

Part 3

Report on Performance

Performance reporting framework

This chapter reports on our performance for 2013–14 using the framework in the 2013–14 Treasury portfolio budget statements (PBS). The ACCC and the AER jointly report against one outcome, with the ACCC reporting against Program 1.1 and the AER Program 1.2, as shown in table 3.1.

Table 3.1: Performance reporting framework

Drivers	<i>Competition and Consumer Act 2010</i> (Cth) (the Act) Portfolio Budget Statements ACCC and AER corporate and business plans
Outcome 1	Lawful competition, consumer protection, and regulated national infrastructure markets and services through regulation. These include enforcement, education, price monitoring and deciding access terms to infrastructure services.
Program 1.1	Australian Competition and Consumer Commission
Program objective	The ACCC program objective is to achieve compliance with the Act, and associated legislation in order to protect, strengthen and supplement the way competition works in Australian markets and industries to improve the efficiency of the economy and to increase the welfare of Australians. This means the ACCC will take actions that: improve consumer welfare; promote the long-term interest of end-users in regulated sectors; protect competition; open markets to competition; or stop conduct that is anti-competitive or harmful to consumers.
Goals*	To promote compliance with federal competition, fair trading, consumer protection and product safety laws, and to regulate markets where there is limited competition, the ACCC will: <ol style="list-style-type: none"> 1. Maintain and promote competition and remedy market failure. 2. Protect the interests and safety of consumers and support fair trading in markets. 3. Promote the economically efficient operation of, use of, and investment in monopoly infrastructure. 4. Increase our engagement with the broad range of groups affected by the ACCC's activities. 5. Increase our effectiveness as an organisation through a commitment to our people, planning and systems.**
Program 1.2	Australian Energy Regulator
Program objective	The Australian Energy Regulator (AER) is the national energy market regulator. The AER's roles encompass the retail and wholesale electricity and gas markets and energy network infrastructure. The objectives of the national energy legislation guide the AER's priorities and work program. The common objective through the legislation is to promote efficient investment in, and efficient operation and use of, energy services for the long-term interests of end-users of energy.

Goals*	<ol style="list-style-type: none"> 1. Maintain and promote competition in wholesale energy markets. 2. Building consumer confidence in energy markets. 3. Promote efficient investment in, operation and use of, energy networks and services for the long-term interests of consumers. 4. Strengthening stakeholder engagement in energy markets and regulatory processes. 5. Increase our effectiveness as an organisation through a commitment to our people, planning and systems.**
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* The ACCC and AER have slightly re-phrased these goals to better align with our organisational objectives and will be using the phrasing of these goals as published in our *Corporate Plan 2013–14*. These goals appear in the 2013–14 portfolio budget statements and we report against them in the quarterly ACCCcount publication.

** Although not listed in the PBS, the ACCC and AER are reporting against this joint goal in Part 4 *Management and Accountability* to provide greater transparency in its performance reporting consistent with its corporate plan.

Goals and strategies

Below are the goals the ACCC and AER work towards in achieving Outcome 1 and the strategies we used to reach each goal. Each strategy has its own measures, which are shown together with the results later in this chapter. The report on performance is separated into Program 1.1 (ACCC) and Program 1.2 (AER). In Part 4 *Management and Accountability* the ACCC and AER jointly report against the shared Goal 5.

Program 1.1 ACCC

Goal 1. Maintain and promote competition and remedy market failure

- 1.1 deliver outcomes to address harm to consumer welfare through anti-competitive conduct and improve competition under the priority areas identified in the ACCC's Compliance and Enforcement Policy
- 1.2 assess and review mergers to prevent structural changes that substantially lessen competition with a particular focus on concentrated and emerging markets and markets of significance to the Australian economy
- 1.3 make decisions on authorisation and notification applications and merger reviews thoroughly and efficiently and give clear guidance to merger parties, authorisation and notification applicants, and market participants
- 1.4 improve the workability of emerging markets by advising on and enforcing industry-specific rules and monitoring market outcomes.

Goal 2. Protect the interests and safety of consumers and support fair trading in markets

- 2.1 deliver outcomes under the priority areas identified in the ACCC's Compliance and Enforcement Policy to improve compliance with the Australian Consumer Law
- 2.2 multiply the effectiveness of ACCC's compliance and enforcement initiatives through an active program of stronger and managed partnerships with ACL regulators and law enforcement agencies

- 2.3 identify and implement nationally integrated approaches to minimise the risk of injury and death from safety hazards in consumer products
- 2.4 support a vibrant small business sector, deter anti-competitive and unconscionable conduct targeted at small business, and facilitate collective conduct by small business operators where that conduct is assessed to provide a net public benefit
- 2.5 empower consumers to assert their rights under the Australian Consumer Law to secure fairer outcomes in the market place.¹

Goal 3. Promote the economically efficient operation of, use of, and investment in monopoly infrastructure

- 3.1 deliver network regulation to promote competition and meet the long-term interests of end-users
- 3.2 improve the workability of emerging markets by enforcing market rules and monitoring market outcomes
- 3.3 respond to government requests to provide monitoring reports on industries in highly concentrated and newly deregulated or emerging markets
- 3.4 improve regulatory practices and processes, including by building relationships with domestic and international regulatory agencies to leverage their experience.

Goal 4. Increase engagement with the broad range of groups affected by the ACCC's activities

- 4.1 implement a comprehensive strategy to ensure effective communication with our diverse audiences that supports our goals
- 4.2 undertake an active program of stronger and managed partnerships with a broad range of organisations that can assist delivery of outcomes that impact favourably on consumer welfare.

Program 1.2 AER

Goal 1. Maintain and promote competition in wholesale energy markets

- 1.1 monitor wholesale electricity and gas markets to ensure compliance and take enforcement action where necessary
- 1.2 apply a risk based approach to compliance and monitoring activities
- 1.3 publish information on energy markets, including the annual State of the energy market report.

Goal 2. Building consumer confidence in energy markets

- 2.1 monitor the performance of energy retailers and distributors in respect of their obligations under the Retail Law and provide comprehensive, clear and regular reporting on performance to inform consumers
- 2.2 encourage a culture of regulatory compliance by energy businesses through provision of clear information on our expectations and through effective and timely enforcement action when appropriate

¹ Although not listed in the PBS, the ACCC is reporting against this strategy in Part 3 to provide greater transparency in its performance reporting consistent with its corporate plan.

- 2.3 engage with consumers and their representatives to identify, develop and implement strategies to address the barriers to effective engagement by consumers in energy markets
- 2.4 further develop the Energy Made Easy website as the source of trusted information for consumers on the energy market, protections available to energy consumers and how to find the best retail energy offer for them.

Goal 3. Promote efficient investment in, operation and use of, energy networks and services for the long-term interests of consumers

- 3.1 deliver network regulation that promotes efficient investment in and operation of energy networks in the long-term interests of energy consumers
- 3.2 develop and implement guidelines and incentive schemes in accordance with the new framework for network regulation to enhance our regulation of monopoly infrastructure
- 3.3 improve data analysis techniques and metrics to inform regulatory decisions and disseminate relevant information to stakeholders to allow them to better engage in the regulatory process
- 3.4 participate in the further development of the regulatory regime to provide efficient incentives for demand side participation by energy suppliers and customers and develop appropriate schemes and guidelines for this purpose
- 3.5 encourage businesses to implement consumer engagement strategies that are effective for all customers.

Goal 4. Strengthening stakeholder engagement in energy markets and regulatory processes

- 4.1 further develop ways of engaging with energy consumers and their representatives, particularly through appropriate consumer consultative forums such as the Consumer Consultative Group and the Better Regulation Program Consumer Reference Group
- 4.2 prepare written communications that are clear and provide consumers with information they value and help them engage more effectively in regulatory processes. For example, through publication of issues papers to guide consumers on considering material issues
- 4.3 establish a Consumer Challenge Panel to provide expert advice on issues of significance to consumers within the regulatory process.

Program 1.1 and Program 1.2

Goal 5. Increase our effectiveness as an organisation through a commitment to our people, planning and systems

- 5.1 build organisational capability and knowledge sharing through well trained and supported people
- 5.2 promote a safe, healthy and respectful work environment for our people
- 5.3 streamline our management of projects to maximise the use of people, skills and experience
- 5.4 transform our specialist legal and economic services to increase the effectiveness of our operations
- 5.5 transform our corporate support services and systems to increase the effectiveness of our operations.

Program 1.1

ACCC

Goal 1: Maintain and promote competition and remedy market failure

Significant outcomes 2013-14

- NSK Australia Pty Ltd and Koyo Australia Pty Ltd were ordered to pay \$3 million and \$2 million respectively for cartel conduct relating to the price of bearings.
- Mitsubishi Electric Australia Pty Ltd was ordered to pay \$2.2 million for resale price maintenance relating to air conditioning products.
- Court determinations were made in the following matters:
 - Flight Centre Ltd—the Court ordered penalties totalling \$11 million for repeatedly attempting to enter into anti-competitive arrangements with three international airlines. The matter is under appeal.
 - ANZ Banking Group Ltd—the Court dismissed the ACCC's case relating to alleging price fixing in relation to loan arrangement services. The matter is under appeal.
 - Cement Australia Pty Ltd—the Court declared that the parties entered into anti-competitive agreements, while dismissing the ACCC's misuse of market power allegations. The matter is awaiting relief.
- We accepted court enforceable undertakings from Woolworths and Coles which address our concerns on shopper docket offers.

