultative Panel** (October 2006 and April 2007) provided the ACCC with the opportunity to liaise with industry associations and other key franchising and small business stakeholders to discuss emerging issues and work towards a collaborative approach to address them
- > roundtables on retail tenancy (October 2006) and unconscionable conduct (May 2007) also provided the ACCC with the opportunity to liaise with key stakeholders and discuss emerging issues and develop collaborative initiatives
- > the **Health Sector Consultative Committee** is the ACCC's newest consultative mechanism; members represent a broad range of the health sector, including private health insurers, hospitals, medical colleges and ancillary providers; the first meeting of the committee was held in May 2007

publications and reports

The ACCC developed and launched a number of new publications in electronic, paper and DVD formats in 2006–07. These included:

- > *FairStore*—a fair trading guide for owners and managers of stores serving Indigenous communities in rural and remote areas of Australia to help them comply with fair trading and other relevant laws and encourage higher trading standards
- > *FairStore* (consumer flyer)—an accompanying guide to educate Indigenous consumers about their rights and obligations when dealing with rural stores
- > *Know how to complain: stand up for your consumer rights*—a brochure outlining consumers' statutory rights, the steps consumers can take when making a complaint, the assistance that the ACCC can provide and details of alternative agencies that can assist was launched in December 2006
- > *If it sounds too good to be true ... it probably is: spam and scams*—a new edition of a leaflet containing tips on what to watch out for and how to protect yourself from internet scams and spam
- > *Your online rights*—revised version of a flyer that helps consumers understand their rights under the Trade Practices Act when shopping over the internet
- > *Best and fairest*—trade practices compliance training package was rolled out to Indigenous Coordination Centres (ICCs) in Western Australia in March 2007. The ACCC expects this initiative to be adopted on a national scale throughout 2007–08
- > *Dealing with debt: your rights and responsibilities*—a joint ACCC and ASIC publication translated into six languages (June 2007)
- > *Consumer protection and broadband connection speed* (consumer fact sheet)—providing information to consumers on the consumer protection provisions of the Trade Practices Act and important information regarding the factors that may affect broadband connection speed
- > *Unconscionable conduct in small business transactions, Unconscionable conduct in consumer transactions, Refusal to deal* (small business fact sheets)
- > *Being smart about your franchise—checklist before signing a retail lease*—assists prospective franchisees to make informed decisions on whether to sign up to a retail franchise and the related lease agreement

- > *Being smart about your new franchise and your retail lease* (franchise bulletin)—advises existing and prospective franchisees on their franchising retail lease agreement and the associated rights and obligations under the Trade Practices Act and the Franchising Code of Conduct
- > *The franchisee manual*—to assist prospective and existing franchisees in understanding their rights and obligations under the Franchising Code of Conduct
- > *Warranty and refund signs*, news for business—inform retailers of their rights and obligations regarding statutory warranties; also an in-store sign outlining a Trade Practices Act compliant ‘returns’ policy and distributed to more than 10 000 retailers across Australia; new titles in the ‘News for business’ series include: *Bait advertising*, *Comparative advertising*, *Price advertising and the Trade Practices Act*
- > three *Safety alert* brochures were released—*Hot water bottles* (on the safe use of hot water bottles, particularly for the elderly or young children); *Household furniture hazards* (on the dangers that heavy, unstable pieces of household furniture pose to toddlers); *Babies dummies* (was produced to coincide with the introduction of a mandatory product safety standard for dummies)
- > *TPA matters for small business*—is a CD compilation of the ACCC’s small business publications; it also contains links to relevant sections of the ACCC and other government websites
- > *The Oilcode—how does it affect you*—is an educational DVD to inform participants in the downstream petroleum industry of their rights and obligations under the Oilcode
- > *The Horticulture Code—how does it affect you*—a DVD that outlines the key features of the Horticulture Code of Conduct, including horticulture produce agreements, the responsibilities of merchants and agents and dispute resolution
- > *Competing fairly forum—collective bargaining*—educates small businesses about the collective bargaining notification regime introduced by the Dawson amendments to the Trade Practices Act; it features a panel discussion revolving around three main themes: the opportunities collective bargaining can offer to both small and big business; the requirement that all parties invest time and resources in the process and the ACCC’s role in the process

In response to feedback that small business and consumer audiences prefer trade practices information in a simple, easy-to-read format, a fact sheet series was developed comprising ‘overview’ fact sheets (on specific aspects of the Act such as bait advertising or price fixing) and ‘case outcome’ fact sheets (on the outcome of ACCC litigation activity or administrative proceedings). Targeted distribution campaigns ensure that case outcome fact sheets reach those businesses and consumers likely to be most affected by the outcome.

The introduction of two mandatory codes of conduct under the Trade Practices Act (the Oilcode and the Horticulture Code of Conduct) required the development of educational materials to provide businesses subject to the new code with relevant information. As well as comprehensive compliance manuals for each code, guides, summary guides and educational DVDs were also produced. Specific aspects of each code have also been the subject of titles in the ACCC fact sheet series. It was also identified that many growers of horticulture produce are from non-English speaking backgrounds, so educational materials on the Horticulture Code were produced in an additional five languages.

responding to businesses and consumers

The Infocentre is a telephone and email information and complaints service for consumers and businesses. It is the initial response centre for all telephone, email inquiries and complaints to the ACCC on competition and consumer issues in Australia.

Infocentre project officers are required to have a good working knowledge of all ACCC functions and current issues affecting the ACCC. With many contacts each day, callers are provided with an increased awareness of the ACCC's roles and functions, and of their rights and responsibilities as businesses or consumers. The Infocentre is a significant education channel for consumers and businesses alike.

The information received from business and consumers is recorded in the ACCC complaints and inquiries database, with Infocentre project officers creating about 90 per cent of those entries. The quality of information available in the database depends on the recorder asking the right questions to establish what, if any, breach of the Trade Practices Act may have occurred and what evidence is available to support the allegations. Additionally, correct and consistent classification of information is an enormous aid to accurate reporting and analysis.

This information is available to all staff for the purpose of analysing complaint trends and identifying possible areas of further inquiry. Investigators can also contact the Infocentre when they require specific information from callers pertaining to their investigation. Infocentre project officers are able to identify information of a valuable evidentiary nature for a number of investigations by asking targeted questions.

The overwhelming majority of people who contact the Infocentre do so as consumers seeking information or wishing to make a complaint. All matters alleging a breach of the anti-competitive conduct provisions of the Act are passed directly to an investigator. When a caller has a complaint about circumstances for which the ACCC or the Trade Practices Act has no remedy, Infocentre staff help to find another agency or organisation that is able to help that caller.

On 31 October 2006 the ACCC launched the new look SCAMwatch website, operating as an ancillary to the Infocentre, to inform consumers and small business how to recognise, avoid and report scams. The SCAMwatch website also serves as the internet portal for the annual scam awareness campaign of the Australian Consumer Fraud Taskforce.

ACCC Infocentre	1300 302 502
Small business helpline	1300 302 021
SCAMwatch complaint line	1300 795 995
SCAMwatch website	www.scamwatch.gov.au
ACCC website	www.accc.gov.au

output 1.1.1

Compliance with competition, fair trading and consumer protection laws and appropriate remedies when the law is not followed

this year the ACCC Infocentre

performance indicator	> responded to 54 035 calls on the Infocentre line, with 71 per cent of calls responded to in less than 20 seconds
respond quickly to allegations of breaches of competition, fair trading and consumer legislation	> entered 47 334 matters in the complaints and inquiries database (88 per cent of calls served); these 47 334 matters disclosed 52 589 contravention allegations
	> received 14 773 legitimate emails; of these 3137 emails were received through the SCAMwatch 'report a scam' online complaint form
	> sent out publications to 3361 callers; a total of 263 930 publications were sent out, with many callers requesting multiple copies of publications

Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

email complaints

	this year	last year
total number of emails received	61 637	17 718
spam or junk emails	48 684	9 941
legitimate email responses	14 773	7 777
telephone responses	6 181	4 589
answered by return email	6 647	2 225
sent elsewhere for response	448	560
no response required (predominately spam)	1 497	403

business information complaints or inquiries

	this year	last year
total number	14 262	10 452
about a small business	2 683	2 971
from a small business	2 893	3 941
about a franchise matter	853	747
about an online trader or ecommerce	7 833	2 883
escalated for investigation	807	991
flagged for future review	1 010	1 244

top ten industries for complaints and inquiries

	this year	last year*
wired telecommunications network operation	4 695	N/A
telecommunication services	2 165	4 391
lotteries	2 102	1 059
automotive fuel retailing	1 837	1 835
electrical, electronic and gas appliance retailing	1 422	N/A
services to finance and investment	1 331	812
business services generally	1 348	4 590
non-store retailing	1 095	N/A
car retailing	1 072	1 404
internet service providers and web search portals	982	N/A

* The Australian and New Zealand Standard Industrial Classification (ANZSIC) is the standard classification used by the Australian Bureau of Statistics and Statistics New Zealand for classifying statistical units by industry in official statistics.

In 2006 a new edition of the ANZSIC was introduced to provide a more contemporary industrial classification system. The ACCC implemented the new edition of ANZSIC into its complaints database in October 2006, replacing the 1993 version. Due to a substantial increase in the number of divisions and subdivisions in the new edition, some anomalies between data recorded against the previous classification structure and the new edition have occurred.

top ten possible contraventions of the Trade Practices Act

predominately fair trading and consumer protection part V

	this year	last year
misleading or deceptive conduct	15 144	13 193
retail warranties	4 414	4 741
price misrepresentation	1 241	1 188
accepting payment non-supply	1 121	854
misrepresentation of performance	984	761
misrepresentation of warranty, guarantee	626	
misrepresentation of grade, quality	502	613
unsolicited telecommunication services	437	
harassment and coercion	432	588

predominately effective competition and informed markets part IV

	this year	last year
exclusive dealing	372	458
misuse of market power	364	451

publications sent to callers

	this year	last year
Keeping baby safe	62 018	34 857
Safe toys for kids	41 483	25 522
Blind/curtain cords (safety alert)	14 133	29 950
The little black book of scams	13 077	11 041
Baby bath aids, brochure	12 158	10 725
Fire safety at home	12 045	36 788
Household furniture hazards for kids (safety alert)	9 168	N/A
Using a ladder (safety alert)	9 131	4 643
Toy safety	8 946	6 010
Cot safety	8 583	8 661

geographic source of allegations of contraventions of the Trade Practices Act

(47 334 complainants disclosed 52 598 allegations of contraventions).

	New South Wales	Victoria	Queensland	Western Australia	South Australia	Australian Capital Territory	Tasmania	Northern Territory	others	total
part IV										
last year	1 258	991	736	359	297	121	79	41	11	3 893
this year	933	629	542	298	223	95	69	35	22	2 846
part V										
last year	8 978	8 744	7 196	2 831	2 329	1 236	797	302	284	32 697
this year	9 487	8 902	7 928	2 993	2 364	1 196	844	388	539	34 641
part IVA/B										
last year	302	250	233	104	98	23	22	13	5	1 050
this year	295	264	269	82	89	17	20	17	4	1 057
prices										
last year	1	0	1	0	0	1	0	0	0	3
this year	0	0	0	0	0	0	0	0	0	0
other										
last year	2 947	2 516	2 222	828	663	365	198	133	128	10 000
this year	4 710	3 104	3 072	1 014	3 630	492	324	192	154	16 692
total										
last year	13 486	12 501	10 388	4 122	3 387	1 746	1 096	489	428	47 643
this year	15 438	12 909	11 821	4 388	3 630	1 802	1 258	632	720	52 598

enforcing for business and consumers

output 1.1.1

compliance with competition, fair trading and consumer protection laws and appropriate remedies when the law is not followed

this year the ACCC

performance indicator

seek appropriate remedies when there is a breach of the law

- > concluded 24 cases of the 58 matters before the court during the year, accepted 52 public undertakings; commenced 28 new cases, 8 of which were concluded this year; 34 cases are currently before the courts; the ACCC did not intervene in any proceedings in the reporting period
- > monitored performance of court orders and undertakings; took action to ensure that remedies ordered in concluded litigation and agreed to in public settlements were honoured; as part of this work the ACCC assessed 80 trade practices compliance programs, considered and accepted 87 compliance program review reports and finalised 34 compliance program matters
- > considered a number of applications for immunity and marker placements under the ACCC immunity policy for cartel conduct; substantial cartel investigations are in progress
- > reinforced the seriousness of price fixing and market sharing, concluding litigation regarding sporting goods and garnet supply
- > stopped wholesalers from limiting discounting on consumer electronics, kitchenware, power tools, clothing and skin care
- > stopped misleading, deceptive and unconscionable conduct regarding various consumer products and services and obtained refunds for consumers where relevant
- > accepted court enforceable undertakings for a wide range of prohibited conduct relating to products and services
- > in investigations, issued 484 notices under its powers to compulsorily acquire information (s. 155); 206 notices to provide information in writing (s. 155(1)(a)); 206 notices to provide documents (s. 155(1)(b)); 72 notices to appear in person (s. 155(1)(c)) and no authorities were issued to enter premises and inspect documents (s. 155(2)) and no premises were entered under search warrant (Part XIX)

Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

this year the ACCC

performance indicator

enforce mandatory product standards and information standards

- > conducted surveys at retail outlets across Australia and on internet sites for products subject to mandatory product safety and information standards and banned goods
- > commissioned proactive laboratory testing on randomly sampled products covered by mandatory standards
- > investigated complaints concerning alleged breaches of mandatory product safety and information standards and bans
- > undertook enforcement action resulting in the withdrawal from sale and/or recall of babies dummies, baby walkers, basketball rings and backboards, bean bags, bunk beds, children's cots, children's dart gun sets, children's nightwear, elastic luggage straps, fire extinguishers, flotation toys and swimming aids, no holes tongue studs, pedal bicycles, sunglasses and fashion spectacles, toys for children under 3 (including small balls/toys containing small balls) and tobacco labelling
- > accepted 9 court enforceable undertakings relating to the supply of baby walkers, bunk beds, cosmetics, children's cots, elastic luggage straps, flotation toys and swimming aids, pedal bicycles, sunglasses and fashion spectacles
- > court enforceable undertakings incorporated broad-based educational outcomes including:
 - > publication of disclosure notices alerting parents to the dangers of buying products for children that do not meet product safety standards and reminding manufacturers/retailers of their obligations
 - > consumer information regarding baby cots and walkers distributed nationally through 'baby bounty' bags to new mothers
- > concluded 5 matters in court for breaches of mandatory product safety and information standards and related offences covering baby walkers, children's cots, high-lift jacks and tobacco labelling
- > undertook administrative action over breaches in relation to basketball rings and backboards, flotation toys and swimming aids, sunglasses and fashion spectacles, toys for children under 3 (small balls/toys containing small balls) and tobacco labelling

Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

this year the ACCC

performance indicator	> worked with industry to develop strategies to ensure that internet sites comply with trade practices provisions/guidelines
develop new consumer protection and investigative initiatives for e-commerce	> ongoing monitoring and education of online traders and auction websites to ensure compliance with the Act, including refund and warranty terms, comparative pricing, misleading or deceptive claims and breaches of mandatory product safety and information standards > undertook enforcement action in relation to tobacco products sold over the internet > undertook administrative action over breaches in relation to false or misleading representations with regards to price

Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

litigation matters and undertakings accepted

	effective competition and informed markets	fair trading and consumer protection	other	total
litigation concluded during 2006–07	9	12	3	24
litigation continuing at end of 2006–07	15	14	5	34
undertakings accepted during 2006–07	12	38	2	52
total matters: concluded and continuing				110

snapshot of litigation and administrative settlements

The following information provides a brief summary of enforcement activity undertaken by the ACCC during the year. Information is also available on the website www.accc.gov.au, in the *ACCC eJournal* or by contacting the Infocentre on 1300 302 502. The information is grouped:

1. litigation concluded during 2006–07
2. litigation continuing at end of 2006–07
3. undertakings accepted during 2006–07

effective competition and informed markets

part IV	anti-competitive conduct: price fixing, market sharing, boycotts, agreements substantially lessening competition, misuse of market power, exclusive dealing, resale price maintenance, mergers and acquisitions substantially lessening competition
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fair trading and consumer protection

part IVA	unconscionable conduct in commercial and consumer transactions
part IVB	industry codes of conduct; the franchising code is a mandatory code prescribed under Part IVB
part V	unfair practices, misleading and deceptive conduct, pyramid selling, country of origin representations, product safety and information, conditions and warranties in consumer transactions
part VC	criminal conduct in fair trading and consumer protection
other	refusal or failure to comply with a notice under section 155, contempt proceedings

1. litigation concluded during 2006–07

effective competition and informed markets

timber merchant	Auspine Limited and others commenced 4 August 2005 concluded 24 January 2007 price fixing of timber estimating services in South Australia Justice Besanko Federal Court Adelaide outcome consent orders: undertakings to the court including injunctions and implementation of a trade practices compliance program and training significance attempted price fixing is a serious breach
garnet supply	Barton Mines Corporation and others commenced 15 March 2005 concluded 22 September 2006 agreement containing exclusionary provisions in relation to the international supply of industrial garnet Justice Tracey Federal Court Melbourne outcome consent orders: penalties totalling \$1.525 million, declarations, injunctions and costs significance collusion is a serious breach
kitchenware	Cambur Industries Pty Limited and another commenced 22 September 2005 concluded 11 August 2006 resale price maintenance in the wholesale supply of kitchenware Justice Besanko Federal Court Adelaide outcome consent orders: declarations, costs, and the court accepted undertakings related to a trade practices compliance program; Cambur Industries to pay penalties of \$280 000 and Mr Caulfield to pay penalties of \$32 000 significance retailers should be free to make their own pricing decisions
construction	Construction Forestry Mining & Energy Union (CFMEU) and others commenced 24 November 2005 concluded 12 December 2006 secondary boycott Justice Nicholson Federal Court Perth outcome penalties totalling \$100 000, declarations, implement a trade practices compliance program, orders to publish a notice to their members and agreed costs significance secondary boycott activity is a serious contravention

**digital
set-top boxes**

Digital Products Group Pty Ltd and others

commenced 27 September 2006 | **concluded** 13 December 2006

resale price maintenance in relation to certain 'Topfield' branded digital set-top boxes

Justice Tracey | Federal Court Melbourne

outcome | consent orders: penalties totalling \$297 500, declarations, injunctions and implement a trade practices compliance program

significance | retailers should be able to determine the advertised price

sports apparel

Fila Sport Oceania Pty Ltd and others

commenced 5 September 2002 | **concluded** 27 November 2006

misuse of market power and exclusive dealing through imposition of selective distribution policy

Justice Kenny | Federal Court Melbourne

outcome | consent orders: penalties totalling \$20 000 and declarations against the second respondent Mr David Carey; judgment against the first respondent was handed down in 2004 and included penalties of \$3 million

significance | misuse of market power with the intention of eliminating competitors is a serious breach

skin care

Jurlique International Pty Ltd and others

commenced 14 August 2006 | **concluded** 8 February 2007

resale price maintenance and price fixing conduct in relation to skincare, cosmetic and herbal products and treatment services offered under the 'Jurlique' brand name

Justice Spender | Federal Court Brisbane

outcome | consent orders: penalties totalling \$3.4 million, declarations, injunctions and costs

significance | retailers should be free to make their own pricing decisions

vitamins

Merck KGaA, F Hoffmann-La Roche Ltd, BASF Aktiengesellschaft and Takeda Chemical Industries Ltd

commenced 24 August 2001 | **concluded** 7 July 2006

alleged price fixing and market sharing in the global market for vitamin C

Justice Merkel | Federal Court Melbourne

outcome | the ACCC discontinued proceedings after further investigations indicated that the cartel arrangements made by the foreign companies were probably not given effect to in Australia

power tools**Tooltechnic Systems (Aust) Pty Ltd****commenced** 30 January 2007 | **concluded** 21 March 2007

attempting to induce power tool resellers not to discount from list prices

Justice Kiefel | Federal Court Brisbane

outcome | consent orders: penalties totalling \$125 000, declarations, injunctions and costs**significance** | retailers should be free to make their own pricing decisions

fair trading and consumer protection

medical claims**Advanced Medical Institute Pty Ltd and others****commenced** 19 July 2004 | **concluded** 15 August 2006

misleading or deceptive conduct in TV celebrity advertising regarding impotence and erectile dysfunction treatments

Justice Lindgren | Federal Court Sydney

outcome | declarations and costs**significance** | endorsement of products by celebrities should be truthful and accurate

insulation batts**Autex Pty Ltd****commenced** 15 February 2007 | **concluded** 5 June 2007

misleading thermal resistance labelling of certain 'GreenStuf' brand packaged polyester; also involved a breach of a court enforceable undertaking

Justice Sundberg | Federal Court Melbourne

outcome | consent orders: injunctions, declarations, corrective notice and costs**significance** | representations regarding product attributes must be accurate

**high-lift
vehicle jacks****Beaver Sales Pty Limited****commenced** 13 July 2006 | **concluded** 20 March 2007

breach of the prescribed consumer product safety standard relating to high-lift vehicle jacks sold as 'Black Rat Power Lifter'