Our role and powers in promoting competition

Competitive markets lead to lower prices, better quality products and services, greater efficiency and more choice, all of which benefit consumers. As Australia's only competition regulator, we work to enhance the welfare of Australians by:

- maintaining and promoting competition
- addressing market failures.

We do so by enforcing Part IV of the *Competition and Consumer Act 2010* (the Act) in relation to:

- cartels and anti-competitive agreements
- misuse of market power
- exclusive dealing and resale price maintenance
- mergers which substantially lessen competition.

We assess proposed mergers to determine whether or not a merger will, or will be likely to, substantially lessen competition. Where a merger potentially raises competition issues, the ACCC will conduct either a public or a confidential review. We publish information about public reviews on a public register to inform the public, along with businesses and their advisers, about the process and the reasons for our decision.

The Act allows the ACCC to consider applications for authorisation and notifications, which enables some anti-competitive conduct to go ahead where the public benefit outweighs the public harm, including harm from reduced competition. The types of conduct we have allowed on public benefit grounds include collective bargaining, codes of conduct and joint ventures or alliances.

Compliance and enforcement tools

Court cases

The ACCC takes court action where, after considering everything, we see it as the best way to achieve our enforcement and compliance objectives. We are more likely to litigate where we see the conduct as particularly bad, we are concerned about likely future behaviour or where the party involved fails to resolve the matter satisfactorily.

Enforceable undertakings

The ACCC often resolves alleged breaches of the Act by accepting court enforceable undertakings from the business involved. In these undertakings, which we record on a public register, the business usually agrees to:

- make good the harm they have caused
- accept responsibility for their actions
- establish or review and improve their compliance programs and culture.

If the business later breaches the undertaking, we seek to have it enforced in the Federal Court of Australia.

The ACCC may also use court enforceable undertakings where we have competition concerns with a proposed merger or acquisition. A business may agree in an undertaking to action addressing concerns about a substantial lessening of competition, allowing the merger or acquisition to go ahead. These agreed actions appear on the public register.

Administrative resolution

In some cases—for example, where the ACCC assesses the potential risk as low—we may accept an administrative resolution. Administrative resolutions generally involve the business agreeing to stop the conduct, compensate those who suffered, and take other measures needed to prevent future recurrences.

Education and advice

The ACCC runs regular educational campaigns to inform and advise consumers and businesses about their rights and obligations under the Act, and to encourage compliance. We believe that preventing a breach of the Act is better than acting after a breach has occurred. Our campaigns aim to educate both big and small businesses.

The ACCC publishes targeted and general information, including tips and tools, to encourage businesses to comply with the Act. All information goes out via a wide range of channels. Additionally, we liaise extensively with business, consumer and government agencies about the Act and our role in its administration.

1.1 Stopping anti-competitive conduct

2013–14 Strategy:

Deliver outcomes to address harm to consumer welfare through anti-competitive conduct and improve competition under the priority areas identified in the ACCC's Compliance and Enforcement Policy.

Measures:

- Outcomes and impact of actions and policies to promote competition.
- Improved levels of effective competition and more informed and better functioning markets.

2014 compliance and enforcement priorities

The ACCC's Compliance and Enforcement Policy sets out priorities for the year and the factors we take into account when deciding whether to pursue matters. In February 2014, we released a revised policy, which continues to prioritise cartel conduct, anti-competitive agreements and misuse of market power because of their significant harm to consumer welfare and competition.

We also identified as priorities competition and consumer issues arising in highly concentrated sectors, in particular the supermarket and fuel sectors.

Our 2014 compliance and enforcement priorities for consumer protection are outlined on page 57.

Cartels

A cartel involves businesses agreeing with their competitors to fix prices, rig bids, share markets or restrict supply of products and services. By conspiring to control markets in these ways, a cartel protects and rewards its inefficient members while penalising honest, innovative and well-run companies.

The ACCC has extensive powers to investigate cartels. We can compel anyone to give us information about suspected cartels and, under warrant, search company offices and the homes of company officers.

Companies and individuals, including cartel participants, help us detect cartels. Participants reporting cartels can ask us for immunity from civil and criminal proceedings by self-reporting their involvement in a cartel under our Immunity Policy for Cartel Conduct.

Court cases

Following litigation by the ACCC, the Federal Court ordered penalties in two separate cases in 2013–14 for cartel conduct. Both concerned the price of bearings.

- In October 2013, the Court ordered, by consent, **Koyo Australia Pty Ltd** to pay \$2 million.
- In May 2014, the Court ordered, by consent, **NSK Australia Pty Ltd** pay \$3 million.

The Court found that, in 2008 and 2009, Koyo, NSK and one other bearing company, Nachi (Australia) Pty Ltd, agreed to increase the price of ball and roller bearings to their aftermarket customers. In both cases, the Court also made orders restraining them from engaging in similar conduct for a period of three years and requiring them to implement programs to ensure they comply with the Act.

More information appears in the case study on page 32.

In December 2013, the ACCC instituted proceedings in the Federal Court against **Colgate-Palmolive Pty Ltd**, **PZ Cussons Australia Pty Ltd**; a former sales director of Colgate, **Mr Paul Ansell**; and **Woolworths Limited** regarding alleged cartel conduct and anti-competitive arrangements in supplying laundry detergents. We alleged that Mr Ansell and Woolworths were knowingly part of the alleged arrangements.

In May 2014, the ACCC started Federal Court action for an alleged egg cartel attempt against: the **Australian Egg Corporation Limited** (AECL); **Mr James Kellaway**, its managing director; two egg producing companies, **Ironside Management Services Pty Ltd** trading as Twelve Oaks Poultry and **Farm Pride Foods Limited**; **Mr Jeffrey Ironside**, a director of AECL and Twelve Oaks Poultry; and **Mr Zelko Lendich**, a director of AECL and a former director of Farm Pride. The ACCC alleges that the parties attempted to induce egg producers who were members of AECL to enter into an arrangement to cull hens or dispose of eggs, for the purpose of reducing the egg supply to Australian consumers and businesses. The ACCC is seeking declarations, injunctions, financial penalties, compliance programs, publicity orders and disqualification orders against the three individuals named and costs.

At year's end, the ACCC had seven proceedings alleging cartel conduct before the courts.

Education and advice

In April 2014, we asked for public comment on the draft of a new Immunity and Cooperation Policy for Cartel Conduct and supplementary frequently asked questions. Condensing the policy into one document and developing the frequently asked questions followed targeted consultations in 2013. The key changes coming from public comment are:

- streamlining processes for granting civil and criminal immunity
- clarifying the criteria for assessing eligibility for immunity
- including more detail on how the ACCC will assess cooperation by second and subsequent parties to a cartel.

The updated policy will be released in the 2014–15 financial year.

The ACCC collaborates with international counterparts such as through the International Competition Network (ICN). In 2013–14, we presented at the ICN conferences and co-chaired the ICN Cartels Working Group. See *International partnerships and collaboration* on page 148 for more information.

Anti-competitive agreements

The Act bans contracts, arrangements or understandings between two or more parties which aim to, or are likely to, substantially lessen competition, even if that conduct does not meet the stricter definitions of other anti-competitive conduct such as cartels. In line with our published priorities, the ACCC is focusing on competition in concentrated market sectors. We are reviewing agreements in the fuel sector on sharing price information and agreements by major supermarket chains about fuel discount 'shopper dockets'. At year's end, we had two cases in court alleging anti-competitive agreements.

Court cases

In November 2013, the Federal Court dismissed the ACCC's case alleging price fixing by **ANZ Banking Group Ltd**. We alleged that Mortgage Refunds Pty Ltd and ANZ were competitors in the market for loan arrangement services. We alleged that ANZ engaged in price fixing by limiting the refund Mortgage Refunds could give customers for arranging ANZ home loans. The Court dismissed our allegations, finding that ANZ was not a competitor in the market for loan arrangement services. In December 2013, the ACCC appealed to the Full Federal Court against the decision. The appeal is ongoing.

Case study

Ball bearing cartel

Following an immunity application, we successfully investigated and prosecuted a cartel involving Australian subsidiaries of international ball bearing suppliers.

Their conduct affected the price of bearings used for aftermarket customers, including those maintaining and repairing motor vehicles as well as household and industrial machinery. From 2007 to 2011, the total value of bearing products imported into Australia by all manufacturers was approximately \$370 million to \$400 million per annum.

We uncovered a pricing plan agreed over dinner by senior Japanese executives living in Australia. They represented three bearings companies: NSK Australia Pty Ltd, Nachi (Australia) Pty Ltd and Koyo Australia Pty Ltd. The deal ran from at least 2000 to May 2011.

In 2013–14, we worked closely with counterparts in the United States, Europe and Canada to investigate the alleged cartel, subsequently taking legal action against NSK Australia and Koyo Australia for attempting to fix the price of ball bearings.

Both NSK Australia and Koyo Australia cooperated with the ACCC's investigation and consented to Federal Court penalties of \$3 million and \$2 million respectively for their involvement in the conduct.

Our action and the penalties imposed send a strong message to local and international businesses about how seriously Australia views cartel conduct.

The ACCC thanks other international competition agencies for their assistance during the investigation.

- In March 2014, the Federal Court ordered **Flight Centre Limited** to pay \$11 million for repeatedly attempting to enter anti-competitive arrangements with three international airlines. Flight Centre's conduct sought to eliminate differences in the international airfares offered to customers. In April 2014, Flight Centre filed an appeal relating to both the liability judgment and penalties imposed. In May 2014, the ACCC lodged a cross-appeal on the penalties imposed. The ACCC's cross-appeal will contend that four of the five penalties imposed do not provide adequate deterrence, given the Federal Court's findings on the nature of the conduct and the size and financial strength of Flight Centre.