Justice Cowdroy | Federal Court Sydney

outcome | consent orders: declarations, injunctions, establish a trade practices compliance program and costs**significance** | mandatory product safety and information standards must be adhered to

waste disposal**BIS Cleanaway and another****commenced** 1 December 2004 | **concluded** 7 September 2006

misleading or deceptive and unconscionable conduct relating to the signing up of customers to waste disposal contracts in Rockhampton

Justice Greenwood | Federal Court Brisbane

outcome | consent orders: declarations, write to affected customers to advise the outcome of the proceedings, to offer the opportunity to lodge a complaint and/or to make a claim for compensation

significance | businesses need to ensure that in their business dealings they adhere to the necessary standards of honesty and fair dealing

tobacco**British American Tobacco Australia Ltd****commenced** 14 November 2006 | **concluded** 23 April 2007

supplying Dunhill wallet packs that did not comply with the prescribed consumer product information standard for tobacco labelling requirements

Justice Tamberlin | Federal Court Sydney

outcome | consent orders: undertaking to the court

significance | mandatory product safety and information standards must be adhered to

muscle stimulation**Emerald Ocean Distributors Pty Ltd and others****commenced** 11 July 2000 | **concluded** 11 August 2006

misleading or deceptive conduct and misrepresentations regarding health and cosmetic benefits of an electronic muscle stimulation product

Justice Nicholson | Federal Court Perth

outcome | declarations, injunctions, corrective notices, implementation of a trade practice compliance program and costs; Full Federal Court appeal and cross claim was dismissed by consent

significance | health claims should be accurate and based on reasonable grounds

**prepaid telephone
card vending**

Global Prepaid Communications Pty Ltd and others

commenced 19 March 2003 | **concluded** 8 August 2006

misleading or deceptive conduct including misleading representation regarding profitability and risk in relation to sale of phone card vending machine distributorships

Justice Jacobson | Federal Court Sydney

outcome | declarations, injunctions, compensation totalling more than \$3.5 million to be paid to 23 small businesses and costs; appeal by Mr Nicholas Yates and Mr Nicholas Rhodin was dismissed with costs

significance | representations made about profitability of business opportunities must be accurate

computers

Info4pc.com P/L and another

commenced 22 January 2001 | **concluded** 16 November 2006

misleading or deceptive conduct, bait advertising and accepting payment not intending to supply in relation to computers

Justice Nicholson | Federal Court Perth

outcome | declarations and costs against Mr James Hamilton Rae (company deregistered in 2003)

significance | capacity to provide products or services must be realistically assessed

mobile phones

LG Electronics Australia Pty Ltd

commenced 29 December 2005 | **concluded** 4 July 2006

misleading and deceptive conduct and false representations made in online mobile phone user manuals about the duration of statutory conditions and warranties implied by the *Trade Practices Act 1974* and also about the rights and remedies that were available to mobile telephone owners/consumers

Justice Siopis | Federal Court Perth

outcome | declarations, injunctions, review existing trade practices compliance program, corrective notices and costs

significance | companies cannot restrict or modify a statutory warranty

medical claims

Menopause Institute of Australia and another

commenced 31 July 2006 | **concluded** 18 December 2006

misleading or deceptive conduct in the advertising and promotion of its 'Natural Hormone Replacement Therapy Program' for the treatment of menopause

Justice Branson | Federal Court Sydney

outcome | orders by consent: admission, injunctions, corrective notices and costs

significance | health claims should be accurate and based on reasonable grounds

medical claims**NuEra Health Pty Ltd (in liquidation) and others****commenced** 24 November 2006 | **concluded** 9 May 2007

misleading and deceptive conduct in respect of cancer cure claims; unconscionable conduct in taking advantage of disadvantaged consumers

Justice Heerey | Federal Court Melbourne

outcome | declarations, injunctions and costs**significance** | health claims should be accurate and based on reasonable grounds

**high lift
vehicle jacks****TWM Imports Pty Ltd****commenced** 23 December 2005 | **concluded** 25 July 2006

breach of the prescribed consumer product safety standards relating to high-lift vehicle jacks

Justice Heerey | Federal Court Hobart

outcome | declarations, finding of fact, injunctions, public recall, revise its current trade practices compliance program and costs**significance** | mandatory product safety and information standards must be adhered to

criminal proceedings**baby walkers
and cot****Skippy Australia Pty Ltd****commenced** 20 April 2006 | **concluded** 18 October 2006

non-compliance with mandatory consumer product safety standards for baby walkers, false representation that a cot was of a particular standard and misrepresentation of refund rights

Justice Tracey | Federal Court Melbourne

outcome | fines totalling \$860 000 and costs**significance** | mandatory product safety and information standards must be adhered to and significant criminal fines can be imposed; 'no refund' signs can be illegal

contempt proceedings**industry****Dynacast (INT) Pty Ltd (formerly phoneflasher.com Pty Ltd)****commenced** 4 October 2005 | **concluded** 26 March 2007

non-compliance with consent orders

Justice Finn | Federal Court Adelaide

outcome | found in contempt of court and fined \$7000**significance** | orders made by the court must be complied with

ACCC respondent

**commercial
air-conditioning**

CMS Engineering Pty Ltd and another

commenced 17 June 2004 | **concluded** 23 May 2007

challenge to an examination under section 155(1)(c)

Justice Lee | Federal Court Perth

outcome | matter discontinued

2. litigation continuing at end of 2006–07

effective competition and informed markets

**commercial
air conditioning**

**Admiral Mechanical Services Pty Ltd and others (formally WA
air conditioning firms)**

commenced 17 December 2004

entering agreements lessening competition through bid
rigging with respect to commercial air conditioning contracts
in Western Australia

Justice Nicholson | Federal Court Perth

status court processes continuing

fine paper

**April International Marketing Services Australia Pty Ltd
and others**

commenced 6 December 2006

entering into arrangements, contracts or understandings
with competitors for the supply of fine paper products

Justice Bennett | Federal Court Sydney

status court processes continuing

**marine fishing
(abalone)**

Australian Abalone Pty Ltd and others

commenced 9 November 2005

anti-competitive agreements among abalone quota holders

Justice Middleton | Federal Court Melbourne

status court processes continuing

medical fluids

Baxter Healthcare Pty Ltd

commenced 1 November 2002

misuse of market power and exclusive dealing in relation
to the supply of health products to state government
purchasing authorities

High Court of Australia

status judgment reserved

construction	Construction Forestry Mining & Energy Union (CFMEU) and others
	commenced 23 August 2006
	engaging in conduct to induce/implement a secondary boycott
	Justice Gyles Federal Court Sydney
	status court process continuing
funeral directors	Dally M Publishing & Research Pty Limited and another
	commenced 27 March 2007
	attempt to induce civil funeral celebrants to collectively increase and charge a minimum agreed fee
	Justice Finkelstein Federal Court Melbourne
	status court processes continuing
wood preservative chemicals	FCHEM (Aust) Limited and others
	commenced 31 July 2006
	price fixing in relation to the supply of various wood preservative chemicals including CCA (copper chromium arsenic) and LOSP (light organic solvent preservatives); these products are widely used by the timber industry
	Justice Cowdroy Federal Court Sydney
	status court process continuing
electrical services	IPM Operation and Maintenance Loy Yang Pty Ltd (formerly Edison Mission Operation and Maintenance Loy Yang Pty Ltd) and the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU)
	commenced 7 February 2005
	arrangement between IPM and the CEPU containing a provision which had the purpose of preventing IPM from engaging certain electrical contractors
	Federal Court and Full Federal Court
	status in January 2007 Justice Young made declarations, imposed injunctions, a penalty of \$125 000 and costs against the CEPU. In February 2007 Justice Tracey by consent made declarations, imposed a penalty of \$120 000 and costs against IPM. The CEPU appealed to the Full Federal Court against liability and penalty in respect of the judgment against it. The judgment in respect of the appeal has been reserved

cardiothoracic surgeons	<p>Knight, John Lincoln and another</p> <p>commenced 5 February 2007</p> <p>anti-competitive conduct with the purpose, effect or likely effect of substantially lessening competition</p> <p>Justice Mansfield Federal Court Adelaide</p> <p>status court processes continuing</p>
education consultants	<p>Kokos International Pty Ltd and others</p> <p>commenced 1 November 2006</p> <p>engaging in price fixing and other anti-competitive conduct where the respondents entered into arrangements or understandings not to offer or accept discounted school tuition fees from Korean students</p> <p>Justice French Federal Court Perth</p> <p>status court processes continuing</p>
fuel retailing	<p>Leahy Petroleum Pty Ltd and others</p> <p>commenced 7 November 2003</p> <p>alleged price fixing of petrol in the Geelong area</p> <p>Justice Gray Federal Court Melbourne</p> <p>status ACCC application dismissed in May 2007, matter continuing in relation to costs</p>
liquor retailing	<p>Liquorland (Aust) Pty Ltd and Woolworths Ltd</p> <p>commenced 27 June 2003</p> <p>anti-competitive agreements and primary boycotts through restrictive agreements with operators of licensed premises for the purpose of substantially lessening competition in packaged takeaway liquor markets</p> <p>Justice Allsop Federal Court Sydney</p> <p>status judgment handed down in December 2006, included declarations and penalties totalling \$7 million against Woolworths; in May 2005, Liquorland admitted that it had entered into illegal agreements with five applicants for liquor licences and was penalised \$4.75 million; court process continuing in relation to final orders</p>
consumer electronics	<p>Teac Australia Pty Ltd and another</p> <p>commenced 27 June 2007</p> <p>resale price maintenance in the sale of consumer electronic goods</p> <p>Justice Kenny Federal Court Victoria</p> <p>status court process continuing</p>

navigation products	Navman Australia Pty Ltd and others
	commenced 6 December 2006
	resale price maintenance in the supply of 'Navman' marine, in-car and personal electronic navigation products
	Justice Jacobson Federal Court Sydney
	status court processes continuing
corrugated fibreboard container industry	Visy Industries Holdings Pty Limited and others
	commenced 21 December 2005
	entering into anti-competitive arrangements
	Justice Heerey Federal Court Melbourne
	status court processes continuing
fair trading and consumer protection	
internet service provider	Dataline.net.au Pty Ltd and others
	commenced 21 December 2001
	misleading, deceptive and unconscionable conduct and resale price maintenance regarding supply of internet-related services to small businesses and consumers
	Justices Dowsett, Greenwood, Moore Full Federal Court Brisbane
	status judgment reserved
poultry farming (eggs)	G.O. Drew Pty Ltd and another
	commenced 4 November 2005
	misleading and deceptive conduct and misrepresentations in relation to the supply of certified organic eggs
	Justice Gray Federal Court Melbourne
	status judgment reserved
tobacco products retailing	Guirguis, Mina
	commenced 13 April 2007
	supply of retail packages of tobacco namely cigarettes in packets and cartons which do not comply with the mandatory product information standard as the retail packages did not display the required messages and graphic images
	Justice Heerey Federal Court Melbourne
	status court processes continuing

access to essential services	<p>Imagine Essential Services Limited, Richard Evans and The Triumphant Group Pty Ltd</p> <p>commenced 29 June 2007</p> <p>misleading and deceptive conduct and misrepresentations in the sale of licences offering discounts for essential services</p> <p>Justice Gordon Federal Court Victoria</p> <p>status court process continuing</p>
drink machines	<p>Kyloe Pty Ltd and others</p> <p>commenced 20 July 2006</p> <p>contravention of industry codes</p> <p>Justice Tracey Federal Court Melbourne</p> <p>status judgment reserved</p>
lotteries	<p>Pacific Network Services Ltd (third party) and others</p> <p>commenced 23 February 2007</p> <p>misleading and deceptive claims in relation to a lottery scam</p> <p>Justice Collier Federal Court Brisbane</p> <p>status court processes continuing</p>
jewellery	<p>Prouds Jewellers Pty Ltd</p> <p>commenced 8 December 2006</p> <p>making 'Was/Now' price comparisons that were false or misleading</p> <p>Justice Moore Federal Court Sydney</p> <p>status court processes continuing</p>
introduction services	<p>Rural Network Pty Ltd and another</p> <p>commenced 28 April 2005</p> <p>misleading or deceptive conduct in relation to the promotion of introduction agency services</p> <p>Justice Spender Federal Court Brisbane</p> <p>status court processes continuing</p>
property investment	<p>Seven Network Ltd and others</p> <p>commenced 27 September 2005</p> <p>misleading or deceptive conduct in the promotion of a millionaire property investment mentoring program 'Wildly Wealthy Women'</p> <p>Justice Bennett Federal Court Sydney</p> <p>status judgment reserved</p>

**rugs and
manchester**

Terania Pty Ltd and Australian Rug Expos Pty Ltd

commenced 2 March 2007

false or misleading representations as to price; 'was' and 'sale' price labelling; deceptive or misleading conduct in relation to representations as to duration and clearance nature of sales

Justice Mansfield | Federal Court Northern Territory

status court processes continuing

**takeaway food
retailing**

The Original Mama's Pizza and Ribs and others

commenced 25 November 2005

misleading and deceptive conduct in relation to legal rights associated with purchase of fast food systems

Justice Madgwick | Federal Court Sydney

status judgment reserved

vehicle jacks

Trade Quip Pty Ltd and another

commenced 31 March 2006

breach of the prescribed consumer product safety standard relating to hydraulic trolley jacks and misleading and deceptive conduct by making false representations in relation to the supply of certain automotive products

Justice Weinberg | Federal Court Melbourne

status court processes continuing

criminal proceedings

fair trading and consumer protection

diamond industry

Carrerabenz Diamond Industries Pty Ltd and another

commenced 20 December 2005

misleading price comparisons in advertising diamond clearance sales

Justice Dowsett | Federal Court Brisbane

status court processes continuing

jewellery

Zamel's Pty Ltd

commenced 20 December 2006

making strike-through price comparisons that were false or misleading

Justice Mansfield | Federal Court Adelaide

status court processes continuing

other proceedings

industry **Neville, John Patrick**

commenced 11 April 2007

false or misleading evidence during course of s. 155(1)(c) examination

Justice Lindgren | Federal Court Sydney

status pleaded guilty to two charges of providing false or misleading evidence; sentencing hearing to be held on 25 September 2007

industry **NuEra Wellness Centre Pty Ltd**

commenced 29 June 2007

refused or failed to comply with a notice under s. 155(1) of the Trade Practices Act

Justice North | Federal Court Melbourne

status court process continuing

industry **Rana, Michael Lee**

commenced 29 June 2007

offence against s. 11.2(1) of the *Criminal Code Act 1995* in that he allegedly aided, abetted, counselled or procured a refusal or failure to comply with a notice under s. 155(1) of the Trade Practices Act

Justice North | Federal Court Melbourne

status court process continuing

industry **Rana, Paul John**

commenced 29 June 2007

refused or failed to comply with a notice under s. 155(1) of the Trade Practices Act, and offence against s. 11.2(1) of the *Criminal Code Act 1995* in that he allegedly aided, abetted, counselled or procured a refusal or failure to comply with a notice under s. 155(1) of the Act

Justice North | Federal Court Melbourne

status court process continuing

contempt proceedings

industry **Mr Bon Levi**

commenced 13 June 2007

breach of court ordered injunctions

Justice Kiefel | Federal Court Brisbane

status court process continuing

3. Undertakings accepted during 2006–07

effective competition and informed markets

clothing

Jaggad Pty Ltd

Melbourne | 2 April 2007

conduct | Jaggad dealer terms required premium resellers to sell Jaggad Apparel at the recommended retail prices set by Jaggad

undertaking | court enforceable undertaking to not enter into an agreement or to set the minimum price below which goods cannot be sold or advertised; publish a public disclosure notice in a trade journal; corrective letters to its dealers and other resellers advising of the ACCC's concerns and resellers' rights to sell stock at any price; and undertake trade practices compliance training

significance | retailers should be free to make their own pricing decisions

clothing

Jurlique International Pty Ltd and others

Brisbane | 12 September 2006

conduct | resale price maintenance and price fixing conduct in relation to skincare, cosmetic and herbal products and treatment services offered under the 'Jurlique' brand name

undertaking | court enforceable undertaking to write to each person to whom it supplied products advising that they are free to decide at what price to sell Jurlique products; write to franchisees to advise them that where Jurlique and its franchisees are in competition with each other they are prohibited from agreeing on the price to sell their services and to establish a trade practices compliance program

significance | retailers should be free to make their own pricing decisions

amusement services

Marshall, James Gavin

Sydney | 7 December 2006

conduct | boycott through an arrangement not to supply amusement services to independent organisers of amusement areas for certain events

undertaking | court enforceable undertaking for trade practices compliance training; notify all members when a guild show becomes a non-guild show and that members are free to attend and provide services at the show; and publish a notice in the industry's trade magazine outlining the terms of the settlement

significance | boycotts entered into by industry bodies have the potential to inhibit competition

computer products **Optima Technology Solutions Pty Ltd**

Sydney | 5 December 2006

conduct | resale price maintenance by making it known to an Optima dealer that the dealer should raise the prices at which it sells Optima products to their recommended retail price, otherwise Optima would withhold the supply of products or cancel the dealer's dealership agreement

undertaking | court enforceable undertaking to refrain from engaging in conduct that constitutes resale price maintenance; establish a trade practices compliance program; implement an audit process of Optima's past business interactions with Optima dealers and send a letter to all dealers outlining the findings of the investigation and the dealers' freedom to determine their own prices for the products

significance | retailers should be free to make their own pricing decisions

amusement services
Osborne, Lewis Eric

Sydney | 7 December 2006

conduct | boycott through an arrangement not to supply amusement services to independent organisers of amusement areas for certain events

undertaking | court enforceable undertaking for trade practices compliance training; notify all members when a guild show becomes a non-guild show and that members are free to attend and provide services at the show; and publish a notice in the industry's trade magazine outlining the terms of the settlement

significance | boycotts entered into by industry bodies have the potential to inhibit competition

amusement services
Pavier, Broderick William

Sydney | 7 December 2006

conduct | boycott through an arrangement not to supply amusement services to independent organisers of amusement areas for certain events

undertaking | court enforceable undertaking for trade practices compliance training; notify all members when a guild show becomes a non-guild show and that members are free to attend and provide services at the show; and publish a notice in the industry's trade magazine outlining the terms of the settlement

significance | boycotts entered into by industry bodies have the potential to inhibit competition

amusement services

Pink, Aaron

Sydney | 7 December 2006

conduct | boycott through an arrangement not to supply amusement services to independent organisers of amusement areas for certain events

undertaking | court enforceable undertaking for trade practices compliance training; notify all members when a guild show becomes a non-guild show and that members are free to attend and provide services at the show; and publish a notice in the industry's trade magazine outlining the terms of the settlement

significance | boycotts entered into by industry bodies have the potential to inhibit competition

amusement services

Pink, George

Sydney | 7 December 2006

conduct | boycott through an arrangement not to supply amusement services to independent organisers of amusement areas for certain events

undertaking | court enforceable undertaking for trade practices compliance training; notify all members when a guild show becomes a non-guild show and that members are free to attend and provide services at the show; and publish a notice in the industry's trade magazine outlining the terms of the settlement

significance | boycotts entered into by industry bodies have the potential to inhibit competition

power tools

Schulz, Holger

Brisbane | 17 January 2007

conduct | as a company managing director, contributing to an environment in which resale price maintenance occurred and failing to take reasonable steps to avoid resale price maintenance conduct by some of the company's sales managers

undertaking | court enforceable undertaking that he will not, by his conduct, induce others to engage in resale price maintenance

significance | managers must properly train and supervise their staff about trade practices law compliance

amusement services

Short, Peter James

Sydney | 7 December 2006

conduct | boycott through an arrangement not to supply amusement services to independent organisers of amusement areas for certain events

undertaking | court enforceable undertaking for trade practices compliance training; notify all members when a guild show becomes a non-guild show and that members are free to attend and provide services at the show; and publish a notice in the industry's trade magazine outlining the terms of the settlement

significance | boycotts entered into by industry bodies have the potential to inhibit competition

amusement services

The Showmen's Guild of Australasia

Sydney | 7 December 2006

conduct | boycott through an arrangement not to supply amusement services to independent organisers of amusement areas for certain events

undertaking | court enforceable undertaking for trade practices compliance training; notify all members when a guild show becomes a non-guild show and that members are free to attend and provide services at the show; and publish a notice in the industry's trade magazine outlining the terms of the settlement

significance | boycotts entered into by industry bodies have the potential to inhibit competition

power tools

Tooltechnic Systems (Aust) Pty Ltd

Brisbane | 17 January 2007

conduct | attempting to induce power tool resellers not to discount from list prices

undertaking | court enforceable undertaking to establish a trade practices compliance program

significance | retailers should be free to make their own pricing decisions

bedding

Adairs The House of Linen (Aust) Pty Ltd

Hobart | 8 November 2006

conduct | misrepresenting that 'Downtime' brand down quilts contained 100 per cent goosedown when they did not

undertaking | court enforceable undertaking to offer refunds through corrective notices; refrain in future from making any down content claims for its products unless the claims can be substantiated and implement a trade practices compliance program

significance | representations regarding product attributes must be accurate

elastic luggage straps

Asia Source Australia Pty Ltd

Canberra | 13 October 2006

conduct | supply of luggage straps which did not comply with the mandatory product safety and information standard because the warning label had incorrect information and was not permanently attached

undertaking | court enforceable undertaking to cease sale of the Porta Hardware and Bilst elastic luggage straps, voluntary recall, corrective notices, refrain in the future from supplying elastic luggage straps with labels that do not comply with the mandatory product safety and information standard and implement a trade practices compliance program

significance | mandatory product safety and information standards must be adhered to

baby cots and walkers

Ausia Australia Pty Ltd

Melbourne | 6 March 2007

conduct | sale of baby cots and walkers over the internet which may not have not complied with mandatory product safety standards

undertaking | court enforceable undertaking to conduct a voluntary recall, publish disclosure notices, distribution of consumer information and implement a trade practices compliance program

significance | mandatory product safety and information standards must be adhered to