In February 2014, the ACCC began separate actions in the Federal Court against **Coles Group Ltd** and **Woolworths Ltd** for allegedly breaching the court enforceable undertakings made to us regarding fuel shopper dockets. On 6 December 2013, we accepted court enforceable undertakings from Coles and Woolworths to voluntarily limit fuel discounts linked to supermarket purchases to a maximum of four cents per litre (see page 34 for more details). The ACCC alleged that:

- Coles had breached the undertaking as it offered a bundled discount of 14 cents per litre (10 + 4 cents), which was only available to a customer who had made a qualifying supermarket purchase, exceeding four cents per litre
- Woolworths had breached the undertaking as it offered a bundled discount of eight cents per litre (4 + 4 cents) which was only available to a customer who had made a qualifying supermarket purchase, exceeding four cents per litre.

In April 2014, the Federal Court found that Woolworth's initial 4 + 4 cent offer to 9 March 2014 had breached the undertaking as the discount depended on a supermarket purchase. However, the Federal Court dismissed the ACCC allegations against Coles and Woolworths that their recent offers had breached their undertakings as the discounts did not depend on the customer having made on a qualifying supermarket purchase.

Non-court matters

In December 2013, the ACCC accepted two separate court enforceable undertakings from **Woolworths Ltd**, and Coles Group Limited, Coles Supermarkets Australia Pty Limited and Eureka Operations Pty Ltd (together Coles) following an investigation into whether fuel saving offers were causing a substantial lessening of competition in retail fuel markets.

The undertakings state from 1 January 2014 **Coles** and **Woolworths** will not make or allow fuel discounts where those discounts are not funded wholly by the fuel subsidiary or division of Woolworths or Coles; or greater in amount than four cents per litre and contingent on purchase of goods or services at a store or business separate from the retail fuel outlet.

See the case study on our shopper dockets investigation on page 34 for more details.

Misuse of market power

A business with substantial market power in a market is not allowed to use this power for the purpose of eliminating or substantially damaging a competitor, stopping another business from entering a market, or to deter or stop another business from acting competitively in any market. Such behaviour is called 'misuse of market power' and is prohibited under the Act.

Court cases

In February 2014, the ACCC instituted proceedings against **Pfizer Australia Pty Ltd** for alleged misuse of market power and exclusive dealing regarding its supply of atorvastatin to pharmacies. Atorvastatin is a medication used to lower cholesterol. Pfizer's original brand of atorvastatin, Lipitor, was protected by patent until May 2012. The ACCC alleges that, in early May 2012, Pfizer offered significant discounts and rebates on sales of Lipitor, provided pharmacies bought a minimum volume of Pfizer's generic atorvastatin product. The case is ongoing, with the ACCC seeking financial penalties, declarations and costs.

Case study

Shopper dockets—short-term gains vs long-term pain

Since 2009, we have voiced concern about the long-term competition impact of fuel savings offers, known as shopper dockets, by the major supermarkets.

In early 2012, we began investigating whether the fuel savings offers of the major supermarkets were substantially lessening competition in markets for the retail sale of fuel. The increased frequency, duration and amount of the offers were a major issue.

Our investigation focused on the offers of Coles and Woolworths of discounts of eight cents per litre, which were made for long periods in 2012 and 2013. We were concerned that, while large shopper docket discounts might benefit customers in the short term, the discounts might harm other fuel retailers and over time reduce competition, driving up fuel prices.

We consulted many industry participants, including fuel retailers and wholesalers and industry associations, to assess the impact of shopper dockets on prices and competition.

On 6 December 2013, the ACCC accepted voluntary court enforceable undertakings by Coles and Woolworths to stop offering fuel discounts which they wholly or partly funded outside their fuel retailing businesses. From 1 January 2014, both Coles and Woolworths agreed to limit fuel discounts linked to supermarket purchases to a maximum of four cents per litre.

The ACCC accepted the undertakings because they addressed the main competition concerns quickly and efficiently. We welcomed the voluntary cooperation of Coles and Woolworths.

From January 2014, Woolworths continued to offer bundled fuel discounts of eight cents per litre and, in early February 2014, Coles began to offer bundled fuel savings of 14 cents per litre.

On 25 February 2014, the ACCC took Coles and Woolworths to court, alleging they had breached their voluntary undertakings.

In April 2014, the Federal Court found that Woolworths' earlier bundled discount of eight cents per litre breached its undertaking because the discount was only available to customers who had made a qualifying supermarket purchase. The Court dismissed two other allegations against Coles and Woolworths.

The undertakings continue to prevent Coles and Woolworths offering fuel discounts that are subsidised by their supermarket operations and to prevent both from bundling supermarket fuel offers greater than four cents per litre.

The ACCC remains concerned about fuel discount offers funded by non-fuel retailing operations and any other fuel discount offers above four cents per litre, which are conditional on purchases of goods or services (other than purchases at the petrol station). We will continue to assess any such offers and take appropriate action to deal with anti-competitive conduct.

Online markets

The ACCC continues to assess behaviour which affects competitive online markets. We are focusing on traditional bricks and mortar businesses that try to limit competition from new online entrants. This may include misuse of their market power, exclusive distribution arrangements and price control through resale price maintenance.

Concentrated markets

The Australian economy has a handful of markets with a relatively small number of suppliers. Given the risk that these suppliers could misuse their power to prevent or damage competition, the ACCC closely monitors their behaviour. Competition and consumer issues in highly concentrated markets, in particular in the supermarket and fuel sectors, remain a priority area for the ACCC.

Other work promoting competition

Resale price maintenance

A supplier may recommend that resellers charge an appropriate price for particular goods or services but cannot stop them charging or advertising below that price. It is illegal for suppliers to pressure resellers to charge their recommended retail price or any other set price, for example, by threatening to stop supply, or to stop resellers from advertising, displaying or selling the goods below a specified price. In most cases, a supplier may, however, specify a maximum price for retail.

Where resellers are concerned, it is illegal for them to ask suppliers to use recommended price lists to stop competitors from discounting. Resale price maintenance restricts businesses from competing on price, which is anti-competitive regardless of its impact on competition. Section 48 of the Act specially prohibits resale price maintenance. However, where it would benefit the public, businesses can apply for authorisation from the ACCC.

Court cases

In December 2013, the Federal Court ordered, by consent, **Mitsubishi Electric Australia Pty Ltd** to pay a \$2.2 million penalty for resale price maintenance on Mitsubishi branded air conditioning products. The Court found that, three times between 2009 and 2011, Mitsubishi Electric had induced or tried to induce the dealer Mannix Electrical Pty Ltd not to sell Mitsubishi Electric branded air conditioning products at prices below a minimum specified price. It also found that Mitsubishi Electric had reduced the discounts Mannix Electrical received by terminating the latter's 'dealer' status for not complying with those minimum prices.

Non-court cases

In April 2014, the ACCC accepted a court enforceable undertaking from **Peter McInnes Pty Ltd** regarding resale price maintenance. Peter McInnes is an importer and wholesale distributor of KitchenAid kitchenware to retailers. The ACCC was concerned that Peter McInnes had engaged in conduct that constitutes or is likely to constitute resale price maintenance, on four occasions, by inducing or attempting to induce retailers not to sell KitchenAid stand mixers at a price less than the recommended retail price specified by Peter McInnes. Peter McInnes undertook to not engage in similar conduct for two years, write to all customers advising they were free to set their own prices, and implement and maintain a compliance program.

1.2 Assessing mergers to maintain competition

2013–14 Strategy:

Assess and review mergers to prevent structural changes that substantially lessen competition with a particular focus on concentrated and emerging markets and markets of significance to the Australian economy.

Measure:

- Prevention of structural change in markets (particularly concentrated markets, emerging markets and markets of significance to the Australian economy) that substantially lessens competition.

Informal clearance and pre-assessments

Section 50 of the Act prohibits mergers and acquisitions that substantially lessen competition in any market in Australia or are likely to do so. The 'informal clearance' process enables merger parties to seek the ACCC's view on whether a proposed acquisition is likely to have the effect of substantially lessening competition. There is no legislation underpinning the informal process; rather, it has developed over time to provide an avenue for merger parties to seek the ACCC's view prior to completion of a merger. Businesses may also apply to the ACCC for formal clearance of mergers.

The ACCC considers those mergers coming to our attention that potentially raise concerns under s. 50. Such mergers are generally flagged by the merger parties who request an informal clearance. Alternatively, the ACCC may become aware of a proposal, or a completed acquisition, through monitoring of media reports, from complaints or through referrals from Australian and overseas regulators.

For each merger considered, the ACCC uses the information available to determine whether a public review is required. Where we are satisfied that there is a low risk of a substantial lessening of competition, we may decide that a public review of the merger is unnecessary. These mergers are described as being 'pre-assessed'. Both public and confidential mergers can be pre-assessed, without market inquiries, on the basis of the information from the parties and other information before us.

Pre-assessment enables the ACCC to respond quickly where there are no substantive competition concerns. A significant proportion of the mergers we assess are pre-assessed.

Where pre-assessment is not applicable, the ACCC conducts a public review or, in the case of confidential mergers, discusses with the merger parties whether they want to proceed to a confidential review.

Merger reviews

The ACCC considered 297 matters under s. 50 of the Act in 2013–14. Of these, 242 were assessed as not requiring a public review (pre-assessed), an increase of 14 per cent on the 213 pre-assessments in 2012–13. The ACCC conducted a public review of 48 mergers and a confidential review of seven, a decrease of 25 per cent on the 64 public reviews and 42 per cent on the 12 confidential reviews in 2012–13.