**household
insulation**
Auspoly Pty Ltd (variation)

Melbourne | 21 May 2007

conduct | Misrepresentations in respect of the 'R value' or insulation value of domestic polyester insulation batts

undertaking | Auspoly has undertaken to install a new and fully automated polyester batt production plant that includes automatic weighing and computerised labelling of batts, to compensate consumers who bought the affected batts and to publish an educative article about the Trade Practices Act in a major trade publication

significance | representations regarding product attributes must be accurate

**complementary
medicine**
Aussia Australia Pty Ltd

Canberra | 18 June 2007

conduct | Aussia Australia Pty Ltd imported from New Zealand bulk supplies of squalene and propolis products in capsule form, which were then packaged into retail quantities and labelled 'made in Australia'. Aussia also claimed on its website to operate a modern factory and employ its own researchers, when it had no role in research or manufacture of its products. These products, traditionally used in Chinese medicine, were sold by Aussia both in Australia and overseas

undertaking | court enforceable undertaking to remove any misrepresentations from existing stock; inform resellers and purchasers of the incorrectly labelled products; review its advertising and promotional material to ensure that any representations comply with the Trade Practices Act; publish an article regarding country of origin claims in an appropriate Chinese publication

significance | country of origin claims must be accurate

bedding
Australian Feather Mills Pty Ltd

Hobart | 31 January 2007

conduct | misrepresenting that 'Downia' and 'Artic Down' brand quilts and pillows contained 100 per cent goosedown when they did not

undertaking | court enforceable undertaking not to make any percentage representations about the down content that it cannot substantiate; publish corrective notices and implement a trade practices compliance program

significance | representations regarding product attributes must be accurate

**high lift
vehicle jacks**

Beaver Sales Pty Limited

Darwin | 28 July 2006

conduct | Beaver Sales breached the prescribed consumer product safety standard relating to high-lift vehicle jacks sold as 'Black Rat Power Lifter'

undertaking | court enforceable undertaking to conduct a public recall of the Black Rat jack on a non-admission basis

significance | mandatory consumer product safety and information standards must be adhered to

fruit juice

Bevco Pty Ltd

Brisbane | 5 June 2007

conduct | labelling of a number of Bevco and Macquarie Valley branded fruit juice products as '100% Australian Made and Owned' although the products consisted of 99.9 per cent imported reconstituted juice

undertaking | court enforceable undertaking to refrain from labelling its beverage products as '100% Australian Made and Owned' unless it can substantiate the claims, publish a corrective notice and implement a trade practices compliance program

significance | country of origin claims must be accurate

jewellery

Bevilles Jewellers

Canberra | 12 June 2007

conduct | use of two-price advertising involving comparison of its price with the recommended retail price (RRP) when the advertised products had never been sold at the RRP

undertaking | court enforceable undertakings to refrain from two-price advertising not supported by prior sales history, publish a corrective notice and implement a trade practices compliance program

significance | price-saving claims should accurately reflect a comparison between recent historical selling prices and advertised discounted prices

waste disposal

BIS Cleanaway Ltd

Brisbane | 3 October 2006

conduct | misleading or deceptive and unconscionable conduct relating to the signing up of customers to waste disposal contracts in Rockhampton

undertaking | court enforceable undertaking for trade practices compliance training

significance | businesses need to ensure that in their business dealings they adhere to the necessary standards of honesty and fair dealing

sander products**Black & Decker (Australia) Pty Ltd**

Melbourne | 12 September 2006

conduct | four types of sanding discs, designed for use with Black & Decker's multi-sander and detail sander products, were sold in packaging that contained an incorrect reference to their country of origin

undertaking | court enforceable undertaking to refrain from making false or misleading representations about the country of origin and the particular history and manufacturing processes of its products; take remedial action in relation to stock already held by resellers; and implement a trade practices law compliance program

significance | country of origin claims must be accurate

swimming aid**Brand Direct International Pty Ltd**

Brisbane | 9 October 2006

conduct | Brand Direct imported Maui-branded swimming aid vests that did not comply with the mandatory consumer product safety standard in that the intended body mass range was not marked on the vest and the warning was not in a colour contrasting with the background

undertaking | court enforceable undertaking to refrain from supplying any flotation toys or swimming aids that do not comply with relevant mandatory consumer product safety and information standards and implement a trade practices compliance program

significance | mandatory product safety and information standards must be adhered to

résumé service**Burnan Pty Ltd and Mr Keith PW Rolston**

Perth | 5 September 2006

conduct | concerns that in the sale and promotion of the business opportunities Burnan made various misleading representations

undertaking | court enforceable undertaking to cease making representations that persons who purchase the business opportunity will commence earning a specified amount per day immediately after training is completed; review its selling and advertising practices; request prospective purchasers to seek independent advice before entering into any agreement to purchase a business opportunity and implement a trade practices compliance program

significance | business promoters must provide complete and accurate information

**complementary
medicine**
Careline Group Pty Ltd

Canberra | 18 June 2007

conduct | Careline Australia Pty Ltd imported from New Zealand bulk supplies of squalene, propolis, omega 3 and royal jelly products in capsule form, which were then packaged into retail quantities and labelled 'made in Australia'. These products, traditionally used in Chinese medicine, were sold by Careline both in Australia and overseas

undertaking | court enforceable undertaking to remove any misrepresentations from existing stock; inform resellers and purchasers of the incorrectly labelled products; review advertising and promotional material to ensure that any representations comply with the Trade Practices Act and publish an article regarding country of origin claims in an appropriate Chinese publication

significance | country of origin claims must be accurate

sunglasses
Corpeyewear Pty Ltd and Mr Andrew Stokes

Brisbane | 27 June 2007

conduct | sold sunglasses that did not comply with mandatory product safety and information standards

undertaking | court enforceable undertaking to only supply products that comply with the relevant mandatory consumer product safety and information standard, corrective notices and implement a trade practices compliance program

significance | mandatory product safety and information standards must be adhered to

bedding
Domayne Pty Ltd

Hobart | 14 January 2007

conduct | misrepresented that its 'Domayne Essentials' down quilts contained 100 per cent duckdown or 95 per cent duckdown when they did not

undertaking | court enforceable undertaking to refrain in future from making any down content claims unless the claims can be substantiated, publish corrective notices, offer refunds and improve its trade practices compliance program

significance | representations regarding product attributes must be accurate

**automotive
electrical products**

Elecspeess Pty Ltd

Melbourne | 21 June 2007

conduct | misrepresented that its 'Condor Led Rear Combination Lamps' complied with national vehicle standards when they did not

undertaking | court enforceable undertaking to only supply products that comply with the relevant standard, quarantine all non-compliant lamps, undertake a product recall and implement a trade practices compliance program

significance | mandatory product safety and information standards must be adhered to

cosmetics

Environmental Marketing Pty Ltd

Adelaide | 16 August 2006

conduct | labels on the cosmetics did not have all of the ingredients listed as required by the mandatory product information standard, and this may also have been misleading if the ingredients not declared had been harmful or were detrimental to the environment

undertaking | court enforceable undertaking to only supply cosmetic products comply with the standard, corrective notice, that refunds and implement a trade practices compliance program

significance | mandatory consumer product safety and information standards must be adhered to

bunk beds

Eternal Design Pty Ltd

Melbourne | 14 January 2007

conduct | Eternal Design Pty Ltd distributed to retailers 94 bunk beds under the description 'Fantasy Bus' that did not comply with the mandatory product safety standard for bunk beds

undertaking | court enforceable undertaking to only supply bunk beds that comply with the mandatory consumer product safety standard, undertake a recall or modification of the bunk beds to ensure they meet the standard, write to consumers who have purchased the bunk bed and implement a trade practices compliance program

significance | mandatory product safety and information standards must be adhered to

bunk beds**Furniture Galore Pty Limited**

Melbourne | 10 January 2007

conduct | Furniture Galore Pty Ltd sold bunk beds to consumers under the description 'Fantasy Bus' which did not comply with the mandatory product safety standard for bunk beds

undertaking | court enforceable undertakings to only supply bunk beds that comply with the mandatory consumer product safety standard and implement a trade practices compliance program

significance | mandatory consumer product safety and information standards must be adhered to

**soft drink,
cordial and syrup
manufacturer****GlaxoSmithKline Australia Pty Ltd**

Canberra | 13 March 2007

conduct | GlaxoSmithKline Australia Pty Ltd had made certain representations about a number of Ribena products that may have been misleading or deceptive to consumers and GSK Australia undertook an internal review of its product labelling and product testing methods

undertaking | court enforceable undertaking that GSK Australia will not distribute or promote Ribena ready-to-drink products with claims of vitamin C content or that Ribena products contain more vitamin C than orange juice if claims cannot be substantiated; corrective notices and implement a trade practices compliance program; a variation to this undertaking was accepted by the ACCC on 13 June 2007

significance | representations regarding product attributes must be accurate

bicycles**Hagemeyer Asia Pacific Pty Limited**

Melbourne | 29 August 2006

conduct | bicycles that were supplied unassembled did not comply with the mandatory product safety standard for pedal bicycles

undertaking | court enforceable undertaking to recall the bicycles and provide customers in return with a bicycle of equivalent value that complies with the standard; to only supply bicycles that comply with the standard; and implement procedures aimed at ensuring that products it supplies in future are subject to mandatory product safety or information standards

significance | need to ensure that promotional items comply with mandatory product safety and information standards

air conditioning**Hagemeyer Brands Australia Pty Limited**

Sydney | 30 October 2006

conduct | making statements that particular Dimplex air conditioning products were 'environmentally friendly' when this is not correct; the statements concerned the environmental benefits of certain Dimplex air conditioning units containing the hydrofluorocarbon refrigerant, R407C gas; while R407C gas is less harmful to the environment than certain hydrofluorocarbon refrigerants, R407C gas is not considered 'environmentally friendly'

undertaking | court enforceable undertaking to refrain from making misleading representations that R407C gas or the air conditioning products that use R407C gas are environmentally friendly; corrective notices and implement a trade practices compliance program

significance | representations regarding product attributes must be accurate

bedding**Harris Scarfe Australia Pty Ltd**

Hobart | 4 September 2006

conduct | misrepresented that its 'Home Statements Signature Collection' down quilts contained 100 per cent white goosedown when they did not

undertaking | court enforceable undertaking to not make any percentage representations about the down content that it cannot substantiate; publish corrective notices; offer refunds and improve its trade practices compliance program

significance | representations regarding product attributes must be accurate

bedding**Home Express Nominees Pty Ltd**

Hobart | 19 September 2006

conduct | misrepresenting that 'Home Express' brand quilts contained 100 per cent goosedown or down when they did not

undertaking | court enforceable undertaking to not make any percentage representations about the down content that it cannot substantiate; publish corrective notices; offer refunds and implement a trade practices compliance program

significance | representations regarding product attributes must be accurate

**home
entertainment**
JB Hi-Fi Group Pty Ltd

Melbourne | 5 December 2006

conduct | two-price advertising used by home entertainment retailer JB Hi-Fi in catalogue advertising that may have misled consumers to believe that JB Hi-Fi, or its relevant market competitors had, within a reasonable time before the catalogue's issue, sold the products in reasonable quantities at the recommended retail price when this may not, in fact, have been the case

undertaking | court enforceable undertaking not to advertise any product with a discount off its RRP unless the product was advertised and sold at that price in the same markets, in reasonable quantities for a reasonable period of time and within a reasonable period of the date of the advertising and implement a trade practices compliance program

significance | price saving claims should accurately reflect a comparison between recent historical selling prices and advertised discounted price

waste disposal**Johns, Stephen Bernard**

Brisbane | 3 October 2006

conduct | misleading or deceptive and unconscionable conduct relating to the signing up of customers to waste disposal contracts in Rockhampton

undertaking | court enforceable undertaking to attend trade practices compliance training

significance | businesses need to ensure that in their business dealings they adhere to the necessary standards of honesty and fair dealing

**mobile phone
retailers****JV Mobile Pty Ltd**

Melbourne | 26 April 2007

conduct | promoting and advertising its business network as a franchise and failing to provide JV Mobile Retailers with a disclosure document as required by the Franchising Code of Conduct

undertaking | court enforceable undertaking to formally structure all new agreements that are substantially similar to its existing agreements with JV Mobile Retailers as franchise agreements; implement a trade practices compliance program that includes complaints-handling procedures and practical trade practices training focusing on the franchising code, and place an article in a national newspaper outlining key rights and obligations under the franchising code

significance | franchisors must provide complete and accurate information

bedding**Legend Australia Holdings Pty Ltd**

Hobart | 5 September 2006

conduct | misrepresenting that its Logan & Mason 'Ultima' down-filled quilts contained 100 per cent goosedown when they did not**undertaking** | court enforceable undertaking not to make any percentage representations about the down content that it cannot substantiate; publish corrective notices and implement a trade practices compliance program**significance** | representations regarding product attributes must be accurate

air conditioners**LG Electronics Australia Pty Ltd**

Canberra | 20 September 2006

conduct | certain air conditioners are required to display energy efficiency labels and meet Minimum Energy Performance Standards (MEPS); check tests found that the energy efficiency of five LG air conditioners was less than 90 per cent of the claimed energy efficiency, and one air conditioner did not meet MEPS**undertaking** | court enforceable undertaking to offer eligible consumers rebates for the increased cost of electricity; only publish or advertise the energy efficiency rating of an air conditioner if an independent laboratory has tested the air conditioner according to the Australian Standard; corrective notices; write to LG retailers that purchased the affected models advising them of the rebate offer; review and upgrade its trade practices compliance program**significance** | representations regarding product attributes must be accurate

bedding**Linen House Pty Ltd**

Hobart | 25 July 2006

conduct | misrepresenting that own-brand 'Linen House' down-filled quilts contained 100 per cent goosedown when they did not**undertaking** | court enforceable undertaking not make any percentage representations about the down content that it cannot substantiate, publish corrective notices, offer refunds and implement a trade practices compliance program**significance** | representations regarding product attributes must be accurate

bicycles**Merja Pty Ltd**

Perth | 17 January 2007

conduct | Merja Pty Ltd, trading under the name Morley Cycles, engaged in misleading and deceptive conduct and made false representations during a 'Was/Now' advertising campaign, by specifying 'Was' prices for bicycles that Morley Cycles had not previously sold

undertaking | court enforceable undertaking not to make 'Was' pricing representations unless the 'Was' price was the usual price at which the item was sold in the previous three months; publish corrective notices; provide trade practices compliance training for staff and implement a corporate complaints-handling system

significance | price-saving claims should accurately reflect a comparison between recent historical selling prices and advertised discounted price

bedding**Pillow Talk Pty Ltd**

Hobart | 14 January 2007

conduct | misrepresenting that 'Pillow Talk Naturals' brand quilts contained 100 per cent goosedown when they did not

undertaking | court enforceable undertaking to refrain from making any down content claims unless the claims can be substantiated, publish corrective notices, offer refunds and implement a trade practices compliance program

significance | representations regarding product attributes must be accurate

bedding**Purax Feather Holdings Pty Ltd**

Hobart | 26 October 2006

conduct | misrepresenting that 'Puradown' and 'White Eider' brand quilts contained 100 per cent goosedown or duckdown when they did not

undertaking | court enforceable undertaking to not make any percentage representations about the down content that it cannot substantiate, publish corrective notices and implement a trade practices compliance program

significance | representations regarding product attributes must be accurate

pet food franchise **Scotty's Premium Pet Foods Franchising Pty Ltd and Scott, Suzanne**

Brisbane | 30 October 2006

conduct | the ACCC had concerns that Scotty's may have breached the Franchising Code of Conduct and acted unconscionably towards franchisees

undertaking | court enforceable undertaking that Scotty's will, for a period of 12 months, not issue any notice of breach unless the notice meets a number of requirements and that before issuing the notice Scotty's will obtain a solicitor's certificate certifying that the solicitor considers the proposed notice to comply with the code and that there is reasonable basis for issuing it; nominate a contact person, other than the principal, who can be contacted by the franchisees in relation to any disputes arising; not approach customers of an existing franchisee to supply them direct unless certain criteria apply

significance | businesses need to ensure that in their business dealings they adhere to the necessary standards of fair dealing

bedding **Sheridan Australia Pty Ltd**

Hobart | 12 July 2006

conduct | misrepresenting that its 'Sheridan Ultradown' geosedown quilts contained 100 per cent geosedown or down when they did not

undertaking | court enforceable undertaking not make any percentage representations about the down content that it cannot substantiate; publish corrective notices and upgrade its trade practices compliance program

significance | representations regarding product attributes must be accurate

bedding **Sleepmaster Pty Ltd**

Hobart | 6 October 2006

conduct | misrepresenting that Sleepmaster 'Jason' brand quilts contained '100% white goose down' when they did not, and misrepresenting that Sleepmaster 'Onkaparinga' brand quilts contained 'pure cotton' or '100% cotton fill' when they did not

undertaking | court enforceable undertaking to publish corrective notices, refunds, refrain from making any down or cotton content claims for its products unless the claims can be substantiated and implement a trade practices compliance program

significance | representations regarding product attributes must be accurate

dating service**Tsvetnenko, Eugeni Yurievich**

Perth | 11 October 2006

conduct | advertisements represented a service was a personal introduction and dating service, consumers could request to list their own profile, and that the maximum call cost was \$4.99; the ACCC believed these representations were misleading

undertaking | court enforceable undertaking not to advertise that dating or introduction services are provided, when that is not the case; not to advertise only part of the price of a service but rather advertise the total price, where there are additional costs or charges that apply not represent that customer profiles can be listed on dating or introductory services when there is no facility to list customer profiles

significance | product representations must be accurate and total price must be clearly stated

children's flotation toys**U. Games Australia Pty Ltd**

Sydney | 27 March 2007

conduct | U. Games Australia Pty Ltd imported and distributed 'Thomas & Friends' swimming armbands that did not comply with the mandatory product safety and information standards

undertaking | court enforceable undertaking to refrain from supplying any flotation toys or swimming aids that do not comply with the relevant mandatory consumer product safety and information standards; post in-store and website recall notices and implement a trade practices compliance program

significance | mandatory product safety and information standards must be adhered to

snack foods**Uncle Tobys Foods Pty Limited**

Canberra | 12 September 2006

conduct | the ACCC had concerns that representations made on the packaging and in a television advertisement for Roll-Ups were false or misleading

undertaking | court enforceable undertaking to publish an article for the food industry on the importance of accurate advertising, and will review and implement recommended changes to its trade practices law compliance program

significance | representations regarding product attributes must be accurate

mergers and asset sales

**promoting effective competition and informed markets
encouraging fair trading and consumer protection**

A primary aim of the ACCC is to encourage competitive market structures and informed behaviour. The Mergers and Asset Sales Branch supports this objective through its work in the assessment of mergers, acquisitions, asset sales and certain collaborative arrangements under ss. 50 and 45 of the Trade Practices Act.

This work includes:

- > promoting the development and maintenance of competitive market structures by promptly assessing mergers, acquisitions, asset sales and collaborative joint ventures
- > instigating appropriate enforcement action for mergers considered to contravene s. 50, and providing appropriate assistance to the Australian Competition Tribunal in relation to clearance reviews and merger authorisations being considered by it
- > educating the public, business and its advisers on the role of the ACCC and its merger review processes, and publicising the ACCC's merger decisions.

The ACCC seeks to minimise uncertainty and risk for business and consumers through fair, predictable and consistent processes, and to be flexible in its strategies for improving market outcomes. On 1 July 2006 the *Merger review process guidelines* issued by the ACCC came into effect, replacing the *Guideline for informal merger review*. The process guidelines refine and expand on the processes followed by the ACCC when considering mergers and acquisitions. Key changes to the guidelines include expansion of the types of mergers (including confidential proposals) for which the ACCC provides procedural guidance, clarification of the processes applied to different types of mergers that the ACCC will review, and clearer indicative timelines for informal reviews. In January 2007 new legislation came into effect prescribing a formal merger clearance process and changes to the merger authorisation process that involve new roles for both the ACCC and the tribunal. On 1 January 2007 the ACCC issued the *Formal merger review process guidelines* to outline the approach the ACCC will take in assessing applications for formal clearances and the requirements on applicants for such clearances.