In September 2013, the ACCC published revised the *Informal Merger Review Process Guidelines*. The revised guidelines reflect important recent developments in our approach to merger reviews, as well as incorporating changes to improve efficiency and transparency.

In reviewing mergers, we aim to work efficiently, transparently and effectively, taking account of the commercial needs of the parties involved. We also seek to inform the public, businesses and their advisers about the merger review process. We publish indicative timelines for mergers under public consideration in our online mergers register, except for mergers which are pre-assessed or subject to a confidential review.

Of the 55 public and confidential reviews conducted in 2013–14:

- 4 mergers were publicly opposed by the ACCC
- confidential opposition or concerns were expressed in 2 mergers
- 10 mergers were allowed to proceed after the ACCC accepted court enforceable undertakings under s. 87B of the Act to address competition concerns
- 2 merger reviews were either withdrawn by the parties before a decision could be made, or were confidential matters where no view could be formed without market inquiries
- 36 were not opposed and no undertakings were sought
- in 1 merger we accepted a requested variation to an existing undertaking.

The ACCC unconditionally cleared 65 per cent of those mergers that underwent a public or confidential review and 94 per cent of all mergers (including pre-assessments). In 11 matters we used our formal information-gathering powers under s. 155.

Statements of issues

The ACCC releases a 'statement of issues' when we reach a preliminary view that a merger raises competition concerns requiring further investigation. Our aim is to make the informal review process more transparent and obtain further information. After public consultation on a statement of issues, we may decide our concerns are valid and, where competition concerns remain, may consider any undertakings by the merger parties to resolve them. In 2013–14, we issued statements of issues in 10 mergers, publishing all statements on our online mergers register.

Public competition assessments

The ACCC helps the public to understand our analysis of the competition issues involved in certain merger reviews by issuing a 'public competition assessment'. The assessment provides a detailed summary of the issues we considered in deciding whether the merger would, or would be likely to, substantially lessen competition. We generally prepare and publish a public competition assessment on our online mergers register when:

- we oppose a merger
- a merger is subject to enforceable undertakings
- the parties to the acquisition seek the disclosure
- a merger is cleared but raises important issues that we consider should be made public.

In 2013–14, the ACCC issued public competition assessments in 10 mergers which included:

- Heinz's proposed acquisition of Rafferty's Garden
- Virgin Australia Holdings Limited's proposed acquisition of Tiger Airways Australia Pty Ltd
- Sonic Healthcare Limited's proposed acquisition of the pathology businesses of Healthscope Limited in Queensland, Western Australia and the Australian Capital Territory

Case study

ACCC opposes energy sale

Based on concerns of a substantial lessening of competition occurring in the New South Wales retail electricity market, on 4 March 2014 we opposed the proposed acquisition of Macquarie Generation by AGL following an informal merger review.

Macquarie Generation, a state-owned corporation, was offered for sale as part of the broader privatisation of electricity generation assets by the New South Wales Government. The key assets of Macquarie Generation included the Bayswater and Liddell power stations, respectively the second and fourth largest power stations in Australia. Macquarie Generation accounts for 27 per cent of New South Wales' electricity generation capacity and is the largest generator in the National Electricity Market.

AGL is one of Australia's three major energy retailers.

The proposed acquisition would result in:

- one of the three largest retailers in New South Wales owning the state's largest electricity generator
- the three largest retailers in New South Wales having a combined share of 70 to 80 per cent of electricity generation capacity or output.

We considered that other energy retailers would have difficulty entering or expanding in the New South Wales retail electricity market following the proposed acquisition. This was because the ACCC formed the view that the proposed acquisition would be likely to result in a significant reduction in both hedge market liquidity and the supply of competitively priced and appropriately customised hedge contracts to second tier retailers competing in NSW. Hedge contracts are required by non-vertically integrated electricity retailers in order to allow them to effectively compete in electricity retail markets. The ACCC was also concerned that post-acquisition, AGL would become the largest electricity generator in New South Wales, Victoria and South Australia.

After we opposed the proposed acquisition, AGL applied to the Australian Competition Tribunal for authorisation on 24 March 2014. In merger authorisation determinations, the Tribunal must apply a public benefit test under s. 95AZH of the Act. This differs to reviews under s. 50 of the Act where a substantial lessening of competition test is applied.

The role of the ACCC in the Tribunal process is to assist the Tribunal. This includes making inquiries, calling and examining witnesses, making submissions to the Tribunal, and preparing a report for the Tribunal. In its report, the ACCC expressed the view that the proposed acquisition was likely to result in consumers ultimately paying more for electricity, receiving lower quality service and being offered less choice.

On 25 June 2014, following an eight-day hearing, the Tribunal granted conditional authorisation to AGL after concluding that the proposed acquisition would result in such public benefit that it should be allowed to occur.

The Tribunal imposed conditions on its authorisation. The conditions place an obligation on AGL to offer not less than 500 MW of electricity hedge contracts to smaller retailers in New South Wales per year for a period of seven years.

The Tribunal did not agree with the ACCC's position, finding that the proposed acquisition was unlikely to lead to any substantial detriment in New South Wales arising from a lessening of competition in the electricity retail or wholesale markets. The Tribunal also found that there were significant public benefits in allowing the state government to privatise the relevant assets and use the sale proceeds for public infrastructure spending.

- Woolworths Limited's proposed acquisition of a supermarket site at Glenmore Ridge Village Centre
- Woolworths Limited and Lowe's Companies Inc's (JV) proposed acquisition of G Gay & Co hardware stores.

Section 87B undertakings

In 2013–14, the ACCC accepted 10 s. 87B undertakings to address competition concerns. Examples include:

- Baxter's proposed acquisition of Gambro AB
- Westfield Group and Westfield Retail Trust's proposed acquisition of Karrinyup Shopping Centre
- Gallagher Group's proposed acquisition of Country Electronics Pty Ltd
- BlueScope Steel Limited's proposed acquisition of OneSteel Sheet and Coil business from Arrium Limited
- MIRRAT's proposed acquisition of a long-term lease of the automotive terminal at the Port of Melbourne
- Peregrine Corporation's proposed acquisition of 25 BP Australia petrol retail sites in South Australia
- Caltex Australia Petroleum Pty Ltd proposed acquisition of the fuel division of Scott's Group.

Public s. 87B undertakings are summarised in appendix 8 on page 331.

Concentrated markets

In 2013–14, the ACCC focused on mergers in concentrated and emerging markets and markets significant to the Australian economy. Some of the public reviews we conducted during the year are detailed below.

BlueScope Steel Ltd—proposed acquisition of Orrcon Steel from Hills Holding Limited

(not opposed). The ACCC considered publicly available data, feedback from industry participants and information provided by BlueScope and Orrcon. All indicated that, after the proposed acquisition, alternative domestic manufacturers and imports would continue to be significant alternatives for the supply of pipe and tube inputs/products in Australia.

Perpetual Limited—proposed acquisition of The Trust Company (not opposed after accepting an s. 87B undertaking to divest a 13.4 per cent shareholding in competitor, Equity Trustees Limited). The merger would aggregate Perpetual and The Trust Company, two of the largest providers of trust services in Australia. However, the ACCC noted that the merged entity would continue to face competition in each trust services market from other existing suppliers, the threat of entry by new competitors and/or expansion in the offering of existing competitors. For some trust services, the merged entity would also be constrained by their corporate customers, who may provide the relevant services in-house or sponsor a new entrant if they are unhappy with price or service levels. The s. 87B undertaking, which required Perpetual to divest Trust Company's entire shareholding in Equity Trustees, addressed the ACCC's concerns about the competition effects of Perpetual also obtaining a shareholding in another important competitor.

Woolworths Ltd—proposed acquisition of Supa IGA Supermarket in Hawker, Australian Capital Territory

(not opposed). The ACCC concluded that the proposed acquisition would result in less competition in the local market, but that it was insufficient to reach the threshold of a substantial lessening of competition required to establish a breach of s. 50 of the Act. The ACCC found that the strongest competitor to the Hawker Supa IGA was Coles at Jamison. The ALDI supermarket at Jamison was also used by some customers to

Case study

Undertaking resolves competition concerns—Thermo Fisher Scientific Inc.—proposed acquisition of Life Technologies Corporation

The ACCC did not oppose the proposed acquisition of Life Technologies Corporation by Thermo Fisher Scientific Inc. after competition concerns were resolved by an undertaking given by Thermo Fisher to the ACCC.

At the time of the ACCC's review, Thermo Fisher and Life Technologies were both global companies operating in the life sciences sector. Both competed to supply products in the molecular biology, protein biology and cell culture sectors.

We were concerned that Thermo Fisher's proposed acquisition of Life Technologies would be likely to substantially lessen competition. At risk was competition in the supply of certain cell culture products, which are used to grow cells for academic research and vaccine production, and of siRNA (a specialised molecular biology product used to effect gene silencing) to Australian customers.

Thermo Fisher gave the ACCC a remedy undertaking under s. 87B of the Act to sell off its Australian cell culture and siRNA businesses. The undertaking complemented Thermo Fisher's remedy offered to the European Commission to sell its global cell culture and siRNA businesses.

While Thermo Fisher's offer to the European Commission provided for independent oversight of their global divestiture, its undertaking to the ACCC required the appointment of an Australian-based independent manager for the Australian cell culture business to transition the business to the approved purchaser. This was considered necessary as cell culture products sourced from Australia are premium products, and the Australian cell culture business is central to the overall global business.

Given the global nature of the companies' businesses and the supply links between those businesses in Australia and overseas, the ACCC liaised with relevant overseas competition authorities in reviewing the proposed acquisition and undertaking. We worked closely in particular with the European Commission, the New Zealand Commerce Commission and the United States Federal Trade Commission.

complement their main grocery shop. While there were existing Woolworths supermarkets at Kippax and Westfield Belconnen, customer surveys commissioned by the ACCC showed that they were not as close substitutes for the Hawker Supa IGA as the Jamison supermarkets. Therefore after the proposed acquisition, Woolworths would replace the Supa IGA at Hawker and compete most closely with Coles and ALDI at Jamison. Further, the customer surveys showed that, while customers valued non-price aspects of the Hawker Supa IGA, they were not enough to attract customers from adjacent suburbs.

Insurance Australia Group Ltd (IAG)—proposed acquisition of Wesfarmers’ insurance underwriting business (not opposed).

The ACCC public review focused upon the specific markets in Australia where IAG and Wesfarmers both underwrite insurance products. The areas of overlap included home and contents insurance, domestic motor insurance and commercial insurance such as heavy vehicle insurance and rural insurance. The ACCC also examined how the proposed acquisition might affect competition for acquiring key related inputs by insurers, particularly smash repair and windscreen repair/replacement services. Although IAG and Wesfarmers are respectively the first and fifth or sixth-largest general insurers in Australia, and the largest suppliers of rural insurance products, the ACCC considered that existing and potential competition would continue to constrain the merged firm.

Sonic Healthcare Limited—proposed acquisition of assets of Delta Imaging Group

(opposed). The ACCC concluded that the proposed acquisition of the assets of Delta Imaging (in liquidation) would be likely to substantially lessen competition in the market for the supply of MRI services in Newcastle and Maitland. Delta Imaging operated two radiology practices in Maitland and Newcastle, providing general diagnostic imaging and MRI services. Delta Imaging also had two Medicare-funded MRI units which operated from its Newcastle practice. The proposed acquisition would have prevented an alternative acquirer from acquiring the Delta Imaging assets through the liquidation process and operating them in competition with Sonic. This would have removed a significant competitive constraint on Sonic by making it the only supplier of Medicare-eligible MRI services in Newcastle and Maitland outside of the public hospital system.

The ACCC also concluded that the proposed acquisition would substantially lessen competition in the market for the supply of general diagnostic imaging services in Maitland. The proposed acquisition would result in Sonic being one of two private radiology companies that supply general diagnostic imaging services in Maitland, with Sonic operating four out of five radiology practices. The general diagnostic imaging market in Maitland was already highly concentrated before the proposed acquisition. As with the MRI services, the ACCC was concerned that the proposed acquisition would prevent an alternative acquirer of the Delta Imaging assets from operating the assets in competition with Sonic, and give Sonic the ability to increase prices for services such as X-ray, CT scans and ultrasounds.

Westpac Banking Corporation—proposed acquisition of the assets of Lloyds International Pty Ltd (not opposed).

Westpac (through its subsidiary St George) and Lloyds (through Capital Finance Australia Limited) primarily competed in providing bailment (‘floor plan’) finance and point-of-sale finance to motor vehicle dealerships. The ACCC found that Westpac would still face competition from remaining manufacturer-aligned and non-aligned financiers and that the proposed acquisition was unlikely to substantially lessen competition in any market.

1.3 Authorisations and notifications to allow arrangements in the public interest

2013–14 Strategy:

Make decisions on authorisation and notification applications and merger reviews thoroughly and efficiently and give clear guidance to merger parties, authorisation and notification applicants, and market participants.

Measures:

- Outcomes and impact of actions and policies to promote competition.
- Improved levels of effective competition and more informed and better functioning markets.
- Prevention of structural change in markets (particularly concentrated markets, emerging markets and markets of significance to the Australian economy) that substantially lessens competition.

Authorisations and notifications

The Act primarily aims to prevent conduct that damages, or is likely to damage, competition. However, if competitive markets are not working efficiently and failing to maximise consumer welfare, allowing some restrictions on competition may be in the public interest. Under the Act, the ACCC can give anti-competitive conduct legal protection when the public benefit outweighs the public detriment, including from any lessening of competition. Depending on the type of conduct, businesses may apply for an 'authorisation' or submit a 'notification' to the ACCC.

We can authorise conduct that contains:

- anti-competitive arrangements, including cartel provisions (such as price fixing, controlling output or sharing markets) and exclusionary provisions (such as an agreement to limit or restrict the supply or acquisition of goods or services to particular people)
- disclosures of pricing and other information
- a secondary boycott, where two or more parties prevent a third party such as a potential customer or supplier from doing business with a target
- exclusive dealing, which occurs when a person trading with another imposes restrictions on the other's freedom to choose with whom, in what or where they deal
- resale price maintenance where the supplier specifies a minimum price below which goods or services may not be resold
- dual-listed company arrangements that affect competition.

Notification procedures are usually more streamlined than authorisations but are only available for:

- collective bargaining when two or more competitors get together with a supplier or a customer to negotiate terms, conditions and prices
- exclusive dealing
- private price disclosures to competitors outside the ordinary course of business.

Both notification and authorisation processes are public. We publish the applications, public submissions and ACCC decisions on the public register on our website.

Authorisation applications

In assessing the likely public benefit and harm of conduct the subject of an authorisation application, the ACCC consults with the public, publishing submissions on the public register, unless confidentiality is requested. After considering submissions, we issue a draft decision, which the applicant and interested parties can discuss with us in a conference. We then reconsider the application in light of any further submissions and release our final decision.

During 2013–14, the ACCC issued 36 final authorisation decisions, excluding minor variations, for arrangements involving a wide range of industries. Among them were agriculture, manufacturing, health care, energy, airlines, finance, waste services and retailing. Applicants sought authorisation for conduct such as collective bargaining, industry codes of practice, industry levies, joint tender processes and other price or fee agreements. The case study on page 44 illustrates one such application.

Other authorisations

Virgin Australia and Air New Zealand (authorised subject to conditions for five years). The ACCC considered that the trans-Tasman alliance was likely to continue to result in material public benefits in the form of enhanced products and services (particularly through new frequencies) and the promotion of competition on the trans-Tasman routes. In addition, the ACCC considered that the alliance is likely to continue to result in small public benefits in the form of cost savings and efficiencies and the stimulation of tourism. Although the ACCC considered that the alliance is unlikely to reduce competition on most of the trans-Tasman routes, it was concerned that the alliance may affect competition on the routes between Christchurch–Melbourne and Christchurch–Brisbane; Wellington–Brisbane; Queenstown–Brisbane; Auckland–Gold Coast; and Dunedin–Brisbane. To address these competition concerns, the ACCC imposed conditions requiring Virgin Australia and Air New Zealand to maintain aggregate base capacity across these routes. Rather than prescribe a minimum growth factor for these routes, the ACCC considered it appropriate to review the airlines' capacity additions in light of actual demand growth over the next two years. This review will commence on 1 September 2015.

AgStewardship Australia Limited (authorised for five years). The authorisation allows AgStewardship, its members, Agsafe Limited and current and future participants to charge a four cent per litre/kilogram levy on the sale of agricultural and veterinary (AgVet) chemicals. The levy is passed on to end-users and funds the drumMUSTER® and ChemClear® programs for the collection and disposal of unwanted, empty AgVet chemical containers and chemicals. We considered that the programs are likely to produce significant environmental and efficiency benefits, particularly as program participation, and the number of drum collections, have increased since our 2009 authorisation.

Clean Energy Council Limited (authorised for five years). The Clean Energy Council's voluntary code of conduct covers the marketing and sale of solar photovoltaic (PV) systems. The code imposes standards on retail businesses that are additional to their existing obligations under consumer protection legislation. The ACCC decided that the code would promote confidence and consumer protection in the PV sector, and improve retailer standards and compliance through sanctions and public reporting.

Case study

Credit card coordination on mandatory PIN rules

Card payment providers such as Visa, MasterCard and American Express can independently decide whether to allow signatures or PINs as a method of authentication for card transactions without ACCC approval.

However, coordination between the card schemes and financial institutions in relation to the removal of signatures for most credit card transactions that are completed in person could breach the Act and as such they sought authorisation, which we granted in late December 2013.

We considered that a coordinated approach and a single message from industry were likely to lead to some efficiencies and less confusion for customers and merchants. Reduced competition more broadly is unlikely, as the card schemes will still compete on fees and all other products and services.

Coordination between the card schemes is also likely to lead to the earlier implementation of mandatory PIN at point-of-sale. Throughout our assessment, the card schemes and financial institutions kept us informed of their plans to engage with merchants and consumers on the proposed changes. Some financial institutions advised that, while PINs will be mandatory for most transactions, some consumers will be able to receive cards allowing them to sign for purchases if they are able to demonstrate that they are unable to use a PIN.

The ACCC granted authorisation until 30 June 2015.

Australian Society of Ophthalmologists Incorporated (authorisation denied). The Society sought authorisation to reach agreements within shared practices on the fees for ophthalmic services. The ACCC considered this was likely to result in higher prices for consumers given the small number of competitors in many geographic areas, the lack of alternatives for many ophthalmic services and the difficulties new providers face in getting established.