The ACCC also aims to improve market processes more generally by:

- > providing information to the market to limit imbalances in information
- > liaising with other regulators (for example through the ICN merger work group and the Cooperation Protocol for Merger Review between the ACCC and the New Zealand Commerce Commission), business and consumer associations
- > speaking to the public and participating in meetings and conferences
- > helping our overseas trading partners to develop and implement effective merger regimes.

Tim Grimwade, general manager, mergers and asset sales branch

assessing mergers, asset sales and joint ventures

The Trade Practices Act prohibits mergers, acquisitions and joint ventures that would substantially lessen competition, and is aimed at preventing businesses accumulating market power that could lead to anti-competitive conduct. The test applied by the ACCC rests on recognition of the link between market structure and unilateral or coordinated market power.

output 1.1.2

competitive market structures and informed behaviour

this year the ACCC

<p>performance indicator</p> <p>publicise merger and authorisation decisions, arbitrations, undertakings and access arrangements and monitoring activities and inquiry findings</p>	<p>> issued 59 media releases on mergers; all public merger decisions for 2006–07 were published on the ACCC website</p>
<p>performance indicator</p> <p>assess the competition effects of mergers, acquisitions and asset sales</p>	<p>> conducted 390 merger reviews, for compliance with s. 50 of the Trade Practices Act; 25 were either withdrawn or would no longer be proceeding before a final decision was made; 6 were publicly opposed outright following the ACCC's review; 8 were resolved during their review with court enforceable undertakings; and 5 variations to undertakings were considered; of 194 matters considered on a confidential basis, 11 were opposed or had concerns expressed confidentially; no formal clearance or merger authorisation applications were made</p>

Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

those publicly opposed were

- > Barloworld Limited's proposed acquisition of Watty Limited
- > Tabcorp Holdings Limited's proposed acquisition of UNITAB Limited
- > Origin Energy Limited's proposed acquisition of Sun Gas
- > Healthe Care Australia Pty Ltd's proposed acquisition of Brisbane Waters Private Hospital from Healthscope Limited
- > Santos Limited's proposed acquisition of Queensland Gas Company Limited
- > ThoroughVisioN and Sky Group's proposed joint venture

those not opposed included

- > Woolworths Limited's proposed acquisition of Jindabyne IGA Supermarket, Festival IGA Liquor and Porter's Liquor Licence
- > Transurban Group Limited's proposed acquisition of Sydney Roads Group Limited
- > AGL Energy and TruEnergy Pty Ltd's proposed swap of South Australian electricity generation assets
- > Pacific Magazines Pty Ltd's proposed acquisition of certain magazine titles of Time Inc. Magazine Company Pty Ltd and IPC Media Australia Holdings Pty Ltd
- > News Limited's proposed acquisition of certain community-style newspapers and magazines of FPC Community Media Group
- > Consortium including Macquarie Bank Limited—proposed acquisition of Qantas Airways Limited

those resolved during their review by court enforceable undertakings were

- > Australian Gas Light Company and Great Energy Alliance Corporation Pty Ltd's acquisition of Loy Yang (replacement undertakings)
- > Alinta Limited and the Australian Gas Light Company's joint merger/demerger proposal
- > Alinta Limited's acquisition of a further interest in Australian Pipeline Trust
- > Linde AG's proposed acquisition of the BOC Group plc
- > ABC Learning Centres Limited's proposed acquisition of Hutchison's Child Care Services Limited
- > Johnson & Johnson's proposed acquisition of Pfizer Inc.'s consumer health care business
- > Fairfax Media Limited's proposed acquisition of Rural Press Limited
- > OneSteel Limited's proposed acquisition of Smorgon Steel Group Limited

mergers and joint ventures

	this year 06–07	last year 05–06	04–05
total ¹	390	272	189
not opposed ^{1, 2}	365	261	178
opposed outright ¹	17	5	2
resolved during review through undertakings	8	6	9

1 includes confidential reviews

2 includes reviews not opposed, reviews withdrawn before a decision was made, and reviews of variations to undertakings.

Mergers, acquisitions and asset sales were assessed for their compliance with s. 50 of the Act. In total 390 reviews were conducted with six matters being publicly opposed (11 where confidential opposition or concerns were expressed) and eight being allowed to proceed after the acceptance of undertakings to address competition concerns. During the past financial year some of the more substantial mergers the ACCC considered fell within the transport, energy and media sectors.

The ACCC worked with overseas competition authorities, particularly through its active participation in the **International Competition Network (ICN)**, a global forum through which individual national competition agencies are able to liaise on common issues. The ACCC is a member of the steering committee of the ICN and its working groups, including those dealing with merger notification and procedures and merger analysis and investigative techniques.

statement of issues

If the ACCC comes to a preliminary view that a proposed merger raises competition concerns that require further investigation, it may release a statement of issues outlining the basis and facts on which the ACCC has reached this view. This process is aimed at increasing the transparency of the informal review process. It allows for obtaining further information that may alleviate (or potentially) reinforce the concerns of the ACCC and/or provide an opportunity to consider any undertakings submitted by the merger parties to resolve competition concerns. In 2006–07 the ACCC released 17 statements of issues.

public competition assessments

To improve the handling of matters, and provide an enhanced level of transparency in its decision making, the ACCC provides a public competition assessment outlining how it reached its final conclusion on a transaction proposal if:

- > a merger is rejected
- > a merger is subject to enforceable undertakings
- > the merger parties seek such disclosure
- > a merger is approved but raises important issues that the ACCC considers should be made public.

Public competition assessments aim to provide the market with a better understanding of the ACCC's analysis of various markets and associated merger and competition issues. Assessments will also alert the market if the ACCC is changing, or is likely to change, its assessment of the competitive conditions in particular markets because of, for example, technological developments or previous mergers in those markets. In 2006–07 the ACCC released 25 public competition assessments.

major merger reviews included

OneSteel Limited's proposed acquisition of Smorgon Steel Group Limited

result | acquisition not opposed subject to s. 87B undertaking

summary | On 7 June 2007 the ACCC announced its decision not to oppose the proposed acquisition of Smorgon Steel Group Limited by OneSteel Limited, after OneSteel provided court enforceable undertakings to the ACCC. The ACCC expressed concern that, in the absence of effective import competition, the proposed acquisition would remove the only source of domestic competition in the vast majority of steel long product markets and was therefore likely to lead to a substantial lessening of competition. The ACCC had concerns in relation to the ability of imports to constrain the merged entity due to the potential impact of future anti-dumping applications.

In light of these concerns, OneSteel offered a s. 87B undertaking as a means of addressing the ACCC's concerns. The key feature of the undertaking was that for a period of at least five years OneSteel undertook to compensate importers that incurred expenses or losses as a result of unsuccessful anti-dumping applications. The ACCC formed the view that the undertaking was likely to act as an appropriate discipline on OneSteel's incentives to make speculative anti-dumping applications that would be likely to disrupt import competition. Accordingly, the ACCC accepted the undertaking offered by OneSteel and did not oppose the proposed acquisition. On 22 June 2007 the ACCC issued a public competition assessment on its decision.

Fairfax Media Limited and Rural Press Limited

result | acquisition not opposed subject to s. 87B undertaking

summary | On 18 April 2007 the ACCC announced its decision not to oppose the proposed acquisition of 100 per cent of the shares in Rural Press Limited by Fairfax Media Limited after Fairfax provided court enforceable undertakings to the ACCC. The ACCC considered that, following the offer of a s. 87B undertaking by Fairfax, the proposed acquisition would be unlikely to substantially lessen competition in any of the relevant markets. The undertaking accepted by the ACCC required Fairfax to divest the two community newspapers it published in Newcastle and the Hunter Valley (pre-acquisition) within a fixed period. An independent manager was appointed to manage the newspapers until they were sold and, if Fairfax was unable to sell the newspapers in the relevant period, a divestiture agent would be appointed to effect divestiture of the newspapers. On 27 April 2007 the ACCC issued a public competition assessment on its decision.

Toll Holdings Ltd—fifth variation of s. 87B undertakings

result | variation to s. 87B undertakings accepted

summary | On 18 April 2007 the ACCC accepted a fifth variation to the s. 87B undertakings originally offered by Toll Holdings Ltd to the ACCC in March 2006. The variation was a result of Toll's planned restructure of its group businesses. The restructure was proposed by Toll to involve the creation of a new listed company, Asciano Limited, and the transfer of the assets, entities and/or businesses that comprised Toll's infrastructure assets, including Pacific National, to this company. The fifth variation amended Toll's undertakings so that, if the restructure of the Toll business occurs and if certain preconditions are met, Toll is relieved of previous undertaking obligations to divest 50 per cent of Pacific National, the vehicle transport business and the PrixCar interest. If the restructure does not occur, or the preconditions are not met, Toll's obligations will not be waived and it is still required to carry out the divestments pursuant to the original undertakings.

The obligations in the original undertakings to make available certain east-west rail assets and not to discriminate in the operation of Pacific National or Patrick's container terminals remain in place and are assumed by Asciano if the restructure occurs. Further, if the restructure occurs, Toll and Asciano become subject to new obligations to ensure the separation of the two companies.

The ACCC's decision to consent to a waiver of Toll's obligations is given effect through several documents: a variation to Toll's undertakings; a new undertaking from Asciano new undertakings from the directors of Toll and Asciano; and a side letter signed by both parties detailing the intended operation of certain aspects of the undertakings. On 18 April 2007 the ACCC issued a press release providing a detailed outline of the changes.

Santos Limited—proposed acquisition of Queensland Gas Company Limited

result | acquisition opposed

summary | On 20 February 2007 the ACCC announced its decision to oppose the proposed acquisition of Queensland Gas Company Limited (QGC) by Santos Limited (Santos). After conducting inquiries with industry participants, the ACCC formed the view that the proposed acquisition, even in light of proposed undertakings—which involved the divestiture of certain assets and the establishment of a competitor, NewCo—was likely to substantially lessen competition for the wholesale supply of gas, particularly in southern Queensland. The ACCC took into consideration information provided by Santos, QGC and many other market participants, including customers, competitors, gas aggregators and pipeline operators and developers. On 7 March 2007 the ACCC issued a public competition assessment on its decision.

Consortium including Macquarie Bank Limited—proposed acquisition of Qantas Airways Limited

result | acquisition not opposed

summary | On 1 March 2007 the ACCC announced its decision not to oppose the proposed acquisition of Qantas Airways Limited by the consortium represented by Airline Partners Australia Ltd, of which Macquarie Bank Limited was a part, after extensive market inquiries. The market inquiries revealed a range of possible competition issues arising from the interests of APA consortium members, such as aeronautical services, domestic and international air passenger services, aircraft leasing services, airline catering, the manufacture and supply of aircraft parts, and ticket reservation and booking distribution services. The ACCC found there was no likely substantial lessening of competition in each of these cases, considering the restrictions on related party transactions under the APA consortium and the level of competition in the relevant markets.

The ACCC also closely reviewed whether Macquarie Bank's partial direct and indirect interests in Qantas and Sydney airport could lead to discrimination in favour of Qantas by Sydney airport management that could adversely affect competition in downstream aviation markets. The ACCC's assessment indicated that there was a level of influence by Macquarie Bank over Sydney airport, but that this influence was somewhat mitigated by a series of regulatory and corporate constraints. On the basis that Macquarie Bank may have some ability to influence Sydney airport, the ACCC explored several potential discrimination scenarios in depth with market participants. The ACCC recognised that Sydney airport could already exercise a level of market power and can discriminate between airlines for its own commercial reasons.

Ultimately, it appeared from the ACCC's extensive market inquiries that there were no clear incentives for Macquarie Bank to try to facilitate increased discrimination in favour of Qantas. The ACCC therefore considered that APA's proposed acquisition was unlikely to give rise to a substantial lessening of competition.

Healthe Care Australia Pty Ltd—proposed acquisition of Brisbane Waters Private Hospital from Healthscope Limited

result | acquisition opposed

summary | On 13 December 2006 the ACCC announced its decision to oppose Healthe Care Australia Pty Ltd's proposed acquisition of Brisbane Waters Private Hospital. The ACCC found that the proposed acquisition would be likely to substantially lessen competition in the supply of private hospital services to patients in the Gosford area. In particular, the ACCC's concerns related to the potential for the quality of private hospital services to diminish. Market inquiries found that treating doctors played a significant role in ensuring that patients received a high standard of care from private hospitals. The ACCC considered that competition existed between Healthe's North Gosford hospital and Brisbane Waters to attract doctors and that they could use that competitive situation to benefit the standard of care for their patients. The ACCC considered that this competitive tension would be likely to cease if Healthe owned both private hospitals.

The ACCC had concerns that the proposed acquisition would be likely to result in a reduction in the range and quality of services currently offered at North Gosford and Brisbane Waters, resulting in patients having to travel further to receive treatment. On 22 January 2007 the ACCC issued a public competition assessment on its decision. The ACCC did not oppose Healthe's proposed acquisition of four other hospitals that were the subject of the sales agreement between Healthscope and Healthe.

Barloworld Limited—proposed acquisition of Wattyl Limited

result | acquisition opposed

summary | On 6 July 2006 the ACCC announced its decision to oppose the proposed acquisition of Wattyl Limited by Barloworld Limited.

After conducting a comprehensive investigation and making inquiries among industry participants, the ACCC formed the view that the proposed acquisition was likely to substantially lessen competition for the manufacture and supply of architectural and decorative (A&D) paints in Australia.

Wattyl and Barloworld were the second and third largest suppliers of A&D paints in Australia, and the merged firm would account for more than half of total sales. The merged firm and Orica, which was the largest supplier, would together account for approximately 90 per cent of A&D paint sales.

Market inquiries demonstrated that Barloworld and Wattyl vigorously competed for second position in the market and were each other's main competitors, but were also clearly competing with the market leader, Orica. The proposed acquisition was likely to remove this competition and lead to increased prices for consumers.

The ACCC considered Barloworld's proposal to divest certain Bristol assets—as well as other submissions made by Barloworld—following the ACCC's publication of its statement of issues in March 2006. After wide consultation among industry participants, the ACCC formed the view that Barloworld's divestiture proposal was not sufficient to resolve the ACCC's competition concerns. On 11 August 2006 the ACCC issued a public competition assessment on its decision.

Alinta Limited and the Australian Gas Light Company—merger/demerger proposal; Alinta Limited—acquisition of further interest in Australian Pipeline Trust

result | acquisition not opposed subject to s. 87B undertaking

summary | On 3 August 2006 the ACCC decided not to oppose a joint merger proposal between the Australian Gas Light Company and Alinta Limited. The proposal involved a merger and subsequent demerger of the assets of Alinta and AGL. Broadly speaking, Alinta was to take control of regulated assets and AGL, the 'market' assets.

The concerns in the proposal arose principally in relation to the aggregation of ownership and operating interests in gas pipelines in New South Wales and Western Australia. In particular, the ACCC was concerned about the prospect of horizontal aggregation of control and operation interests in the eastern gas pipeline and the Moomba to Sydney pipeline (MSP) as well as horizontal aggregation of interests in the Dampier to Bunbury natural gas pipeline and the Parmelia pipeline. Any aggregation of ownership or control of transmission pipelines that supply a city is considered very closely by the ACCC for competition effects.

On 3 August 2006 the ACCC decided not to oppose the transaction on the basis of a s. 87B undertaking to divest Alinta's interests in the Australian Pipeline Trust (APT)—the owner of the MSP and Parmelia pipeline—that it had acquired from AGL. Alinta also committed to divest AGL's contracts for the supply of management and operational services to the MSP and Parmelia pipeline.

Subsequently Alinta put forward a replacement undertaking that would permit Alinta to retain the interest it had acquired in APT from AGL (and a further interest it had acquired on the Australian Stock Exchange) in the event that APT chose to sell, within a certain timeframe, the MSP and Parmelia pipelines, as well as GasNet (which APT had acquired in the interim period). Taking into consideration further detailed undertakings to hold separate the interest in APT, the ACCC accepted this undertaking on 27 November 2006. On 9 January 2007 the ACCC issued a public competition assessment on its decision.

adjudication

**promoting effective competition and informed markets
encouraging fair trading and consumer protection**

A key objective of the Trade Practices Act is to prevent anti-competitive arrangements or conduct, thereby encouraging competition and efficiency in business, resulting in greater choice for consumers in price, quality and service.

The Act, however, allows protection to be afforded to arrangements or conduct that might otherwise raise concern under the competition provisions, where parties can demonstrate that the arrangements or conduct is in the public interest. Businesses may obtain protection by applying to the ACCC for an **authorisation** or lodging **exclusive dealing** or **collective bargaining notifications**.

In 2006–07 the Adjudication Branch continued to focus on its core function of assessing public interest immunity through the authorisation and exclusive dealing notification processes. The branch also devoted resources to ensuring the smooth implementation of the collective bargaining notification process and other legislative changes that came into operation on 1 January 2007.

The ACCC has responded to numerous inquiries and attended meetings about collective bargaining in a number of industries. The ACCC did not receive any small business collective bargaining notifications in the first half of 2007, but anticipates notifications to be lodged in the second half.

Significant matters for the year include an Australian Competition Tribunal decision relating to the Medicines Australia authorisation application, the ACCC's draft determination on the proposed arrangements between Qantas and Air New Zealand (subsequently withdrawn by the airlines) and the timely consideration of the Port Waratah Coal Services Limited interim authorisation application.

The branch continues to successfully apply the three guiding principles of its work—timeliness, consistency and transparency.

Over the past year the ACCC has continuously improved its timeliness in dealing with authorisation applications. The introduction of a six-month timeframe for authorisation decisions in January 2007 will build on these gains.

To enhance the consistency and transparency of its adjudication responsibilities, the ACCC finalised a suite of publications dealing with authorisation, exclusive dealing notifications and collective bargaining notifications during the 2006–07 financial year.

Maintaining guidelines is part of the branch's wider role in supporting the ACCC's objectives of promoting effective competition and informed markets and ensuring fair trading. The branch continues to provide information to business and consumer organisations and the general public on the ACCC's adjudication functions. The ACCC continues to ensure that all applications and ACCC decisions are available on its website and that the matters it considers are in the public domain.

Scott Gregson, general manager, adjudication branch

output 1.1.2

competitive market structures and informed behaviour

this year the ACCC

performance indicator publicise merger and authorisation decisions, arbitrations, undertakings and access arrangements and monitoring activities and inquiry findings	<ul style="list-style-type: none">> issued 57 media releases on authorisation and notification decisions
performance indicator adjudicate authorisation applications (where anti-competitive behaviour is claimed to deliver public benefits)	<ul style="list-style-type: none">> made 36 final determinations on authorisation matters and received 38 new authorisation matters> received 694 notifications for exclusive dealing, the majority of which concerned third line forcing; and issued 2 notices to revoke and 2 draft notices to revoke relating to exclusive dealing notifications

Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

authorisation applications

Under the authorisation process, in response to an application, the ACCC can grant immunity for potential breaches of most of the competition provisions of the Act if it is satisfied the conduct delivers a net public benefit. The process is open and transparent, involving public registers, consultation with interested parties and the publication of draft determinations.

	authorisation applications	minor variation applications	revoke and substitute authorisation applications	revocations	total	last year
opening balance	8 (16)	2 (2)	3 (6)	0 (0)	13 (24)	25 (43)
new applications	17 (31)	4 (4)	9 (17)	8 (8)	38 (60)	26 (44)
applications withdrawn	3 (7)	3 (3)	0 (0)	0 (0)	6 (10)	3 (6)
applications decided	15 (24)	3 (3)	11 (21)	7 (7)	36 (55)	35 (57)
balance	7 (16)	0 (0)	1 (2)	1 (1)	9 (19)	13 (24)

Note: Figures in brackets indicate total applications; figures without brackets indicate numbers of projects (i.e. some projects involve multiple applications).

notifications

The exclusive dealing notification process provides immunity for potential breaches of the exclusive dealing provisions of the Act. It differs from the authorisation process in that immunity does not depend on a decision by the ACCC. Lodging a notification provides automatic immunity from the date it is lodged with the ACCC (or soon after in the case of third line forcing conduct) and remains in force unless revoked by the ACCC. Again, the process is open and transparent with notifications placed on a public register. When considering the revocation of a notification, the ACCC is required to consult interested parties and to provide a draft decision document setting out the reasons it is considering revocation.

	this year	last year
new notifications	694	1099*
notifications withdrawn	9	6
notifications revoked	2	0

* Discrepancy with the ACCC's 2005–06 annual report following database reconciliation.

While most of new notifications received have been allowed to stand, certain matters are still being considered by the ACCC. Notifications may be reviewed at any time.

applications for review by the Australian Competition Tribunal

Decisions under the authorisation process and decisions to revoke either exclusive dealing or collective bargaining notifications may be reviewed by the Australian Competition Tribunal.

	this year	last year
opening balance	0	2
new applications	2	0
applications withdrawn	1	0
applications decided	1	2
balance	0	0

Two new appeals were lodged with the tribunal within the last financial year. It heard and made a decision relating to the Medicines Australia application for revocation and substitution of an authorisation covering a code of conduct. Nestlé Australia Limited lodged an application with the tribunal for review of the giving of a notice to revoke a notification relating to the supply of soluble coffee products. The application for review was later withdrawn.

certification trademarks

ACCC approval is required before certification trademarks can be registered under the *Trade Marks Act 1995*. Consistent with its role in enforcing the Trade Practices Act, the ACCC assesses whether CTM applications and rules raise consumer protection, competition or associated concerns.

	this year	last year
opening balance	14	24
new applications	30	21
applications withdrawn	2	4
applications decided	30	27
balance	12	14

selected finalised authorisations

Consistent with trends in recent years, the ACCC has been asked to make a high number of decisions relating to authorisation matters.

Collective bargaining arrangements comprised a significant proportion of these decisions. This reflects business' growing awareness of the authorisation process for collective bargaining arrangements that deliver public benefits, often through facilitating increased input into contracts.

Also undertaken during 2006–07 were a number of ACCC and applicant-initiated revocations relating to fairly longstanding authorisations on fee guides and pricing structures. These revocations included authorisations previously granted to the Australian Institute of Building, Retail Liquor Stores Association, South Australian Mixed Business Association, Retail Grocers and Storekeepers Association of Western Australia, Queensland Retail Traders and Shopkeepers Association, Service Station Association and Retail Confectionary and Mixed Business Association.

collective bargaining

Container Logistics Action Group A30242

result | 5 July 2006 | granted authorisation until 27 July 2011

background | authorisation to allow the Container Logistics Action Group to collectively negotiate on behalf of its present and future members with the stevedores at Port Botany. Matters for negotiation relate to access to the terminal and the terms, prices and conditions of a range of services supplied by the stevedores.

Association of Australian Bookmaking Companies A30243

result | 19 July 2006 | granted authorisation until 31 August 2011

background | authorisation to allow the Association of Australian Bookmaking Companies to collectively bargain with racing control bodies to obtain approval for its members to publish and use race field information, and to collectively bargain with sporting organisations to obtain approval to publish and use information relating to that sport.

Coalition of Major Professional Sports A91007

result | 13 December 2006 | granted authorisation until 28 February 2009

background | authorisation to allow the Coalition of Major Professional Sports, on behalf of its members, to enter into collective bargaining negotiations with licensed sports betting operators.

Victorian Potato Growers Council A91048

result | 27 June 2007 | granted authorisation until 31 July 2012

background | authorisation to allow the Victorian Potato Growers Council to represent its current and future members in collective negotiations with potato buyers. The authorisation process was completed in two months and involved the waiving of fees under new provisions.

industry association arrangements

Real Estate Institute of Western Australia A91026

result | 18 April 2007 | granted authorisation until 18 April 2012

background | authorisation in respect of the arrangements contained in the Real Estate Institute of Western Australia's articles of association, members' code of practice, auction code of conduct, multiple listing service by-laws and the agreement to make standard exclusive agency agreements available for use.

Agsafe Limited A91027–30

result | 6 June 2007 | granted authorisation until 29 June 2010

background | application for revocation and substitution of authorisations allowing Agsafe to enforce its code of conduct, which includes the ability of Agsafe to impose trading sanctions.

Motor Trades Association of Australia Limited A91025

result | 6 June 2007 | granted authorisation until 30 June 2012

background | authorisation to allow the Motor Trades Association of Australia Limited to proceed with the development and promotion of a times guide for smash repairs.

infrastructure

Port Waratah Coal Services Limited A91033–35

result | 23 May 2007 | granted authorisation until 31 December 2007

background | application for revocation and substitution of authorisations allowing Port Waratah Coal Services Limited to enforce its medium-term capacity balancing system. This is designed to address the imbalance between the demand for coal-loading services at the Port of Newcastle and the capacity of the Hunter Valley coal chain. Interim authorisation was provided within 15 days of receipt.

Aviation

Qantas Airways Limited and Air New Zealand Limited A91001–03

result | 17 November 2006 | application withdrawn

background | Qantas Airways Limited, Air New Zealand Limited and their subsidiaries sought authorisation of a Tasman networks agreement to allow the coordination of activities of any flight operated on the 'trans-Tasman network'. The application was withdrawn following a draft decision proposing to deny authorisation.

Qantas Airways Limited A40107–09

result | 13 September 2006 | granted authorisation until 5 October 2011

background | authorisation to allow Qantas Airways Limited and its subsidiaries to form a cooperation agreement with Orangestar Investment Holdings Pty Ltd to coordinate their flying operations and activities.

International Air Transport Association A90855

result | 9 November 2006 | granted authorisation until 30 June 2008

background | authorisation in respect of the International Air Transport Association's cargo agency, scheduling, prorata, clearing house and services (passenger and cargo), and tariff (passenger and cargo) systems. Following a lengthy review of a longstanding authorisation, the ACCC agreed to a transition authorisation to allow a narrowing of protection provided and, where necessary, consideration of redesigned arrangements.

Medicines Australia Incorporated A90994–96

result | 27 June 2007 | granted authorisation until 27 June 2012

background | application for revocation and substitution of authorisations relating to Edition 14 of Medicines Australia's code of conduct and their substitution with authorisations in respect of Edition 15 of the code of conduct.

On 26 July 2006 the ACCC granted authorisation for three years to Medicines Australia. The authorisation included a condition requiring Medicines Australia to publicly report details about all educational events sponsored by pharmaceutical companies. Medicines Australia applied to the Australian Competition Tribunal for a review of the ACCC determination. The tribunal released its determination on 27 June 2007, affirming the ACCC determination, subject to minor amendments to the condition of authorisation, and granted authorisation to the code for five years.

Royal Australasian College of Surgeons A91013

result | 14 December 2006 | granted authorisation until 22 July 2007

background | ACCC-initiated revocation and substitution of authorisation to the Royal Australasian College of Surgeons, removing immunity for the college's training functions. Authorisation for other college activities—the accreditation of hospitals and hospital posts, and the assessment of overseas trained surgeons—remained in place until 22 July 2007.

Canberra After Hours Locum Medical Service A91011

result | 17 January 2007 | granted authorisation until 30 June 2008

background | application for revocation and substitution of an authorisation concerning a capped fee structure used in the provision of after-hours primary medical care in the Australian Capital Territory.

Royal Australian College of General Practitioners A91024

result | 23 May 2007 | granted authorisation until 14 June 2011

background | application for revocation and substitution of an authorisation by the Royal Australian College of General Practitioners to allow general practitioners in certain business structures to agree on patient fees and to collectively negotiate the fees they charge as visiting medical officers to hospitals.

Major notifications of exclusive dealing

The ACCC received 694 exclusive dealing notifications in 2006–07, the majority of which concerned third line forcing. While most notifications are allowed to stand, the ACCC assesses each notification and consults more broadly on notifications that raise apparent concern. Where the ACCC considers conduct to fall short of the relevant public interest test, it ultimately moves to revoke notifications.

The ACCC consulted on a number of notifications this year, including on notifications lodged by O'Dwyer Horseshoe Sales Australia Pty Ltd, Anaesthesia Systems Pty Ltd, ResMed Asia Pacific Limited, Acacia Ridge Interstate Terminal, Metcash Trading Limited and AHL Investments Pty Limited.

The ACCC also issued two draft and two final decisions to revoke notifications this year.

draft notices to revoke

Seal-A-Fridge Pty Ltd & Others N50196–N50199 and N92676

result | 23 May 2007 | draft notice to revoke issued

background | The notifications detail an arrangement whereby Seal-A-Fridge franchisees are required to acquire PVC extrusion and flexible magnet products from Seal-A-Fridge Pty Ltd or from nominated approved suppliers. The ACCC continues to consider these notifications.

GeelongPort Pty Limited N92776

result | 28 June 2007 | draft notice to revoke issued

background | GeelongPort Pty Ltd lodged a notification whereby it proposed to provide access to Lascelles Wharf in Geelong Port on condition that potential port users use Geelong Port's figee cranes, when available, for the purpose of unloading fertiliser and other dry bulk cargoes. The ACCC continues to consider this notification.

final notices to revoke

Nestlé Australia Limited N31488

result | 3 August 2006 | final notice to revoke issued

background | Nestlé Australia Limited lodged a notification in relation to the supply of NESCAFE BLEND 43 coffee and other Nestlé Australia products to ALDI stores. The ACCC issued a draft notice on 3 April 2006 proposing to revoke the notification. A final notice to revoke the notification was issued to Nestlé on 3 August 2006. Nestlé requested a tribunal review, but withdrew that request before the hearing commenced.

Australian Baseball Federation Inc. N90853

result | 1 September 2006 | final notice to revoke issued

background | The Australian Baseball Federation Inc. lodged a notification in respect of the ABF's merchandise licensing program. Under the program, the ABF requires players, clubs, regional associations and state and territory associations to acquire uniform components and baseballs from licensed third party suppliers. A final notice to revoke the notification was issued by the ACCC on 1 September 2006 and the notification ceased to be in force on 1 April 2007.

regulatory affairs

regulate infrastructure service markets and other markets where competition is restricted

The ACCC and the AER have roles in promoting competition in network industries: communications, energy, post and transport. The ACCC is also involved in monitoring prices of selected goods and services. The products and sectors monitored are diverse. The nature and purpose of the monitoring is different. For the first time this year, for example, the ACCC examined prices paid to farmers for livestock and the prices that Australian consumers are paying for red meat.

Prices oversight and regulatory arrangements to secure third-party access to 'essential' services are necessary to curb the market power of monopoly infrastructure. Administering access regimes for monopoly infrastructure assets is a major area of regulation.

Depending on the infrastructure industry and the nature of the specific regime, access regulation can involve determining which services should be subject to access regulation, determining conditions of access, considering access undertakings and/or arbitrating terms and conditions in access disputes.

Access regulation is used as a means to an end—to promote competition and to encourage new entrants into what is the contestable part of the market: freight services over the rail track, and telephone services over the copper wires. To be sustainable, the access regime must credibly satisfy the demands of both consumers and investors and be procedurally fair while at the same time providing incentives for efficiency.

2006–07 was a period of new direction and of continuity:

- > The first arbitration under Part IIIA was notified in November 2006 when Services Sydney notified the ACCC of a dispute regarding the methodology of pricing access to Sydney Water's declared sewage transportation services.
- > In contrast, the 100th arbitration under telecommunications—Part XIC of the Trade Practices Act and the *Telecommunications Act 1997* was notified during this period.
- > In response to a request from the Australian, New South Wales, Victorian and South Australian governments, the ACCC analysed irrigation water delivery fees. The resulting report developed a consistent inter-jurisdictional framework for the use of access and termination fees to be charged by irrigation operators. Involvement in the water infrastructure industry is a new area of activity for the ACCC.
- > New issues relating to the impact of technical convergence on the communications market were examined.
- > The consolidation of the role of the AER as a legal entity within the ACCC continued. In addition to its responsibilities in the electricity market and for the economic regulation of transmission, a number of other functions are due to be transferred to the AER from the ACCC and jurisdictional regulators. The transfer process has been slower than anticipated and the revised date for the transfer is now 31 December 2007.

It has been more than 10 years since the implementation of the competition policy reforms and the ACCC is looking ahead to understand how future trends will affect the practice of regulation. Regulatory regimes in Australia and in most OECD countries have been subject to frequent review and there has been both continuity and change—in other words, an evolution of regulation. Understanding this evolution and what it may mean for future regulatory practices will be the theme for the July 2007 regulatory conference. It is also a theme that will be explored by the ACCC over the next few years as we continue to refine and improve our regulatory processes.

Joe Dimasi, executive general manager, regulatory affairs division

energy

The AER is Australia's national energy market regulator. It was established within the ACCC and commenced operation on 1 July 2005.

Responsibility for regulation of electricity and gas transmission businesses is shared between the AER and the ACCC. The ACCC retains responsibility for regulatory decisions under the National Third Party Access Code for Natural Gas Pipeline Systems (the Gas Code) pending the introduction of the new National Gas Law (NGL) and National Gas Rules (NGR) after which this role will be undertaken by the AER. Responsibility for administration of Part VII (authorisations and notifications) provisions in respect of energy businesses is the function of the ACCC. The AER assists the ACCC in this function.

The AER functions include (or will include):

- > monitoring compliance with the NEL, NER and the regulations by registered participants and other persons
- > investigating breaches or possible breaches of provisions of the NEL and NER and instituting and conducting enforcement proceedings against registered participants and other persons
- > monitoring the wholesale electricity market
- > economic regulation of electricity transmission and distribution service providers (except in Western Australia and the Northern Territory)
- > economic regulation of gas transmission and distribution service providers (except in Western Australia)
- > regulation of retail markets, to the extent determined by the MCE.

The transfer of relevant functions from the ACCC and jurisdictional regulators to the AER is not yet complete.

An amended Australian Energy Market Agreement was concluded on 2 June 2006. The amended agreement provides for the transfer of economic regulation of gas transmission networks and gas and electricity distribution networks. The MCE announced that the revised date for the transfer is 31 December 2007. In the interim, the AER assists the ACCC in undertaking the gas transmission regulatory functions that will ultimately be transferred to the AER, including approval of access arrangements, applications for approval of associate contracts, approval of annual tariff changes within an access arrangement period and gas transmission ring-fencing compliance reporting.

The AER will continue to work closely with jurisdictional regulators to ensure a smooth transfer of the economic regulation of distribution network functions to the national framework. Energy retail regulation (to the extent determined by the MCE) is scheduled to be transferred to the AER from 1 July 2008. The AER also assists the ACCC with energy competition matters, including merger issues and energy authorisations.

The AER was established in accordance with the *Trade Practices Amendment (Australian Energy Market) Act 2004*. The AER comprises three members who are statutory appointees. The members are collectively referred to as the Board. The AER was established as a separate legal entity within the ACCC. The Australian Government is responsible for funding the AER.

authorising environment

National Electricity Law

The NEL is established by the *National Electricity (South Australia) Act 1996* (as amended by the *National Electricity (South Australia) (New National Electricity Law) Amendment Act 2005*). It is applied through state and territory application legislation.

The *National Electricity (South Australia) (New National Electricity Law) Amendment Act 2005* was passed by the South Australian Parliament on 14 April 2005. The NEL contains provisions setting out the powers and functions of the Australian Energy Market Commission (AEMC) and the AER, as well as provisions for the operation of the National Electricity Market (NEM).

National Electricity Rules

The initial NER commenced operation on 1 July 2005. The NER governs the operation of the NEM. The AEMC is charged with amending the NER from time to time; the latest version of the NER can be found on the AEMC website. The AER has provided submissions to the AEMC on its proposed amendments to the NER relating to economic regulation of electricity transmission service providers (TNSPs).

The National Third Party Access Code for Natural Gas Pipeline Systems

The Gas Code applies to transmission and distribution pipelines with natural monopoly characteristics. The Gas Code sets out the principles to be applied by regulators in assessing an access arrangement. It also provides for binding arbitration of disputes between service providers and access seekers.

National Gas Law and Rules

The MCE response to the Productivity Commission's review of the gas access regime was released in May 2006. The response will be given effect through the new NGL and NGR. The new gas legislative regime is expected to commence on 31 December 2007.

output 1.1.2

competitive market structures and informed behaviour

this year the ACCC

performance indicator

encourage competition in markets that depend on monopoly services

- > facilitated competition in energy markets (NEM monitoring/reports)
 - > published weekly market analysis, looking at spot prices, rebidding, network outages and demand/supply forecasting
 - > prepared longer term statistics on the performance of the market detailing trends in demand, spot prices, contract prices, the wholesale electricity price index, frequency control ancillary service prices, reserve energy, settlement residue auctions and spot price
 - > prepared reports on all incidents where spot prices for a region exceeded \$5000/MWh in a trading interval and analysed market conditions leading up to and during such intervals
 - > conducted special investigations into spot market outcomes addressing compliance issues with results published where appropriate
 - > examined all rebids through reporting functions during times where prices exceeded 3 times the volume weighted average in a week and investigated any atypical rebids, where necessary
 - > published 4 quarterly compliance reports
 - > monitored compliance and investigated breaches or possible breaches of the NEL or NER to recommend possible enforcement action
- > established access terms (access arrangements and revenue resets)
 - > approved investment of \$2629 million for Powerlink to augment and upgrade its transmission network from 1 July 2007 to 30 June 2012, providing incentives for efficient investment in the NEM
 - > approved APT Petroleum Pipelines Ltd proposed access arrangement for the Roma to Brisbane pipeline from 2006–07 to 2010–11 and set an initial capital base of \$296.4 million, providing investment incentive and certainty to APTPPL
- > approved Epic Energy's revised access arrangement for the south-west Queensland pipeline until 30 June 2016, providing investment incentive and certainty to Epic Energy

Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

this year the ACCC

performance indicator

ensure that access regulation provides incentives for efficient business investment and use of infrastructure

- > released the annual electricity regulatory report for 2005–06, detailing information from regulated transmission businesses about their financial and operational performance
- > released an issues paper canvassing options to introduce a new service standards incentive that rewards TNSPs for reducing the number and duration of outages that have a market impact and provide more advanced notice of outages
- > released indicators of the market impact of transmission congestion for 2004–05 and 2005–06, identifying the causes and market impacts of transmission constraints
- > assessed service standards compliance reports received from electricity transmission businesses and advised the businesses of the financial reward or penalty for their annual revenue allowance
- > analysed annual ring-fencing reports from 15 service providers of 10 gas transmission pipelines to ensure compliance with the ring-fencing requirements of the gas code.

performance indicator

ensure that businesses using monopoly services pay prices that reflect efficient costs

- > approved 6 gas transmission service providers' reference tariff variations to ensure their compliance with their access arrangements
- > approved pass-through of Powerlink's additional grid support payments to account for increased demand in north and south-east Queensland
- > approved pass-through of SP AusNet's liability for land tax on its transmission easements ensuring the financial effect of land taxes on transmission easements was economically neutral, facilitating efficient transmission charges
- > approved pass-through of Transend's additional grid support payments to account for a temporary change in the location of the grid support supplier; the AER also granted Transend an extension to pass-through actual grid support payments from 1 August 2007 to 30 June 2009

Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

Chevron Australia Pty Ltd and others

result | On 1 November 2006 Chevron Australia Pty Ltd notified the ACCC it would withdraw the A90667–69 applications for the authorisation of joint marketing in connection with the PNG gas pipeline if no other parties to the applications objected. The ACCC contacted the parties to the original applications and received no objection to their withdrawal. The applications were withdrawn on 8 March 2007.

Santos Limited and others

result | On 3 November 2006 Santos Limited notified the ACCC of the withdrawal of its A90559 application for the authorisation of the joint marketing of commingled liquid hydrocarbons from the Cooper Basin in South Australia and Queensland.

Western Australian Wholesale Electricity Market Rules

result | On 22 December 2006 the ACCC released its determination granting authorisations A91004–06 for the Western Australian Wholesale Electricity Market Rules for 15 years.

AER decisions under the National Electricity Rules

\$20 000 penalty imposed on AGL Hydro Partnership

result | On 28 July 2006 the AER imposed a \$20 000 civil penalty on AGL Hydro Partnership after determining that it breached cl. 3.8.22(c)(2)(i) of the NER by failing to provide a verifiable and specific reason for declaring the MCKAY1 generating unit inflexible on 22 March 2006.

Powerlink pass-through application

result | On 13 October 2006 the AER approved Powerlink's application to pass-through additional grid support costs into transmission charges for 2007–08 under the pass-through provisions in Powerlink's 2001 revenue cap decision.

Reopening TransGrid's revenue cap for material error—final decision

result | On 2 February 2007 the AER decided to revoke and substitute TransGrid's 2004–05 to 2008–09 revenue cap under cl. 6.2.4(d)(2) and 6.2.4(e) of the NER.

SP AusNet transmission determination

result | On 28 February 2007 the AER received a revenue proposal, proposed negotiating framework and proposed pricing methodology from SP AusNet for 1 April 2008 to 31 March 2014. The AER is currently reviewing SP AusNet's proposal. A final decision is scheduled for January 2008.

VENCorp transmission determination

result | On 1 March 2007 the AER received a revenue proposal and proposed negotiating framework from VENCORP for 1 July 2008 to 30 June 2014. On 7 June 2007 VENCORP submitted its proposed pricing methodology for the same period separately. The AER is currently reviewing VENCORP's proposal. A final decision on VENCORP's revenue proposal and proposed negotiating framework is scheduled for January 2008 while a final decision on VENCORP's pricing methodology is scheduled for April 2008.

SP AusNet pass-through application

result | On 27 April 2007 the AER approved SP AusNet's application to pass-through the effects of a change in tax event into transmission charges for 2007–08, under the pass-through provisions in SP AusNet's 2002 revenue cap decision.

Transend pass-through application

result | On 27 April 2007 the AER approved Transend's application to pass-through additional grid support costs into transmission charges for 2007–08, under the pass-through provisions in Transend's 2003 revenue cap decision. The AER also granted Transend an extension to pass-through actual grid support costs from 1 August 2007 to 30 June 2009.

GridX Power Pty Ltd network service provider exemption

result | In May 2007 the AER issued its decision not to grant a general (or class) exemption, under s. 13(1) of the NEL and cl. 2.5.1(d) of the NER, to GridX Power Pty Ltd from the requirement to register as a network service provider (NSP) and comply with relevant provisions of the NEL and NER.

ElectraNet transmission determination

result | On 31 May 2007 the AER received a revenue proposal, proposed negotiating framework and proposed pricing methodology from ElectraNet for 1 July 2008 to 30 June 2013. The AER is currently reviewing ElectraNet's proposal. A final decision is scheduled for April 2008.