We considered that fee setting was likely to significantly reduce price competition as, instead of competition occurring between individual ophthalmologists, it would only occur between the relatively small number of shared practices in a region. The majority of benefits that the Society claimed arose from the operation of shared practices, in which most ophthalmologists already participated. We therefore saw the benefits from fee agreements as unlikely to outweigh the detriments.

Exclusive dealing notifications

Most exclusive dealing conduct breaches the Act only when it substantially lessens competition, although third line forcing, a type of exclusive dealing, is prohibited regardless of its impact on competition. Third line forcing involves supplying goods or services only if the buyer also acquires certain goods or services from a third party.

Businesses proposing exclusive dealing arrangements that provide public benefits can lodge a notification with the ACCC to protect them from legal action under the Act. A notification gives automatic legal protection from the lodgment date, or after 14 days in the case of third line forcing, and protection remains in place unless revoked by the ACCC. We can review the public benefit and harm from a notification at any time.

The ACCC may revoke protection for third line forcing if satisfied that the public detriment outweighs the public benefit. To revoke protection for other types of exclusive dealing, we must be satisfied that the conduct is likely to substantially lessen competition and that the public detriment outweighs the public benefit.

The ACCC received and assessed more than 720 exclusive dealing notifications involving 503 separate matters in 2013–14, 23 per cent more than the previous year.

During 2013–14, we consulted interested parties about a range of exclusive dealing notifications, including those covered in the case study and examples on page 46.

Port Hedland Port Authority (notification not opposed). The notification lodged by the Authority requires all vessels entering and exiting the port (other than small craft such as fishing vessels) to use an Authority-licensed towage service provider. To date, the Authority has only licensed BHP Billiton Minerals Pty Limited (BHP). Following consultation with interested parties and the ACCC, the Authority agreed to facilitate opportunities for additional towage service providers at the port.

The ACCC considers that competition in towage services through an additional licence should improve service quality, efficiency and price. To ensure that competition begins as soon as possible, the appointment of an additional towage service provider must be managed in a genuine, transparent and timely way. The Authority has agreed to regularly update the ACCC on the expression of interest and appointment process.

Qube Logistics (Vic) Pty Ltd & Ors (notifications not opposed). Qube provides handling, cleaning, maintenance and storage services for empty shipping containers, and access to container transport operators picking up or dropping off empty containers. Under two third line forcing notifications, Qube will allow access to its container parks provided container transport operators use an online booking system administered by Containerchain Pty Limited.

Case study

Undertaking protects customers in solar energy deal

By giving an undertaking to the ACCC which protects consumers, a company addressed the ACCC's concerns with its notification and gained legal protection for third line forcing.

In October 2012 and March 2013, Jasmin Solar lodged third line forcing notifications proposing to supply discounted solar panel systems in Queensland so long as customers use Diamond Energy as their energy retailer. Customers sign on for 16 years.

During sunny daylight hours customers can consume energy free of charge under the notified arrangement up to the amount generated by their solar panel system. However, they must use Diamond Energy as their energy retailer for:

- all energy consumed over that generated by their solar panel system during the day
- all energy consumed outside productive daylight hours, such as during the evening and night.

Aside from the upfront outlay, the customer effectively pays Jasmin Solar for the solar panel system by redirecting income generated by the system to Jasmin Solar. This income includes Feed-in Tariff payments generated throughout the 16-year term as well as the one-off Small-scale Technology Certificates payment.

On 4 September 2013, we accepted an s. 87B undertaking from Jasmin Solar and Diamond Energy. It ensures that the retail electricity prices charged to Jasmin Solar's customers reflect the prices charged to other customers with solar panel systems in the same geographic region. That way, Jasmin Solar's customers will not have to pay excessive prices for additional electricity that they must purchase from Diamond Energy. The undertaking also protects consumers from paying a termination fee if their solar system fails within a warranty period, unless they contributed to the failure.

With the undertaking in place, we are satisfied that the likely benefits from the third line forcing arrangement by Jasmin Solar will outweigh the likely public detriment.

Interested parties were generally supportive of the Containerchain solution and advised that there were fewer queues and fewer futile trips at the Port of Melbourne following its implementation. The ACCC also noted that government and industry broadly support the use of such scheduling systems at empty container parks. The ACCC considered that greater public benefits would result from the use of Containerchain than if Qube developed its own alternative booking system.

Collective bargaining arrangements

There are two ways that businesses can seek protection under the Act for collective bargaining arrangements:

- by lodging a collective bargaining notification, which protects against legal action for small business arrangements 14 days after lodgment. Protection will, however, end after three years
- by lodging an application for authorisation where legal protection begins if and when the ACCC grants authorisation. There is a six-month time limit for the ACCC to consider all new applications for authorisation. For small business collective bargaining a streamlined authorisation process is available, where we agree to issue a draft determination within 28 days and a final determination in three months. The ACCC can give protection under an authorisation for longer than three years depending on the circumstances.

In 2013–14, the ACCC issued 13 determinations authorising collective bargaining arrangements. There were no collective bargaining notifications allowed during the year. The arrangements we considered during the year involved clubs, lottery agents, interpreter services, medical services, office supplies, wagering and coal handling and supply. We detail some below.

Clubs Australia Incorporated (authorisation granted for five years). Clubs Australia sought authorisation to collectively bargain for current and future members with suppliers of major goods and services to registered clubs across Australia. The clubs submitted that suppliers, including wagering, energy and insurance companies, often presented clubs with standard form contracts and gave them little opportunity for negotiation. The ACCC considered that collective bargaining was likely to deliver transaction cost savings for clubs and suppliers and provide clubs with more effective input into contracts. Any potential harm would be limited—all parties can choose whether or not to participate in collective negotiations, and suppliers have a range of alternative customers for their goods and services.

Queensland Newsagents Federation (QNF) (authorisation granted for five years). The ACCC considered that collective bargaining by QNF members with Tatts Group (including Golden Casket) over the terms of lottery agency agreements should produce more efficient agreements. Authorisation will give Queensland lottery agents who are newsagents a choice of bargaining group because the ACCC has previously authorised Lottery Agents Queensland (LAQ) to represent all Queensland lottery agents. The ACCC considered that all Queensland lottery agents will have access to a better and more diverse offering of bargaining services, and newsagent lottery agents choosing not to join LAQ will have better representation.

Australian Wagering Council Limited (AWC) (notifications withdrawn after draft objection notice was issued). The AWC, on behalf of Bet365, Centrebet, Betstar, IASBet.com, Sportingbet, Sportsbet, Tomwaterhouse.com, UNIBet, Betfair, and Ladbrokes proposed to collectively bargain about the terms on which the sports betting companies acquire the rights to offer wagering services on NRL events. The AWC also proposed arrangements that would allow the group to agree only to negotiate with the NRL through the AWC, or to

collectively refuse to deal with the NRL, which would constitute a collective boycott. The NRL is the sole supplier of the rights to offer wagering services on its events. Betting agencies typically share a percentage of their revenue from such wagering with the NRL.

The ACCC has always recognised that collective bargaining arrangements can be mutually beneficial when participation is voluntary on both sides of the negotiating table. In this case, however, the ACCC was not satisfied that collective bargaining would produce public benefits. In particular, we did not consider that the AWC was in a weak position to negotiate with the NRL, nor did any information from the AWC suggest that the current arrangements caused inefficiencies or other public detriments. Moreover, collective bargaining could facilitate coordination between the betting companies, which could impact competition. In the event of a collective boycott, the NRL would be unable to negotiate with individual betting agencies.

The ACCC therefore issued a draft objection notice which prevented the legal protection from commencing. The AWC subsequently withdrew the notifications.

Other work assessing the public interest

Under the *Trade Marks Act 1995*, the ACCC has responsibilities for assessing Certification Trade Marks. Our role involves assessing rules for use of certification trade marks including:

- assessing the requirements that goods/services/persons must meet in order to be eligible to use a Certification Trade Mark, and assessing the proposed process by which compliance with certification requirements will be judged
- examining the rules to ensure they are not anti-competitive, misleading or deceptive.

One of the Certification Trade Mark rule assessments we made is detailed below.

Australian Made Campaign Ltd (ACML) (variation of Australian Made, Australian Grown rules approved). The owners of the well-known and widely used Australian Made, Australian Grown Certification Trade Mark (a gold kangaroo in a green triangle) sought to vary the rules for the use of the mark. One proposed change was to list production processes that would *not* be accepted as constituting the 'substantial transformation' in Australia needed for a product to qualify for the mark. The AMCL wished to rule out for example, bottling, mincing and pickling. When assessing variation applications, the ACCC must be satisfied that the amended rules would not cause public harm and would be in line with competition and consumer protection principles. The ACCC invited submissions on the rule variation from interested groups and individuals, including more than 1800 licensees that use the mark. After assessing submissions the ACCC approved the variation.

1.4 Improve the workability of emerging markets

2013–14 Strategy: *Improve the workability of emerging markets by advising on and enforcing industry-specific rules and monitoring market outcomes.*

Measure:

- Improved levels of effective competition and more informed and better functioning markets.

Improving competition and consumer outcomes online

The online environment offers consumers more choice—more products, competitive prices and detailed information. However, the ACCC is concerned that this choice is being eroded by various practices and conduct which look to limit consumer choice and in some cases restrict competition.

Concerned about these issues and practices emerging in online retailing, the ACCC ran a project to research and understand in-depth online competition and consumer issues. These issues include:

- conduct aimed at keeping new players out of the market or reducing the ability of smaller players to compete
- consumer issues unique to the online sector and supply chain
- issues that have been evident in traditional markets, but are exacerbated or exaggerated online due to the nature of the online environment
- emerging market issues such as m-commerce and fake online reviews.