Powerlink transmission network revenue cap decision

result | On 14 June 2007 the AER issued its final decision on the maximum allowed revenue that Powerlink is entitled to recover from 1 July 2007 to 30 June 2012.

Retail Employees Superannuation Pty Ltd network service provider exemption

result | On 29 June 2007 the AER issued its decision to grant a specific exemption under s. 13(1) of the NEL and cl. 2.5.1(d) of the NER to Retail Employees Superannuation Pty Ltd from the requirement to register as an NSP and comply with relevant provisions of the NEL and NER subject to conditions.

South-west Queensland pipeline access arrangement

result | On 1 November 2006 the ACCC made a final decision to approve revisions lodged by Epic Energy to its access arrangement for the south-west Queensland pipeline.

Ring-fencing compliance report for 2005-06

result | In November 2006 the ACCC finalised its assessment of the annual ring-fencing compliance reports submitted by 15 service providers in accordance with the Gas Code.

Moomba to Sydney gas pipeline arbitration

result | On 22 December 2006 AGL Wholesale Gas Limited notified the ACCC of an access dispute with East Australian Pipeline Limited on covered portions of the Moomba to Sydney gas pipeline for the purposes of s. 6.1 of the Gas Code. On 21 February 2007, the ACCC was satisfied that the dispute was validly notified for the purposes of s. 6.1 of the Gas Code and resolved to conduct the arbitration itself in relation to the dispute. The ACCC commenced the process of arbitrating the dispute consistent with its dispute resolution guidelines. On 12 June 2007 AGLWG notified the ACCC of the withdrawal of its notification of an access dispute under s. 6.5 of the Gas Code. The parties reached a negotiated outcome consistent with the objective of a negotiate/arbitrate framework.

Dawson Valley pipeline ring-fencing waiver

result | On 14 February 2007 the ACCC released its final decision to grant each of the waivers applied for by Anglo Coal (Dawson) Limited, Anglo Coal (Dawson Management) Pty Ltd and Mitsui Moura Investment Pty Ltd, the service providers of the Dawson Valley pipeline.

NT Gas associate contract

result | On 28 February 2007 the ACCC approved an extension until 15 June 2007 of the existing associate contract with NT Gas Distribution, an associated company. On 14 March 2007 the ACCC approved a new associate contract until 1 January 2009 for interruptible supply to NTGD.

Roma to Brisbane pipeline access arrangement

result | On 28 March 2007 the ACCC approved an amended access arrangement proposed by the service provider APTPPL.

Victorian principal transmission system access arrangement

result | On 30 April 2007 the ACCC received a proposed revised access arrangement from GasNet Australia Pty Ltd. On 25 May 2007 the ACCC released the proposed access arrangement, supporting documentation and an issues paper for consultation. After considering issues raised in submissions the ACCC will make its draft decision. The ACCC is currently considering submissions. A draft decision is scheduled for October 2007.

Dawson Valley pipeline access arrangement

result | On 23 May 2007 the ACCC issued a draft decision proposing not to approve the service providers' access arrangement proposal. The ACCC is currently considering submissions. A final decision is scheduled for August 2007.

ACCC annual tariff resets under the Gas Code

Victorian principal transmission system

result | On 6 December 2006 the ACCC allowed the annual reference tariff variation for GasNet for 2007, and on 23 May 2007 it allowed VENCORP's annual reference tariff variation for 2007–08 for tariffs charged in relation to the Victorian principal transmission system.

Moomba to Sydney gas pipeline

result | On 28 May 2007 the ACCC disallowed the service providers' proposed tariff variations for the MSP and specified its own tariff variations for 2007–08.

Central-west pipeline, Central Ranges pipeline and Roma to Brisbane pipeline

result | On 28 May 2007 the ACCC allowed the annual reference tariff variations for these pipelines for 2007–08.

submissions

Energy Reform Implementation Group

result | Lodged on 16 August 2006 commenting on ERIG's issues paper examining the opportunity and need for further reform in 3 work streams—transmission, market structure and financial markets. This was supplemented on 8 December 2006 in a submission that generally supported ERIG's recommendations.

AEMC reviews—review of the electricity transmission and pricing rules (revenue requirements)

result | Lodged on 15 September 2006 commenting on the draft chapter 6A of the NER and the regulatory framework, including incentive mechanisms and the decision-making model. This was supplemented on 20 September in response to legal advice and interpretation of the draft rules and again on 20 October in response to the assessment of capital expenditure and operating and maintenance expenditure during transmission determinations.

AEMC reviews—review of the electricity transmission and pricing rules (pricing principles)

result | Lodged in September 2006 supporting the proposed approach to transmission pricing and making recommendations to the proposed process for the AER to assess a TNSP's pricing methodology. This was supplemented in late November in a submission supporting the draft rule for the pricing of prescribed transmission services.

AEMC review—regulatory test principles

result | Lodged in November 2006 supporting a draft rule to insert a set of principles into the NER to guide the AER in promulgating the regulatory test.

Retail Policy Working Group papers

result | Lodged on 8 December 2006 a submission on the first Retail Policy Working Group working paper commenting on the proposed arrangements for retailer obligation to supply small customers, retailer and customer market contracts, and retailer and small customer marketing. This was supplemented on 24 January 2007 in a submission on the second working paper commenting on the proposed arrangements for a distributor obligation to provide connection services and their interface with retailers and embedded generators. This was further supplemented on 21 February 2007 in a submission on the third working paper commenting on the proposed arrangements for business authorisation, ring-fencing and retailer failure. This was again supplemented on 10 May 2007 in a submission on the RPWG supplementary working paper, commenting on the proposed arrangements for AER enforcement mechanisms for energy distribution and retailing.

Joint submissions on the National Gas Law and National Gas Rules exposure drafts

result | Lodged on 19 December 2006 by the AER and the Economic Regulation Authority of Western Australia commenting on the MCE's exposure draft of the NGL. This was supplemented on 21 December 2006 by joint comments supporting the transfer of well understood methodologies from the gas code to the NGR.

Submission on the exposure draft National Electricity Law Amendment Bill

result | Lodged on 22 February 2007 commenting on the MCE's exposure draft including the proposed arrangements for access arbitrations, determining the form of regulation for distribution services, ring-fencing and regulatory performance reporting.

AEMC review—EnergyAustralia rule change proposal

result | Lodged on 4 May 2007 commenting on EnergyAustralia's rule change proposal to allow certain transmission assets to be treated as distribution assets for revenue determination purposes.

Electricity distribution pricing and revenue rules exposure draft

result | Lodged on 25 May 2007 commenting on the MCE's exposure draft and the arrangements outlined in the explanatory material for transitional arrangements for the 2009 resets for the Australian Capital Territory and New South Wales.

guidelines

Distribution statement of approach

result | In September 2006 the AER released its electricity distribution regulatory guidelines statement of approach. This document outlined the scope and timeframes for the AER's consultation processes on the development of guidelines for the regulation of electricity distribution services.

First proposed guidelines for electricity transmission businesses

result | In January 2007 the AER released the first proposed guidelines and accompanying explanatory statements for electricity transmission businesses as required under chapter 6A of the NER and the transitional provisions in cl. 11.6.17 of the NER. The first proposed guidelines relate to the post-tax revenue model, the roll-forward model, an efficiency benefit sharing scheme, a service target performance incentive scheme, submission guidelines and cost allocation guidelines. The AER is currently reviewing submissions received and will issue a determination on the first proposed guidelines on or before 30 September 2007.

Pricing methodology guidelines—agreed interim requirements for SP AusNet, VENCORP and ElectraNet

result | In February 2007 the AER released agreed interim requirements, together with an explanatory statement, for SP AusNet, VENCORP and ElectraNet, which will apply to their 2007 reset processes. These requirements were developed in accordance with the transitional provision under cl. 11.8 of the NER.

Pricing methodology guidelines

result | In April 2007 the AER released an issues paper outlining its obligations under the NER and canvassing issues related to the development of the pricing methodology guidelines. Following public consultation, the AER will issue a determination on the pricing methodology guidelines on or before 31 October 2007.

Draft process guideline for contingent projects applications

result | On 14 May 2007 the AER issued its draft guideline for contingent project applications by electricity TNSPs. The NER sets out the requirements on TNSPs lodging applications and the obligations on the AER in assessing applications. While this guideline is not formally required to be made under the NER, the AER has published this guideline to assist TNSPs with lodging an application that complies with NER requirements.

Draft information guidelines for electricity transmission businesses

result | In June 2007 the AER released an issues paper, draft information guidelines and accompanying explanatory statement for electricity transmission businesses. The draft guidelines provide instructions to regulated electricity transmission businesses about the information to be submitted to the AER for annual reporting purposes. Following public consultation the AER will issue a determination on the information guidelines on or before 30 September 2007.

reports issued

Price and network monitoring

result | The AER published weekly market analysis, looking at spot prices, rebidding, network outages and demand/supply forecasting. Further reports were produced on trading intervals when spot prices were in excess of \$5000/MWh. The other major reports produced were quarterly compliance reports targeting specific rule provisions and focusing on areas of the rules related to registration, market operations, security, metering and network connection arrangements.

Indicators of the market impact of transmission congestion 2004–05

result | In October 2006 the AER released its second annual *Indicators of the market impact of transmission congestion 2004–05* report. The report includes the total cost of constraints (TCC) and the marginal cost of constraints (MCC), together with a qualitative assessment of constraints with high market impacts.

Ring-fencing compliance reporting program for 2005–06

result | In November 2006 the ACCC finalised its assessment of the annual ring-fencing reports for compliance with the Gas Code from 15 gas service providers. Most service providers generally complied with the code requirements but areas for improved reporting in the future were identified.

Indicators of the market impact of transmission congestion 2005–06

result | In February 2007 the AER released its third annual *Indicators of the market impact of transmission congestion 2005–06* report. The report includes the TCC and the MCC, together with a qualitative assessment of constraints with high market impacts.

Service standards compliance reports

result | In February 2007 the AER received service standards compliance reports from Directlink, ElectraNet, EnergyAustralia, Murraylink Transmission Company, SP AusNet, Transend and TransGrid. In April 2007 the AER advised these electricity transmission businesses of their financial reward or penalty for their respective annual revenue allowance.

Developing incentives based on market impact of transmission congestion—issues paper

result | In June 2007 the AER released an issues paper canvassing options to introduce a new service standards incentive that rewards TNSPs for reducing the number and duration of outages that have a market impact and for providing a more advanced notice of outages. This issues paper builds on the recent work the AER has undertaken into reporting indicators of the market impact of transmission congestion.

Annual electricity transmission regulatory report for 2005–06

result | In June 2007 the AER released its annual electricity regulatory report for 2005–06. The report details information from regulated transmission businesses and provides greater transparency about their financial and operational performance.

High Court of Australia review

Moomba to Sydney gas pipeline

result | On 17 and 18 April 2007 the High Court heard an application by East Australian Pipeline Limited for review of the Full Federal Court's judgments of 2 June 2006 and 18 August 2006 of the Australian Competition Tribunal's decision of 19 May 2005 concerning the access arrangement for the covered portions of the Moomba to Sydney gas pipeline. The High Court's judgment is pending.

communications

The telecommunications sector includes telecommunications carriage services, the facilities over which they are provided and the content and applications they deliver.

Telecommunications markets were opened to full competition in 1997. The ACCC is responsible for the **competition and economic regulation** of telecommunications markets. The ACCC administers the competition notice and access regimes within the Trade Practices Act that apply to the telecommunications industry, as well as other legislative provisions in the Telecommunications Act and related legislation.

Part XIB of the Act provides an industry-specific mechanism to address breaches of the 'competition rule'. The competition rule prohibits telecommunications carriers and carriage service providers from engaging in anti-competitive conduct. The ACCC has discretion to issue a Part A competition notice if it has 'reason to believe' that a carrier or CSP has engaged, or is engaging, in anti-competitive conduct. A **Part A competition notice** allows for legal proceedings, other than proceedings for injunctive relief, to be taken by the ACCC or a third party to enforce the competition rule. In particular, it allows the ACCC to seek pecuniary penalties from the carrier or CSP. An affected third party may also take legal action seeking damages for the time the notice was in force.

The ACCC also has discretion to issue a **Part B competition notice** if it has reason to believe that a carrier or CSP has committed, or is committing, a specified contravention. A Part B competition notice is prima facie evidence of the matters set out in the notice. However, with both Part A and Part B competition notices, the Federal Court ultimately decides whether a carrier or CSP has engaged in anti-competitive conduct and determines the appropriate penalty or remedy.

Part XIB also gives the ACCC the power to make record-keeping rules (RKR) by written instrument, and it requires that carriers and CSPs comply with them. The rules may specify what records are kept, how reports are prepared and when these reports are provided to the ACCC. The ACCC cannot require the keeping of records unless they contain information relevant to its responsibilities. These responsibilities include the operation of parts XIB and XIC.

Part XIC of the Act governs the telecommunications **access regime**. The access regime does not provide automatic rights of access. Services must first be declared by the ACCC where it is satisfied that declaration will promote the long-term interest of the end user. Carriers or CSPs are then required to provide declared services upon request in accordance with the **standard access obligations**.

Under Part XIC, the **terms and conditions of access** should be the product of commercial negotiations between access seeker and access provider. However, if access cannot be commercially negotiated, a party may notify the ACCC that a dispute exists. The ACCC may then arbitrate over the dispute. The regime also gives access providers the option of lodging an undertaking with the ACCC. An undertaking is a written document under which the access provider undertakes to comply with terms and conditions it specifies in relation to the applicable standard access obligations. If accepted as reasonable by the ACCC, the ACCC cannot make a determination inconsistent with the undertaking. An access provider may also apply to the ACCC for exemption from the standard access obligations that apply to a declared service. Both undertakings and exemption applications can be submitted for services that are not yet being supplied or currently declared.

The ACCC also has responsibilities for administering access regimes for other communications services, such as certain digital television and digital radio services, as well as access to broadcasting transmission towers under the *Radiocommunications Act 1992*. Content and application services are also subject to the restrictive trade practices provisions in Part IV of the Act.

output 1.1.2

competitive market structures and informed behaviour

this year the ACCC

performance indicator

encourage competition in markets that depend on monopoly services

- > implemented enhanced accounting separation of Telstra's wholesale and retail operations, including the release of 6 public reports
- > delivered its 3 annual telecommunications reports to the Minister for Communications, Information Technology and the Arts on competition safeguards and prices as required by divisions 11 and 12 of the Act
- > released a joint report with the Australian Communications and Media Authority on communications infrastructure and services availability in Australia
- > progressed an audit of telecommunications infrastructure assets with the release of a discussion paper
- > monitored Telstra's compliance with the operational separation plan

Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

this year the ACCC

performance indicator

ensure that access regulation provides incentives for efficient business investment and use of infrastructure

- > re-declared the unconditioned local loop service (ULLS), public switch telephone network origination and termination access (PSTN OTA) and local call service (LCS) for 3 years
- > declared wholesale line rental (WLR) for 3 years
- > commenced an inquiry into whether the line sharing service (LSS) should continue to be declared
- > commenced a public inquiry to determine whether it should vary the service declaration for the ULLS to ensure for possible sub-loop access
- > rationalised and removed access regulation by:
 - > revoking the analog pay-TV declaration
 - > allowing the declaration of the conditioned local loop service (CLLS) to expire
 - > allowing the local PSTN OTA service declarations to expire
- > commenced a public consultation process on the channel B digital television access regime with the release of a discussion paper on 15 December 2007 and commenced development of legislative instruments to guide the assessment of channel B access undertakings in 2007–08
- > continued a major review of existing regulation and the principles that will guide future regulatory decision by issuing a position paper and continuing a major review of the regulation of key network and wholesale services provided over the fixed telecommunications network

Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

this year the ACCC

<p>performance indicator</p> <p>ensure that businesses using monopoly services pay prices that reflect efficient costs</p>	<ul style="list-style-type: none"> > released a final decision to reject 2 access undertakings for the ULLS submitted by Telstra and assisted the Australian Competition Tribunal in its review of the ACCC's decision to reject these undertakings; Telstra's appeal was unsuccessful > assisted the tribunal in its review of the ACCC's decision to reject a mobile termination access service (MTAS) undertaking from Vodafone; Vodafone's appeal was unsuccessful > assisted the tribunal in its review of the ACCC's decision to reject an MTAS undertaking from Optus; Optus's appeal was unsuccessful > accepted a special access undertaking from Foxtel for a digital set-top unit service that allows content providers to use the undertaking to offer their channels to Foxtel's customers as a tier to Foxtel's basic package > commenced a public consultation process on the FTTN network special access undertaking lodged by FANOC—the company created by the G9 group of telecommunications carriers > released a decision to reject access undertakings for the PSTN OTA and the LCS from Telstra > commenced and progressed 32 new arbitrations for declared wholesale services: 10 for the MTAS; 5 for the ULLS; 6 for the LSS; 3 for the WLR; 2 for the domestic transmission capacity services (DTRANS); 2 for the PSTN OTA; 3 for the LCS; and 1 for RadCom and PMTS tower leases under the Telecommunications Act > made 53 determinations for arbitrations during 2006–07: 11 interim and 18 final determinations for the MTAS; 13 interim determinations for the ULLS; 5 interim determinations for the LSS; 3 interim determinations for the WLR; and 3 interim determinations for the LCS > released final pricing principles and indicative prices for the PSTN OTA, LCS and WLR services
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Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

	this year	last year
anti-competitive conduct investigations	8	11
services newly declared	1	0
services re-declared	4	2
services undeclared	4	0
access undertakings received	3	10
access disputes notified	32	31

reports

The ACCC complied with its reporting requirements under the Act by supplying the minister with reports on **competitive safeguards, changes in the price paid for telecommunications services and price controls**.

The ACCC's **competitive safeguards report** observed that growing investment in infrastructure is providing consumers with better quality services. The report noted that carriers were investing significantly in 3G mobile networks and broadband infrastructure. The report also found that investment in competing infrastructure was allowing carriers to launch higher speed ADSL2+ services.

The **changes in the prices for telecommunications services report** observed that the overall average prices paid by consumers fell by 6.5 per cent in 2005–06. Fixed-line and mobile consumers benefited equally from the reductions, with the prices paid for fixed-line services falling by 6.6 per cent and prices paid for mobile services falling by 6.5 per cent.

The ACCC also supplied the minister with a **price control report**. The report found that Telstra had adequately complied with all price control arrangements established by the government for 2005–06.

The ACCC also furnished the minister with a copy of two sets of half-year accounts for Telstra's core services prepared on a current cost and historical cost basis. This step is in accordance with a direction issued by the minister in June 2003 requiring the ACCC to develop a record-keeping rule and to publish reports to implement **enhanced accounting separation** of Telstra's wholesale and retail operations.

The ACCC also published quarterly reports on imputation testing and non-price terms and conditions under the enhanced accounting separation regime for Telstra. The report presents key performance indicators that compare Telstra's customer service performance in meeting certain non-price terms and conditions for its wholesale and retail customers.

The ACCC also continued to publish quarterly reports on the deployment of broadband services in its **broadband snapshot**. The ACCC's broadband snapshot in part addressed a reporting obligation arising from a determination by the minister under Division 12A of the Act. The determination required the ACCC to report quarterly at a very detailed level on a range of broadband availability and take-up. In April 2007 the minister revoked the determination. Given the revocation of the determination, the recommencement of the ABS Internet Activity Survey and confirmation that its half-yearly reporting will continue in future, the ACCC decided to discontinue its broadband snapshot.

investigations

In the 2006–07 financial year the ACCC concluded its investigation into Telstra's line rental pricing. On 12 April 2006 the ACCC issued a Part A competition notice to Telstra regarding its wholesale line rental pricing. The issuing of the competition notice was challenged by Telstra, but the Federal Court has yet to make final orders in relation to the validity of the competition notice.

Following the ACCC's declaration of the WLR service and subsequent market developments, the ACCC prospectively revoked the competition notice on 28 February 2007. The ACCC considered that competition concerns relating to pricing of the WLR service had been effectively addressed by the declaration processes that it had instituted under Part XIC of the Act.

The ACCC also undertook seven **anti-competitive conduct investigations**. In each of these investigations, the ACCC did not form the requisite reason to believe that the carrier or carriage service provider was engaging in anti-competitive conduct.

The ACCC conducted two investigations into Telstra's compliance with the operational separation plan. These two matters were brought to the attention of the minister, as it is the minister's responsibility to consider whether remedial action is required. In addition, the ACCC conducted two investigations into Telstra's compliance with the **retail price control determination**, which have been completed without further action.

The ACCC also conducted a number of industry-wide investigations into compliance with Part V of the Act, including an investigation into broadband speed claims. In January 2007 the ACCC released an information paper on broadband speed claims and the Trade Practices Act. As a result, there has been widespread change to industry conduct.

declarations

In December 2005 the ACCC commenced its **fixed services review**, a broad-ranging inquiry to examine the future regulation of certain key fixed network and wholesale services. The inquiry was initiated because of the pending expiry of declarations for the ULLS, PSTN OTA and the LCS, as well as significant developments in the industry such as fibre-to-the-node.