Some issues, such as price discrimination and other competitive restrictions, whilst not prohibited by the Act, nevertheless potentially limit consumers choice and the ability of retailers to compete freely.

Our project encompassed research and industry engagement, education and awareness raising, monitoring international developments and identifying enforcement matters.

This work informed our approach to our input to the IT pricing inquiry (reference), and work with international competition and consumer agencies. It has also helped in our actions against emerging practices which harm competition or consumers such as group buying practices (reference) and drip pricing (reference).

Enforcement cases identified during the research phase are now under investigation or have been resolved using the ACCC's enforcement tools.

Our in-depth understanding of the issues and challenges involved placed us well to address them in our submission to the Harper review.

Measures and performance for Goal 1: Maintain and promote competition and remedy market failure

Measures—Goal 1

- Outcomes and impact of actions and policies to promote competition.
- Improved levels of effective competition and more informed and better functioning markets.
- Prevention of structural change in markets (particularly concentrated markets, emerging markets and markets of significance to the Australian economy) that substantially lessens competition.

Performance indicators

Our performance and the results we achieve are described in detail throughout the report on performance. In this section we provide a short summary and some highlights of our performance in relation to competition, including merger and authorisation matters.

1. Outcomes and impact of actions and policies to promote competition

- 200 initial investigations in competition matters.
- 56 in-depth investigations into competition matters.
- Eight competition cases were instituted.
- Successful outcomes in five cases.
- Penalties awarded totalling \$18.2 million.
- Three competition related court enforceable undertakings were accepted.

2. Improved levels of effective competition and more informed and better functioning markets

In determining 36 authorisation applications within statutory time frames, the ACCC improved the level of effective competition and stimulated more informed and better functioning markets across a range of industries, for example, by:

- facilitating small business collective bargaining to enable more efficient and informed negotiation outcomes
- enabling industry codes of conduct to address market failures
- enabling the operation of product stewardship schemes to more efficiently deal with product waste.

3. Prevention of structural change in markets (particularly concentrated markets, emerging markets and markets of significance to the Australian economy) that substantially lessens competition

- during 2013-14, the ACCC considered 297 mergers. All mergers were assessed in accordance with published guidelines
- 242 were pre-assessed as not requiring a public review. Public reviews of 48 mergers were conducted
- to prevent structural change in markets that would substantially lessen competition the ACCC accepted undertakings to remedy competition concerns in 10 of the mergers considered and opposed four transactions outright.

Goal 2: Protect the interests and safety of consumers and support fair trading in markets

Significant outcomes 2013–14

- Received payment for 23 infringement notices across eight matters.
- Received an additional \$2.65 million against three companies in respect of door-to-door energy sector.
- Successfully appealed a Federal Court decision, resulting in the High Court reinstating a \$2 million penalty against TPG Internet regarding its misleading unlimited ADSL2+ advertising campaign.
- Encouraged greater compliance and sent strong deterrence messages securing over \$12 million in penalties and other remedies, under the Australian Consumer Law.
- Secured a \$3 million penalty against Hewlett-Packard for misleading consumers on their consumer guarantee rights.
- The Full Federal Court found that Lux Distributors had engaged in unconscionable conduct in relation to the sale of vacuum cleaners to three elderly consumers in their homes.
- Actively administered over 260 product safety recalls.
- Increased overall consumer awareness of the dangers associated with coin-sized lithium batteries from 27 per cent in 2011 to 72 per cent in 2013.
- Released a revised edition of the *Country of origin claims and the Australian Consumer Law* guide.
- Recorded 1.48 million unique visitors to the SCAMwatch website, issued 20 SCAMwatch radar alerts on current scams to over 26 000 subscribers as part of our free alert service and served nearly 44 000 contacts via the hotline.
- Issued guides for industry and consumers on fake online reviews and successfully prosecuted Euro Solar for publishing fake testimonials.

Our role in consumer protection

The ACCC's purpose is making markets work for consumers now and in the future. Protecting the interests and safety of consumers and supporting fair trading is central to our work. The Act under which we operate includes the Australian Consumer Law (ACL), which is designed to protect consumers and ensure fair trading. As a single national law it ensures that, across Australia, consumers have the same protections, and businesses have the same obligations and responsibilities.

Our role is to inform businesses and consumers of their rights and obligations under the Act, monitor markets and emerging markets for unfair practices, and address harmful conduct, including by taking action against businesses and individuals that break the law.

We gather intelligence to identify market failures and take action to fix the problems, using our regulatory powers to address breaches and, when possible, gain remedies for consumers who have suffered.

We cannot pursue all complaints received and rarely become involved in resolving individual consumer or small business disputes. While the ACCC carefully considers all complaints, we focus on business conduct that affects competition or causes widespread consumer detriment.

To assist with this prioritisation, we seek to focus on conduct involving one or more of these factors:

- significant public interest or concern
- substantial detriment for consumers (including to small business)
- unconscionable conduct, particularly by large national companies or traders
- blatant disregard for the law
- national or international significance
- detriment to disadvantaged and vulnerable consumer groups
- concentrated markets that impact on small business and consumers
- significant new or emerging market issues.
- industry-wide conduct, or conduct likely to become industry-wide unless we intervene
- where ACCC action is likely to have a significantly educative or deterrent effect
- the business, person or industry has a history of breaking competition and consumer or fair trading laws.

The ACCC works closely with state and territory counterparts in monitoring and enforcing compliance with the Australian Consumer Law under a one law, multi-regulator model. Cooperation includes joint projects aimed at widespread harm or cross-industry issues, and intelligence sharing on specific matters.

In 2013–14, we continued to work with industry-sponsored ombudsmen schemes, such as the Private Health Insurance Industry Ombudsman, Financial Ombudsman Service and the Telecommunications Industry Ombudsman.

In addition, the ACCC undertakes a range of consumer protection work in infrastructure industries which it regulates, for example, reviewing speed claims in the telecommunications industry and energy sales practices. These activities are discussed further in Goal 3 and Goal 4.

Our compliance and enforcement tools

The ACCC has a range of tools to encourage and enforce compliance with the Act, as detailed in the Compliance and Enforcement Policy on our website. We use the policy to decide which matters to prioritise for investigation and action. The ACCC can seek various solutions in the courts, including injunctions and penalties. Outside the courts, we can also use remedies through such means as enforceable undertakings. Our compliance activities include trader and industry engagement, as well as broader education and communication programs to inform businesses and consumers about what constitutes anti-competitive or unfair trading conduct and how to make informed choices.

Court cases

In 2013–14, the ACCC was involved in 53 proceedings relating to consumer protection enforcement.

Enforceable undertakings

To protect consumers and resolve a matter under investigation, we are able to accept undertakings provided under s. 87B of the Act where a breach, or a potential breach, might otherwise justify litigation. In these public undertakings, companies or individuals generally agree to:

- remedy the harm caused by the conduct
- accept responsibility for their actions
- establish or review and improve their compliance programs and culture.

Examples of the type of redress sought by the ACCC in previous matters include:

- corrective advertising in the print and electronic media
- refunds to affected customers
- community service remedies
- industry-wide education programs funded by the company providing the undertaking.

In 2013-14, the ACCC accepted 14 consumer protection-related undertakings.

Infringement notices

We can issue an infringement notice where we believe a breach of the Act requires a more formal sanction than an administrative resolution, but where we consider resolution possible without going to court.

In 2013-14, the ACCC received payment for 23 infringement notices from nine traders, with penalties totalling over \$220 000.

Administrative resolutions

In some cases, for example, where we assess the potential risk as low, we may accept an administrative resolution. Depending on the circumstances, administrative resolutions can range from a commitment by a trader in a letter to a signed agreement between the ACCC and a trader setting out detailed conditions.

Administrative resolutions generally involve the trader agreeing to stop the offending conduct, compensate those adversely affected, and take other measures necessary to ensure that the conduct does not recur. Where a trader re-offends after an administrative resolution, we are likely to resolve the new matter differently.

In 2014, we put the fitness industry on notice for using the phrase 'No Contracts' in advertising, where they required consumers to sign membership contracts with conditions for termination and payment of the membership. We consider this advertising to be misleading. In response to our concerns, several gyms agreed to stop using the term. We will continue to monitor gyms on this issue and will contact gyms identified as engaging in potentially misleading advertising of its membership contracts.

Voluntary industry self-regulation codes and schemes

The ACCC encourages and assists genuine voluntary compliance by individual businesses and industry sectors. Initiatives may range from individual trader compliance programs to sector-wide initiatives, including charters and voluntary codes of conduct tailored for individual industries.

Education and advice

The ACCC uses educational campaigns to ensure consumers and small businesses are fully aware of both their rights and responsibilities under the Act, and to encourage compliance by businesses with the Act. We firmly believe that preventing a breach is better than acting after one has occurred.

The ACCC's educational campaigns also support consumers to navigate complex or difficult consumer choices to help them make smart choices.

We distribute targeted and general information, including tips and tools, to help consumers and small business via a wide range of channels. We liaise extensively with business, consumer and government agencies about the Act and our role in its administration.

As well as guiding consumers and small businesses, we also seek to maximise the effect of enforcement actions. A penalty and reputational damage following a court judgment are powerful deterrents to other traders, encouraging compliance. Court cases can also highlight to consumers how they can use their rights.

2.1 Deliver priority consumer law outcomes

2013–14 Strategy: *Deliver outcomes under the priority areas identified in the ACCC's Compliance and Enforcement Policy to improve compliance with the Australian Consumer Law.*

Measures:

- Outcomes and impact of actions to prevent or address consumer harm or unfair trading.
- Efficiency and effectiveness of actions to promote consumer safety and fair trading.