In July 2006 the ACCC released a final decision to re-declare the ULLS and PSTN OTA services for three years. It concluded that continued declaration of the ULLS and PSTN OTA will promote the long-term interests of end users (LTIE) by promoting competition in various wholesale and retail markets and encouraging efficient use of, and investment in, infrastructure.

The ACCC rationalised regulation in a number of areas. It revoked its declaration of the analog pay-TV service. It also allowed the declaration of the CLLS to expire as it considers that the CLLS now provides little or no comparative benefits. The local PSTN OTA services were also not re-declared as they are no longer deemed to promote the LTIE.

Also in July 2006 the ACCC re-declared the LCS for three years and declared the WLR service for three years. These decisions were made because the ACCC considers that the continued declaration of the LCS and the WLR declaration are in the LTIE and will encourage economically efficient use of, and investment in, infrastructure. The ACCC also released its final indicative prices for the LCS and WLR services in November 2006.

In April 2007 the ACCC began a second stage of the fixed services review. The ACCC released a position paper outlining a framework for the review of existing fixed services regulation and the principles that will guide future regulatory decisions. This paper also commenced a re-declaration inquiry for the LSS, which is due to expire in October 2007.

The ACCC also decided to hold a public inquiry to determine whether it should vary its service description for the ULLS. The ACCC had received a request from the G9 consortium of companies to vary the ULLS declaration and has decided to hold an inquiry to consider the appropriateness of the change. The ACCC released a discussion paper in May 2007.

access pricing—disputes and undertakings

Over the course of 2006–07 the ACCC commenced and progressed 32 new arbitrations for **declared wholesale services**: 10 for the MTAS; five for the ULLS; six for the LSS; three for the WLR; two for the DTRANS; two for the PSTN OTA; three for the LCS; and one for RadCom and PMTS tower leases under the Telecommunications Act.

The ACCC issued 53 determinations during 2006–07: 11 interim and 18 final determinations for the MTAS; 13 interim determinations for the ULLS; five interim determinations for the LSS; three interim determinations for the WLR; and three interim determinations for the LCS.

As at 30 June 2007 the ACCC had 39 arbitrations continuing: six arbitrations for the MTAS; 11 arbitrations for the ULLS; nine arbitrations for the LSS; two arbitrations for the WLR; two arbitrations for the DTRANS; six arbitrations for the PSTN OTA; two arbitrations for the LCS and one for RadCom and PMTS tower leases under the Telecommunications Act.

In December 2005 Telstra submitted a ULLS monthly charge undertaking that proposed a geographically averaged ULLS monthly charge. The ACCC issued a draft decision in June 2006, and a final decision in August 2006, to reject the amended undertakings on the basis that the proposed charges were not reasonable. Telstra applied to the Australian Competition Tribunal in September 2006 for review of the ACCC's decision. In May 2007 the tribunal upheld the ACCC's decision and rejected the application, as it was not satisfied that the terms of the undertakings were reasonable.

In December 2004 Optus submitted an undertaking for the supply of its domestic global systems for mobile communications (GSM) terminating access service (DGTAS). The DGTAS is a subset of the declared MTAS covering only services on Optus's GSM network. The ACCC issued a draft decision in November 2005, and a final decision in February 2006, to reject the undertaking on the basis that the proposed charges were not reasonable. Optus applied to the tribunal in February 2006 for review of the ACCC's decision. In November 2006 the tribunal upheld the ACCC's decision and rejected the application, as it was not satisfied that the terms of the undertaking were reasonable.

In March 2005 Vodafone submitted an undertaking for the supply of its MTAS. The ACCC issued a draft decision in December 2005, and a final decision in March 2006, to reject the undertaking on the basis that the proposed charges were not reasonable. Vodafone applied to the tribunal in April 2006 for review of the ACCC's decision. In January 2007 the tribunal upheld the ACCC's decision and rejected the application, as it was not satisfied that the terms of the undertaking were reasonable.

Telstra submitted **PSTN OTA and LCS undertakings** to the ACCC in 2005–06. In November 2006 the ACCC released its final decision to reject the undertakings.

In February 2007 Optus lodged an **MTAS undertaking** with the ACCC. The undertaking specified certain terms and conditions upon which Optus undertakes to supply its DGTAS. In June 2007 the ACCC released a draft decision to reject the undertaking.

content, applications and convergence

The ACCC examined emerging issues and new policy approaches relating to the impact of technical convergence on communications markets.

The ACCC continued to participate in discussions with Telstra to assist it in deciding whether to put forward a detailed **FTTN special access undertaking** for public consultation. Telstra halted discussions in August 2006 and did not submit a formal FTTN SAU.

The ACCC also engaged in discussion with the G9 consortium of carriers, which also indicated an intention to develop an FTTN network. The discussions with the G9 resulted in FANOC—a company created by the G9 consortium—submitting an SAU for assessment by the ACCC on 30 May 2007. The SAU specifies the terms and conditions upon which it undertakes to supply what it terms the 'broadband access service' in the case where the proposed FTTN network is deployed. The ACCC commenced its public consultation process on the SAU with the release of a discussion paper on 21 June 2007.

As part of its role under the Radiocommunications Act, the ACCC released a discussion paper on the channel B digital television access regime in December 2006. The ACCC received 17 submissions in response to the discussion paper. The ACCC is considering these submissions and will establish legislative instruments to guide the assessment of channel B access undertakings in 2007–08. The ACCC has also commenced work on implementing an access regime for digital radio multiplex facilities in the lead-up to the commencement of digital radio services in 2009.

The ACCC participated in meetings of the Communications Alliance addressing regulatory and policy issues, including convergence, voice over internet protocol (VOIP), interconnection and quality of service and local number portability.

Following an ACCC draft decision to reject its initial undertaking, Foxtel lodged a revised special access undertaking on 1 December 2006. The undertaking relates to what Foxtel describes as the **digital set-top unit service**. DSTUS generally used by subscription television providers for the reception, decryption and display of content (including interactive content) at the end user premises. Following public consultation, the ACCC issued its final decision to accept the special access undertaking on 16 March 2007. Digital content providers will be able to use the undertaking to offer their channels to Foxtel's customers as a tier to Foxtel's basic package.

The Seven Network has commenced litigation in the Federal Court seeking judicial review of the ACCC's decision to accept Foxtel's special access undertaking.

consultation, monitoring and reviews

In June 2007 ACMA and the ACCC released a report entitled *Communications infrastructure and services availability in Australia 2006–07*. This is the first time the two agencies have issued a joint report of this type, which discusses the availability of broadband, fixed voice, mobile voice, mobile data and broadcasting infrastructure and services. The report lays the foundation for future joint reporting by ACMA and the ACCC on communications markets.

The ACCC is also progressing an audit of telecommunications infrastructure assets. In March 2007 a discussion paper was released detailing data sets proposed to be collected as part of the audit. Submissions are presently being considered and the ACCC will finalise the details of the audit before the end of 2007.

Data provided by 19 leading ISPs under the internet interconnection record-keeping and reporting rules gave the ACCC insight into the arrangements ISPs use for interconnecting with each other to exchange traffic. Following a review, the ACCC decided to revoke the rules in June 2007 because the benefits of collecting further data would not justify the reporting costs to industry.

The ACCC continued to provide advice to the Department of Communications, Information Technology and the Arts on a range of price and non-price matters relating to Telstra's proposed operational separation. The ACCC also continued to monitor bundling of residential services using RKR introduced in March 2003.

aviation

output 1.1.2

competitive market structures and informed behaviour

this year the ACCC

performance indicator	> issued a price monitoring and financial report for the seven major airports
ensure that businesses using monopoly services pay prices that reflect efficient costs	> issued a quality of service monitoring report for the seven major airports > commenced arbitration under Part IIIA of an access dispute between Virgin Blue and Sydney Airport Corporation Limited (SACL)

Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

monitoring prices and quality of service

The ACCC published **airports regulatory reports** for the seven major airports: Sydney, Melbourne, Brisbane, Perth, Adelaide, Canberra and Darwin. Under Part VIIA of the Trade Practices Act, the ACCC monitors the prices, costs and profits relating to aeronautical services and aeronautical-related services; and under the Airports Act, it reports on financial accounts and quality of service.

Monitoring involves collecting information and reporting on prices, quality and financial accounts. The ACCC has no power to prevent price increases, except for aeronautical services for regional airline services at Sydney airport. These prices are subject to a price cap. No proposal for price increases for regional services was received from Sydney airport in 2006–07.

The ACCC is also responsible for assessing proposals by Airservices Australia to increase charges for en route and terminal navigation services and rescue and fire fighting services.

The airports **price monitoring and financial report** provided information on the prices, costs and profitability performance of the seven major airports. Key findings were that changes in average aeronautical revenue per passenger (including landing charges and passenger processing charges) mostly ranged from a decline of 1.1 per cent to an increase of 12 per cent, with the exception of a 49 per cent increase at Adelaide where a new terminal was commissioned; and aeronautical operating expenses per passenger changed by between -1.3 per cent and +9 per cent, except for Adelaide where these expenses increased by 69 per cent. Aeronautical margins per passenger increased at the majority of airports in 2005–06, but decreased at Canberra airport.

The ACCC monitors airport **quality of service** by collecting information from airport operators, the Australian Customs Service, Airservices Australia and airlines. The information includes data from customer perception surveys and airline surveys. Key findings were that results were generally satisfactory to good over the period from 2002–03 to 2005–06, with Brisbane the top-ranked airport over this period, achieving an overall rating of good. Melbourne, Sydney and Perth airports rated between satisfactory and good. Both Canberra and Darwin airports have generally rated at the satisfactory level. Adelaide airport's overall rating improved significantly in 2005–06, from satisfactory to just below good, following the opening of the multi-user integrated terminal.

arbitration

Certain airside services provided by SACL to airlines are declared under Part IIIA of the Trade Practices Act. In January 2007 Virgin Blue notified the ACCC of an access dispute with SACL, and in February 2007 an arbitration of this dispute commenced. The dispute related to the level of, and the methodology for, calculating the price SACL was charging Virgin Blue for the use of airside services at Sydney airport.

In May 2007 Virgin Blue withdrew its notification of an access dispute with SACL following a negotiated commercial settlement of the dispute.

rail

output 1.1.2

competitive market structures and informed behaviour

this year the ACCC

performance indicator

ensure that businesses using monopoly services pay prices that reflect efficient costs

- > monitored Australian Rail Track Corporation (ARTC) compliance with its obligations outlined in its access undertaking
- > commenced assessment of a new access undertaking from ARTC
- > contributed to development of a model national rail access code

Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

Under a Part IIIA access undertaking approved in May 2002, the ACCC administers the terms and conditions of **access to rail tracks** owned or leased by ARTC. The tracks are part of the interstate mainline standard gauge track in Victoria and South Australia, which extends to Kalgoorlie in Western Australia and Broken Hill in New South Wales.

In May 2007 the ACCC received an application from ARTC for a new access undertaking, including terms and conditions for access to tracks that are part of the interstate mainline standard gauge track.

In conjunction with ARTC, the ACCC developed and submitted to Treasury a template for the national rail access regime. The template is being considered by the Council of Australian Governments.

water

output 1.1.2

Competitive market structures and informed behaviour

this year the ACCC

performance indicator

ensure that businesses using monopoly services pay prices that reflect efficient costs

- > issued a report regarding access, exit and termination fees charged by irrigation water delivery businesses in the southern Murray–Darling Basin
- > arbitrated under Part IIIA an access dispute between Services Sydney and Sydney Water Corporation

Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

irrigation water delivery fees

In November 2006 the ACCC released its report on **access, exit and termination fees** charged by irrigation water delivery businesses in accordance with a request from the Australian, New South Wales, South Australian and Victorian governments.

The report developed a consistent inter-jurisdictional framework for the use of access and termination fees charged by operators of irrigation water delivery networks to assist the New South Wales, Victorian and South Australian governments to meet their obligations under the National Water Initiative.

arbitration

Certain services provided by Sydney Water are declared under Part IIIA of the Trade Practices Act. In November 2006 Services Sydney notified the ACCC of a dispute in relation to the methodology of pricing access to Sydney Water's declared sewage transportation services.

The ACCC made its final determination in June 2007 and will release the public arbitration report in July 2007.

The ACCC determined that the access pricing methodology is to be Sydney Water's regulated retail prices less its avoidable costs of undertaking the contestable activities associated with the provision of sewerage services.

waterfront and shipping

output 1.1.2

competitive market structures and informed behaviour

this year the ACCC

performance indicator

ensure that businesses using monopoly services pay prices that reflect efficient costs

- > issued a stevedoring monitoring report showing average company costs and revenues rising
- > monitor prices to assess the impact of market conditions on price levels of goods and services
- > monitored prices formally and informally for container stevedoring and freight rates for international liner cargo
- > administered international liner cargo shipping arrangements

Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

The Treasurer directed the ACCC on 20 January 1999 under the then *Prices Surveillance Act 1983* to monitor prices, costs and profits of **container stevedoring operators** in the ports of Adelaide, Brisbane, Burnie, Fremantle, Melbourne and Sydney to inform the community about the progress of waterfront reform at major container terminals.

The ACCC released its eighth **container stevedoring report** in November 2006 examining trends in prices, costs and profits of the three major stevedoring companies, P&O Ports, Patrick and DP World, from July 2005 to June 2006. Industry average costs and revenues increased during 2005–06. Average productivity levels at the five ports monitored decreased.

The ACCC has a role in administering Part X (**international liner cargo shipping**) of the Trade Practices Act, which provides for agreements between shipping lines to be exempted from some of the provisions proscribing anti-competitive conduct. The ACCC did not conduct any investigations under Part X during 2005–06.

post

output 1.1.2

competitive market structures and informed behaviour

this year the ACCC

performance indicator

ensure that businesses using monopoly services pay prices that reflect efficient costs

- > required Australia Post to keep records relevant to the ACCC's functions of testing for cross-subsidy, assessing proposals for price increases and dispute inquiry under recent amendments to the *Australian Postal Corporation Act 1989*
- > issued reports outlining the ACCC's analysis of Australia Post's 2004–05 and 2005–06 regulatory accounts

Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

In March 2005 the ACCC issued a record-keeping rule to Australia Post. That RKR requires that Australia Post provide the ACCC with annual regulatory accounts.

The ACCC released its first report outlining its **cross-subsidy analysis** of Australia Post's regulatory accounts for the 2004–05 financial year in July 2006. After further consultation with Australia Post and other interested parties, the ACCC finalised its views on the disclosure of confidential information in these reports and released its principles for disclosure of confidential information and re-issued the 2004–05 report, with additional information included, in November 2006. The ACCC released its analysis of Australia Post's 2005–06 regulatory accounts in March 2007.

Proposals by Australia Post to increase charges for **monopoly postal services** are assessed by the ACCC. Australia Post did not propose to increase the price of any reserved services during 2006–07.

The ACCC also has a role in resolving disputes over the price charged to users of Australia Post's bulk interconnection services. No disputes were notified to the ACCC this year.

petrol

output 1.1.2

competitive market structures and informed behaviour

this year the ACCC

performance indicator

monitor prices to assess the impact of market conditions on price levels of goods and services

- > monitored the retail prices of unleaded petrol, diesel and automotive LPG in all capital cities and about 110 country towns
- > monitored E10 petrol prices and the price differential between E10 petrol and regular unleaded petrol
- > monitored international crude oil and refined petrol prices, published terminal gate prices of the major oil companies and the city–country price differential

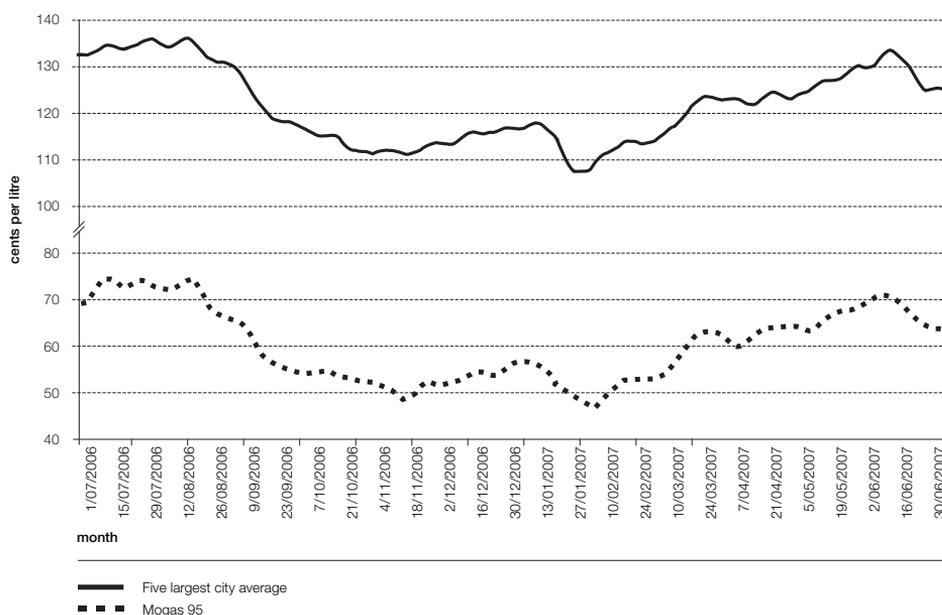
Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

As in previous years, **monitoring of unleaded petrol prices** indicated that prices were volatile over the year. This can be seen in the chart. The average monthly retail unleaded petrol price for the five largest metropolitan cities (i.e. Sydney, Melbourne, Brisbane, Adelaide and Perth) ranged from a low of 112.0 cents per litre in January 2007 to a high of 134.6 cents per litre in July 2006. The average price during the year was 121.5 cents per litre, which was 0.4 cents per litre above the average price last year.

Movements in domestic petrol prices are largely driven by movements in the international refined petrol price (measured by the spot price for Singapore Mogas 95 Unleaded) and the Australian/United States dollar exchange rate (this is shown in the chart). However, on two occasions during the year (i.e. in early January 2007 and in late May/early June 2007) the ACCC publicly expressed concern about a divergence in the movements of retail unleaded petrol prices in Australia and movements in Singapore Mogas 95 Unleaded.

On 15 June 2007 the Treasurer approved the ACCC holding an inquiry into the price of petrol, under the prices surveillance provisions of the Trade Practices Act. Matters to be considered by the inquiry include the structure of the industry; the extent of competition at the refinery, wholesale and retail levels; the determination of prices at each of these levels; and impediments to efficient petrol pricing. The ACCC is to provide a report to the Treasurer by 15 October 2007.

figure 4 Five largest metropolitan cities 7-day rolling average and Singapore Mogas 95 Unleaded rolling average: 1 July 2006 to 30 June 2007



The average differential between average retail prices in the five largest metropolitan cities and **country areas** was 5.4 cents per litre. The monthly differential ranged from a high of 8.7 cents per litre in September 2006 to a low of 2.4 cents per litre in May 2007.

In July 2006 the ACCC made a submission to the Senate Economics Legislation Committee inquiry into the price of petrol in Australia. The ACCC also appeared before the committee on two occasions and provided supplementary information in response to issues raised by the committee.

In August 2006 the Treasurer announced that the ACCC would extend its monitoring of fuel prices to include E10 petrol and provide a quarterly report on the price differential between E10 petrol and unleaded petrol. E10 petrol is unleaded petrol blended with 10 per cent ethanol. The first report, released in January 2007, found that E10 petrol prices in the December 2006 quarter were on average 2.9 cents per litre below regular unleaded petrol prices. The second report, released in May 2007, indicated that E10 petrol prices in the March 2007 quarter were on average 3.0 cents per litre below regular unleaded petrol prices. These reports are available on the ACCC website.

The consumer awareness initiative on **petrol price cycles** on the ACCC website—which aims to increase consumers’ understanding of petrol price cycles and how to take advantage of them—continued in 2006–07. Consumers can make significant savings by buying petrol at the bottom of the price cycle. The ACCC website provides data on unleaded petrol price cycles in the five largest metropolitan cities. It also includes information on petrol prices and has links to a number of other websites that have information about petrol prices and petrol pricing issues.

The ACCC dealt with 1842 inquiries and complaints on fuel pricing.

insurance and bank charges

output 1.1.2

competitive market structures and informed behaviour

this year the ACCC

performance indicator

monitor prices to assess the impact of market conditions on price levels of goods and services

> monitored prices for medical indemnity insurance

Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

On 29 May 2006 the Minister for Revenue and Assistant Treasurer, the Hon. Peter Dutton MP, wrote to the ACCC requesting that it continues to examine the actuarial and commercial justification of medical indemnity premiums, including within jurisdictions, for a further three years.

The Australian Government released the ACCC's **fourth monitoring report** in April 2007. This report found that premiums written in 2006–07 (2006 in the case of Australasian Medical Insurance Limited) were considered to be both actuarially and commercially justified.

The ACCC also maintains a watching brief on **bank fees and charges**, including credit cards and personal transaction accounts.

red meat

output 1.1.2

competitive market structures and informed behaviour

this year the ACCC

performance indicator

monitor prices to assess the impact of market conditions on price levels of goods and services

- > reported on the relationship between saleyard livestock and retail red meat prices

Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

On 28 November 2006 the Hon. Peter McGauran MP, Minister for Agriculture, Fisheries and Forestry, asked the ACCC to examine the prices paid to farmers for **livestock** and the prices that Australian consumers are paying for **red meat**.

The ACCC submitted a report to the minister in February 2007 and it was publicly released on 15 February 2007.

intellectual property

output 1.1.2

competitive market structures and informed behaviour

this year the ACCC

performance indicator

ensure that businesses using monopoly services pay prices that reflect efficient costs

- > issued a draft guide to copyright licensing for public consultation
- > became a party to the Phonographic Performance Company of Australia's reference of its fitness class tariff to the Copyright Tribunal of Australia

Measured against performance indicators defined in the ACCC portfolio budget statements 2006–07

In December 2006 the *Copyright Act 1968* was amended to allow the Copyright Tribunal of Australia to consider any relevant guidelines made by the ACCC and allow the tribunal to make the ACCC a party to certain proceedings before it.

regulators forum

The ACCC, with state and territory regulatory agencies, set up a public utility regulators forum to share information and develop understanding of the activities of various regulators and industries as they implement reform. All regulators are involved. The aim of the forum is to exchange information, to encourage consistency in the application of regulatory functions and to review new ideas about regulatory practices. The forum published three **Network** newsletters with updates on regulatory activities as well as articles on common challenges.

when we did it

july 06

Federal Court upheld ACCC's access arrangement for the Moomba to Sydney pipeline decision

obtained consent orders against LG Electronics over mobile telephones for warranty misrepresentations

opposed acquisition of Watty! by Barloworld

allowed collective negotiations at Port Botany

notified of two telecommunications access disputes

allowed transition period for public liability insurance pool

proposed to grant authorisation to Qantas–Orangestar cooperation agreement

issued best practice guide for stores serving Indigenous communities

discontinued proceedings against global vitamin C cartel

allowed collective negotiations by corporate bookmakers

ACCC/NZCC agreed in-principle to cooperative trans-Tasman mergers review protocol

high-lift 'farm jacks' declared unsafe

imposed tougher reporting under revised drug companies code

instituted against alleged franchising contraventions

issued final decisions on regulation of fixed-line telecommunications services

issued 2004–05 telecommunications market indicator report

took court action against Beaver Sales Pty Ltd over high-lift jack

extended current access arrangement for Roma to Brisbane pipeline

notified of telecommunications access dispute—PowerTel Limited and Hutchison 3G Australia

august 06

issued Australia Post cross-subsidy report

instituted proceedings against FCHEM (Aust) Limited, Osmose Australia Pty Ltd and Edward Mark Greenacre for alleged price-fix

called for comment on the proposed acquisition of Unitab Limited by Tabcorp Holdings Limited

decided not to oppose Alinta/AGL joint merger proposal

instituted against Menopause Institute of Australia, managing director alleging misleading and deceptive health claims

agreed to trans-Tasman merger protocol with NZCC

revoked Nestlé notification
 provided guidance on media mergers
 penalised Bamix distributor \$280 000 for preventing discounts
 called for comment on Smorgon Steel Limited/Onesteel Limited acquisition
 notified of telecommunications access dispute—Macquarie Telecom Pty Limited and Telstra Corporation Limited
 agreed to work with ACMA on industry data collection
 decided to oppose Tabcorp proposed acquisition of UNiTAB
 Federal Court declared Advanced Medical Institute's advertising 'misleading'
 ensured green cosmetic claims come clean
 released full reasons for notice to revoke Nestlé notification
 instituted proceedings against skincare and cosmetics company Jurlique for alleged resale price maintenance
 Federal Court made final orders on tribunal decision on access arrangement for Moomba to Sydney pipeline
 decided not to oppose the acquisition of Gippsland saleyards by Victorian Livestock Exchange
 Crown immunity shielded Baxter Healthcare
 issued final decision on Telstra's ULLS undertakings
 issued Telstra retail pricing protocol
 issued draft decision on Roma to Brisbane pipeline revised access arrangement
 accepted undertaking for recall of promotional bicycle from Hagemeyer Asia Pacific Pty Limited

september 06

published interim telecommunications determination
 announced draft decision to reject Foxtel's special access undertaking for digital set-top unit service
 proposed changes to surgeons' authorisation
 issued statement of issues on proposed acquisition of GasNet by the APT
 OneSteel requested ACCC to delay Smorgon merger decision
 issued notice revoking Australian Baseball Federation notification
 notified of telecommunications access dispute—Telstra Corporation Limited and Optus Networks Pty Limited
 accepted gas company divestiture in international Linde AG/BOC Group plc industrial gas merger
 decided not to oppose S8 Limited travel industry acquisitions
 welcomed IATA request for phased removal of immunity

launched Competing Fairly Forum—scams, frauds and your business
 sought comment on new Alinta/APT merger proposal
 Federal Court declared Cleanaway’s conduct misleading and unconscionable
 issued draft decision to reject Telstra’s PSTN and LCS undertakings
 resumé business gave undertakings over home-based business claims
 BP moved on petrol discount signage
 Uncle Tobys stopped claims Roll Ups are ‘made with 65% real fruit’
 Black & Decker corrected country of origin claims
 approved APT proposed acquisition of GasNet subject to AGL’s proposed divestiture of APT
 announced that broadband take-up strong and steady
 granted authorisation to Qantas–Orangestar cooperation agreement
 granted interim authorisation to CPM and CS Energy to commence joint negotiation for the purchase of coal
 instituted proceedings against Alinta Limited
 OneSteel and Smorgon requested ACCC continue pause of Smorgon acquisition assessment
 decided not to oppose baby car restraint merger
 issued draft decision on south-west Queensland gas pipeline
 proposed allowing an increase in the refrigerant gas levy
 proposed denying collective negotiations by major sport bodies
 \$1.525 million penalties against garnet producers for market-sharing arrangement
 sought leave for High Court appeal on Baxter Healthcare Crown immunity finding
 court declared Bon Levi bankrupt
 issued Telstra accounting separation report for June quarter 2006
 decided not to relieve Alinta of its undertaking to divest Agility service contracts

october 06

proposed to authorise revised capped fees for the Canberra After Hours Locum Medical Service
 rejected Alinta undertaking on Alinta/APT merger proposal
 alleged resale price maintenance by Topfield distributor
 acted against unsafe children’s swim vests
 raised concerns over misleading personal introduction service
 notified of two telecommunications access disputes—Optus Networks Pty Limited and Telstra Corporation Limited
 household furniture safety guide issued
 proposed to authorise CS Energy/CPM joint negotiation

Asia Source Australia's elastic luggage straps fail product safety standard
specialist nursery retailer fined \$860 000 for dangerous baby walkers and cot
TPA matters for small business: ACCC launched latest small business resource
issued statement of issues on proposed acquisition of Queensland Gas Company Limited by Santos Limited
confirmation of interim determinations in five telecommunications arbitrations
issued airports quality monitoring report
new SCAMwatch website launched for consumers—scams, swindles, rorts and rip-offs

november 06

issued report on Telstra's compliance with its price controls
notified of telecommunications access dispute—Optus Networks Pty Limited and Telstra Corporation Limited
comments call on Hexion Specialty Chemicals/Orica Australia acquisition proposal
issued 2005–06 container stevedoring monitoring report
issued final decision on south-west Queensland gas pipeline
proposed to deny Qantas/Air New Zealand tasman agreement
allowed industry refrigerant gas levy
proposed to authorise restrictions in a Queensland coal supply agreement
instituted against Kokos, IAE, Nanuri and others
granted interim approval to Melbourne metropolitan councils to collectively tender for bus shelters
comments call on Health Care Australia's proposed acquisition of Brisbane Waters Private Hospital
IATA transition arrangements approved by ACCC
accepted undertakings from pet food franchisor
proposed to remove surgeons' immunity for training arrangements
called 'time out' on unsafe basketball rings
notified of telecommunications access dispute—NEC Australia Pty Ltd and Telstra Corporation Limited
court declared internet service provider acted unconscionably
Dimplex chills out on 'environmentally friendly' claims
took court action against British American Tobacco over Dunhill wallet pack cigarettes
notified of access dispute in relation to declared services provided by Sydney Water
issued draft guides to new merger clearance, collective bargaining notification and revised authorisation processes
Dunhill cigarette wallet packs withdrawn from sale
issued discussion paper on analog pay-TV service declaration

authorised CS Energy/CPM joint negotiation
 obtained declaration against director of Info4pc
 welcomed Australian Competition Tribunal decision on Optus's supply of mobile terminating access service
 called for fair trading in food and beverage industry
 granted interim approval to the St George Region of Councils to commence a tender process for joint waste and recycling collection
 accepted Alinta undertaking on Alinta/APT merger proposal
 sought court injunctions over the RANA system cancer treatment
 issued statement of issues on proposed acquisition of Pfizer Inc.'s consumer healthcare business by Johnson & Johnson
 revoked grocery price guide authorisation
 notified of telecommunications access disputes—Telstra's supply of the line sharing service
 obtained court injunctions over the RANA system cancer treatment
 full Australia Post report issued
 issued draft copyright licensing guide for comment
 rejected Telstra's undertakings for fixed interconnection and local call resale services: sets indicative prices
 challenged Telstra
 issued seventh Telstra accounting separation current cost report

december 06

revoked Australian Institute of Building fee guide authorisation
 notified of telecommunications access disputes—Telstra Corporation Limited and Optus Mobile Pty Limited and Optus Networks Pty Limited
 decided to appeal decision against internet service provider
 new Foxtel special access undertaking for digital set-top unit service
 called for comment on the proposed acquisition of Promina Group Ltd by Suncorp Metway Limited
 concerned by JB Hi-Fi comparative advertising
 Optima admitted to resale price maintenance
 proposed to let National Library tender on behalf of other libraries
 called for comment on the proposed acquisition of Federal Publishing Company Community Newspaper Group by News Limited
 instituted proceedings against marine GPS navigation products company Navman for alleged resale price maintenance
 instituted against Prouds' two-price advertising practices
 Optus corrected ambiguous packaging claims

sought comments on variation to Toll undertakings
 updated on Santos' bid for Queensland Gas Company
 decided to oppose Health's proposed acquisition of Brisbane Waters Private Hospital
 \$100 000 penalties for secondary boycott
 penalised Topfield distributor \$238 000 for resale price maintenance
 conducted market inquiries on Johnson & Johnson's proposed divestiture
 allowed collective negotiations by major sport bodies
 confirmed changes to surgeons' immunity
 issued discussion paper on Foxtel digital set-top unit service special access undertaking
 issued discussion paper on licences for new digital television services
 reviewed proposed acquisition of Qantas
 highly toxic novelty item recalled: consumers warned
 consumers advised on how to protect their rights
 decides not to oppose merger between Suncorp Metway and Promina
 Menopause Institute admits deceiving its patients about menopause treatments
 Domino's to correct 'fresh dough' claims
 prosecuted Zamel's for false jewellery prices
 granted authorisation to restrictions within Queensland coal supply agreement
 issued Telstra accounting separation report for September quarter 2006
 safety checks for Christmas
 issued final decision on Roma to Brisbane pipeline revised access arrangement
 issued safety warning on vehicle LPG tanks
 quilt suppliers stopped false and misleading '100%' down content claims
 proposed to let Melbourne councils collectively tender for bus shelters
 accepted divestitures by Johnson & Johnson
 Woolworths penalised \$7 million for anti-competitive liquor deals

january 07

issued guides to collective bargaining notifications, revised authorisations and new merger clearance processes
 commenced review of Alinta proposal to acquire Origin infrastructure assets
 unsafe 'bus' bunk beds recalled
 union fined \$125 000 for Trade Practices Act breach
 decided not to oppose News Limited proposed FPC acquisition
 Australian Competition Tribunal decision further evidence of telco industry failure to offer reasonable access prices

proposed to approve High Value Clearing System rules

authorised the National Library of Australia to tender on behalf of other libraries

issued interim determinations and reasons in two line-sharing service telecommunications arbitrations

authorised revised capped fees for the Canberra After Hours Locum Medical Service

'was' pricing by bicycle retailer incorrect

issued first E10 petrol price monitoring report

settlement of ACCC action against timber merchants

decided not to oppose AGL Energy acquisition of a 30 per cent stake in Queensland Gas Company

praised voluntary reporting from Cadbury Schweppes

Nestlé withdrew application for review of ACCC decision

issued an information paper to assist on broadband speed advertising

decided not to oppose pipe and tube joint venture between Onesteel and Smorgon

considered Santos' new proposal to acquire QGC

issued statement of issues on proposed acquisition of Sydney Roads Group by Transurban Group

february 07

release of WIK consult mobile network and cost model, WIK report and discussion paper

StoresOnline customers got \$679 000 in refunds after ACCC legal action

access dispute in relation to declared service provided by Sydney Airport Corporation Limited

notified of telecommunications access disputes—Adam Internet Pty Ltd and Primus Telecommunications Pty Ltd against Telstra Corporation Limited

proposed to allow discount funerals for WA pensioners

alleged anti-competitive conduct by two cardiothoracic surgeons

highest ever penalty for resale price maintenance against skincare, cosmetics company Jurlique: \$3.4 million

published interim determinations in telecommunications access disputes

High Court to examine Baxter Healthcare's shield of immunity

power station operator penalised \$120 000

called for comment on Pacific Terminals' proposed acquisition of bulk liquid terminals from Craig Mostyn

approved High Value Clearing System rules

interim determinations in telecommunications access disputes

issued meat and livestock prices report

issued statement of issues on George Weston Food Limited's proposed acquisition of Rabkal Pty Ltd

approved SCT Logistics as purchaser of rail assets under Toll undertakings
 allowed Melbourne councils to collectively tender for bus shelters
 took legal action against insulation manufacturer over alleged misleading labelling
 Socrates recalled unsafe toy after ACCC investigation
 decided to oppose Santos' proposed acquisition of QGC
 called for tenders for the development of a fixed network services cost model
 varied Australian Property Institute authorisation
 issued fourth airport price monitoring report
 published confirmation of interim determinations in two telecommunications arbitrations
 proposed to grant authorisation to St. George Region of Councils for collective waste and recycling collection services
 trend of broadband growth continues: ACCC

march 07

issued guides and compliance manual to the Oilcode
 decided not to oppose proposed acquisition of Qantas Airways Limited by Airline Partners Australia Limited
 revoked competition notice lifted for Telstra's wholesale line rental price increase
 launched scams target you! protect yourself campaign
 launched scams target you! protect your money campaign
 ACCC and ACMA seek to share confidential media merger information
 instituted proceedings for misleading conduct and false price representations in relation to travelling rug and manchester sales
 filed additional claims in relation to the RANA System cancer treatment
 notified of two telecommunications access disputes—Primus Telecommunications Pty Ltd and Telstra Corporation Limited
 issued a Competing Fairly Forum DVD on collective bargaining
 unsafe nursery goods again under ACCC scrutiny
 issued discussion paper on access undertaking lodged by Optus for DGTAS
 decided not to oppose Pacific Terminals (Australia) Pty Ltd's proposed acquisition of bulk liquid terminals from Craig Mostyn & Co Pty Ltd
 decided not to oppose Townsville hospital merger
 decided not to oppose proposed acquisition of Sydney Roads Group Limited by Transurban Group Limited
 allowed Toll to divest Tasmanian Shipping and Forwarding businesses to Chas Kelly Group
 notified of Moomba to Sydney gas pipeline access dispute
 allowed discount funerals for WA pensioners

launched scams target you! protect your phone campaign

decided not to oppose proposed acquisition of Good Stuff Bakery by George Weston Foods Limited

granted urgent approval to system to reduce coal ship queue

outlined possible improvements in consumer protection

ACCC and AUSTRAC signed memorandum of understanding

accepted digital pay-TV undertaking from Foxtel

launched scams target you! protect your computer campaign

Ribena vitamin C claims 'may have misled consumers'

further resale price maintenance win for ACCC

granted authorisation to St George Region Councils for collective waste, recycling services

Federal Court ordered Beaver Sales to stop supply of high-lift jacks which do not meet product safety standard

launched scams target you! protect your identity campaign

notified of telecommunications access disputes—Netspace Pty Ltd and Telstra Corporation Limited

approved Roma to Brisbane pipeline revised access arrangement

second Australia Post report issued

proposed to grant authorisation to IATA passenger agency program

proposed to remove Agsafe's ability to impose trading sanctions

alleged attempted price fixing in funeral celebrants market

Federal Court declared contempt of court for non-compliance with court orders

issued guidelines on deferral of arbitrations and backdating of determinations under Part IIIA of the *Trade Practices Act 1974*

april 07

Jaggad Pty Ltd ceased resale price maintenance

proposed to approve amended system to reduce Newcastle coal ship queue

offered a revised variation to Toll Holdings undertakings

not entitled to issue competition notice

issued Telstra accounting separation report for December quarter 2006

decided not to oppose Northern Territory fuel retail, distribution acquisition

proposed to grant authorisation to GPs for fee-setting and hospital agreements

proposed to authorise the promotion of MTAA 'real times guide'

government issued fourth ACCC medical indemnity report

accepted undertakings from U. Games Australia Pty Ltd over Thomas & Friends swimming armbands

notified of telecommunications access dispute—Chime Communications Pty Ltd and Telstra Corporation Limited

outlined robust framework for review of existing regulation

proposed to authorise limited negotiations by car importers and exporters

required 'clean break' between Toll Logistics and infrastructure companies

accepted newspaper divestitures in Fairfax/Rural Press merger

issued statement of issues on proposed acquisition of Greif Australia by Drum Makers (Visy)

granted authorisation to Western Australian real estate agents

Dunhill wallet packs permanently removed from sale after ACCC action

mobile telephone franchising undertakings accepted

instituted legal proceedings against internet tobacco website registrant

may 07

cautioned traders and growers pre-dating farm produce supply agreements

proposed to allow Sky and TVN to share racing content

notified of a telecommunications access dispute—Telstra Corporation Limited and Chime Communications Pty Ltd

extended immunity for IATA passenger agency program

granted interim authorisation to Construction Materials Producers Association

issued transmission cost model discussion paper

comments call on Video Ezy/Blockbuster acquisition proposal

began criminal proceedings against real estate agent for allegedly providing false and misleading evidence

court found cancer sufferers exploited under the RANA System

monitored jewellery advertising

stopped supply of dangerous toys

announced that Telstra jibbing on Australian consumers

decided to consider variation of the unconditioned local loop service description

welcomed Australian Competition Tribunal decision that Telstra's unconditioned local loop service prices are unreasonable

cautioned traders, growers against signing non-compliant horticultural produce agreements

continued discussions with steel merger parties

gave final approval to amended system to reduce Newcastle coal ship queue

authorised GPs to collectively set fees and negotiate with hospitals

draft notices proposed revoking Seal-A-Fridge notifications

issued draft decision on Dawson Valley pipeline access arrangement
 received proposed access arrangement from GasNet Australia
 welcomed commercial resolution of access dispute between Virgin Blue and Sydney airport
 proposed to allow Victorian potato growers to collectively bargain
 published interim determinations in telecommunications arbitrations
 lodged submission to inquiry into Australia's consumer policy framework
 G9/FANOC FTTN lodged special access undertaking for the broadband access network service

June 07

notified of telecommunications access disputes—Telstra Corporation Limited with Vodafone Network Pty Limited and Telstra Corporation Limited with Hutchison 3G Australia Pty Limited
 'fair go'—ACCC to petrol retailers
 decision maintained Agsafe's ability to impose trading sanctions
 decided not to oppose proposed acquisition of Smorgon Steel Group Limited by OneSteel Limited
 allowed limited negotiation by car importers and exporters
 authorised promotion of MTAA 'real times guide'
 Bevco corrected misleading country of origin fruit juice labels
 insulation batts undertakings strengthened
 court declared false and misleading representations made on insulation rating labels
 consumers continued to reap benefits from competition in telecommunications
 giggling toy recalled by Socrates
 arbitration threat brought commercial solutions—regulator
 no appeal against Geelong petrol decision
 Bevilles Jewellers corrected two-price advertising
 complementary medicines incorrectly labelled 'made in Australia'
 considered rail access undertaking from Australian Rail Track Corporation
 comments sought on Healthscope Limited/ Symbion Health Limited proposal
 comments sought on proposed joint venture of PMP Limited/McPherson's Limited book printing businesses
 proposed to grant authorisation to the Construction Material Producers Association
 proposed to re-authorise Star Alliance Corporate Plus and Conventions Plus programs
 announced inquiry into petrol prices
 issued discussion paper on FANOC (G9) special access undertaking for broadband access services

issued draft decision to reject Optus's undertakings for mobile terminating access service

issued draft mobile terminating access service pricing principles determination and supporting documentation issued

secured \$270 000 boost to the organic food industry

ACMA and ACCC issued joint report on communications infrastructure and services availability

accepted undertaking from automotive parts importer

Australian Competition Tribunal affirmed ACCC's decision on extra reporting for Medicines Australia code

real estate agent pleaded guilty to providing false or misleading evidence to ACCC

released petrol issues paper

issued draft notice proposing to revoke GeelongPort notification

decided to allow Victorian potato growers to collectively bargain

alleged resale price maintenance by TEAC