2014 compliance and enforcement priorities

Each year the ACCC reviews its compliance and enforcement priorities to determine where to focus our efforts to maximise our impact on preventing and redressing consumer harm. We consult with ACL regulators, consumer advocacy groups, external dispute resolution and ombudsman schemes and other government departments on current and emerging issues; and also analyse data from thousands of people who contact the ACCC Infocentre.

In protecting consumers, our priorities are:

- the telecommunication sector, and the energy sectors, with a particular focus on savings representations, referred to as 'discounts off what?'
- online consumer issues, particularly drip pricing and comparator websites
- consumer issues in highly concentrated sectors, in particular the supermarket and fuel sectors
- disruption of scams that rely on building deceptive relationships and cause severe and widespread consumer or small business detriment
- complexity and unfairness in consumer or small business contracts
- credence claims, particularly those with the potential to adversely impact the competitive process and small business
- carbon price claims
- consumer guarantees, particularly in the context of extended warranties
- issues affecting Indigenous communities
- product safety issues with the potential to seriously harm consumers, an enduring priority.

Consumer protection in the telecommunications sector

Consumer protection in the telecommunications sector has been an ongoing priority for several years. The reasons include the complaint levels received by regulatory agencies; ongoing behaviour of concern; and potential for emerging issues with new technology. Some of the enforcement actions in 2013–14 to address concerns about advertising and marketing are detailed below.

Case study

High Court decision in TPG reinforces consumer law principles

It's not every day that the ACCC has a matter before the High Court that can potentially reinforce fundamental consumer law principles. The High Court's decision in December 2013 allowing an appeal by the ACCC in relation to TPG's Unlimited ADSL2+ advertisements was one such example.

The High Court overturned the Full Court's findings that the advertisements, which TPG had revised after ACCC intervention, as well as TPG's initial online, print and radio advertisements, were not misleading. In the High Court's view, the Full Court erred in finding that the home telephone bundling requirement and set-up charges were adequately disclosed and consumers would have known that internet services were commonly bundled with telephony services. The High Court considered that there was no appealable error in the trial judge's approach to finding that these advertisements were misleading.

The High Court also overturned the Full Court's order that TPG pay total penalties of \$50 000 in respect of its misleading initial television advertisements and its failure to prominently display the single price in its initial advertisements. The High Court considered that the \$2 million penalty ordered by the trial judge was within the appropriate range and should be reinstated.

At the time of the decision, ACCC Chairman Rod Sims said 'It is important that penalties imposed for breaches of the Australian Consumer Law are set at a level that deters future breaches. In particular, the High Court recognised that penalties must be fixed with a view to ensuring that the penalty is not such as to be regarded by businesses as an acceptable cost of doing business. We were also seeking the court's guidance on the practice of headline advertising and the extent to which advertisers can rely on the knowledge of consumers about possible offers...'

In its judgment, the High Court said 'The tendency of TPG's advertisements to lead consumers into error arose because the advertisements themselves selected some words for emphasis and relegated the balance to relative obscurity.'

Court cases

In November 2013, the Federal Court ordered **Excite Mobile Pty Ltd** to pay pecuniary penalties totalling \$555 000 for engaging in false, misleading and unconscionable conduct and using undue coercion in selling and obtaining payment for mobile phone services. The Court also ordered that Excite Mobile's directors, Mr Obie Brown and Mr David Samuel, and an employee, Ms Fiona Smart, pay penalties of \$103 500 for their involvement. The Court disqualified Mr Brown from managing a corporation for three years and Mr Samuel for two and a half years. Injunctions have also been imposed on Mr Brown, Mr Samuel and Ms Smart and they have been ordered to pay the ACCC's costs.

In December 2013, the High Court of Australia allowed an appeal by the ACCC in relation to the **TPG Internet Pty Ltd** unlimited ADSL2+ advertisements. The High Court overturned the Full Federal Court findings that TPG's advertisements were not misleading. The High Court reinstated the \$2 million penalty ordered by the trial judge, overturning the Full Court's order for a \$50 000 penalty. See the case study on page 58 for a full description.

In March 2014, the ACCC instituted proceedings against **Zen Telecom Pty Ltd** for allegedly making false, misleading or deceptive representations during unsolicited calls to consumers by representing that they were acting on behalf of Telstra or a business associated with Telstra. The ACCC also alleges that Zen Telecom breached the unsolicited consumer agreement provisions of the ACL. Zen Telecom supplies telephone, broadband, mobile and mobile broadband services across Australia under the following: XLN Telecom, Venus Telecom, Action Telecom, Alpha Talk and Telko Key. The case is ongoing, with the ACCC seeking pecuniary penalties, declarations, injunctions, an order for corrective notices, a compliance program and costs.

Non-court cases

In March 2014, the ACCC accepted a court enforceable undertaking from **Medion Australia Pty Ltd** after the company made representations that its ALDImobile 'Unlimited Pack' gave customers unlimited features when in fact significant usage restrictions applied. Medion supplies pre-paid mobile products and services under the brand name ALDImobile, which is not a related entity to ALDI stores. The ACCC was concerned that these 'unlimited' representations were likely to mislead consumers. To address our concerns, Medion undertook to not mislead consumers through such promotions for three years, publish a corrective notice on the ALDImobile website for 30 days and establish and implement a compliance program for two years.

In April 2014, Cardcall Pty Ltd paid two infringement notices totalling \$20 400 for misleading advertisements for their pre-paid phonecard services. In 2013, Cardcall advertised prices for its 'Hot' phonecard that did not reflect various terms and conditions that applied to their phonecard services, including flagfall fees, service fees and other surcharges. The terms and conditions, which Cardcall did not prominently display, meant that consumers were highly unlikely to pay the advertised price per minute through ordinary use of the phonecard.

Education and advice

On 13 March 2014, the ACCC in collaboration with ASIC, AMTA, the TIO and ACMA, released a MoneySmart Teaching digital activity which aims to assist students to understand and use their consumer rights when they have a problem with goods and services. The activity allows students to 'purchase' a mobile phone. When there is a problem with the phone students are guided through the process of exercising their rights under the Consumer Guarantee provisions of the Australian Consumer Law to obtain a refund or replacement. This digital activity formed part of a series of multimedia classroom activities designed to help students navigate the costs of mobile phones and their consumer rights. Other module topics include:

- Calls, messaging and browsing
- Choosing a plan

- Mobile credit
- Advertising
- Entertainment
- Security
- Mobile phone advertising
- Premium services
- Social media

In 2013–14 the ACCC reviewed its publicly available information on issues consumers are likely to face in the telecommunications industry. The ACCC published new and updated information on a range of issues related to telephone, internet and mobile phone services, including in-app purchases. In April 2014, the ACCC also published important consumer information about the National Broadband Network (NBN), including about the disconnection of copper services, the compatibility of medical and security alarms with the NBN, choosing a provider and plan and when to consider obtaining battery backup. This information helps consumers choose a mobile, fixed and internet service that best meets their needs and transition to the NBN.

Consumer protection in the energy sector

Door-to-door sales

We finalised our compliance and enforcement project to address the harm caused by many energy retailers involved in door-to-door selling at the end of 2013. During the project, we aimed to educate industry through such means as direct letters and presentations at industry conferences. The ACCC also ran the national *Knock! Knock! Who's There?* campaign, to raise community and industry awareness of their rights and obligations when buying or selling door-to-door. To educate and arm consumers, we distributed a 'do not knock' sticker, a consumer guide, a brochure available in 14 different languages, as well as an accompanying film on how to say 'no' to a door-to-door salesperson through social media channels. A research report into the door-to-door sales industry also helped regulators, industry and the community to better understand what business structures may be encouraging non-compliant behaviour. The enforcement action resulted in Court ordered penalties of over \$5 million, two court enforceable undertakings and infringement notices totalling \$26 400. We will take further action against door-to-door selling if required as part of our business as usual activities. Details of energy door-to-door sales cases are set out below.

Savings representations or 'discounts off what?'

Our next area of focus in the energy sector is misleading discount claims, known as 'discounts off what?'. Discounts always sound good but, when the nature of the discount is unclear, consumers can go wrong. One example is retail energy plans that promise benefits, discounts or savings but are fuzzy on what the discount is off or whether consumers can actually make the savings promoted, known as 'discounts off what?'. We are increasingly concerned that claims of benefits, discounts or savings in energy promotions are misleading consumers.

Consumers can find it hard to compare energy plans and decide on which one suits them best. Our action will help them choose the right plan for their needs by ensuring retailers are clear about the discounts offered. In making their decision, consumers can also use the AER's Energy Made Easy website, to compare gas and electricity offers.

In August 2013, we wrote to energy retailers about our concerns, in particular, the promotion of discounts and savings under energy plans. In the December following, we began our first court action on misleading savings representations against AGL South Australia Pty Ltd, followed by a second case in May 2014 against Origin Energy Limited. Further details on our enforcement action in these cases appear below.

Court cases

In November 2013, the Federal Court ordered, by consent, that **Australian Power & Gas Company Ltd** (APG) pay \$1.1 million for illegal door-to-door selling practices. The Court declared that APG, through salespeople acting on its behalf made false or misleading claims while calling on consumers at home to negotiate agreements for the supply of retail electricity and/or gas by APG.

The Court also declared that APG, through one sales representative, engaged in unconscionable conduct during a door-to-door sale involving a consumer from a non-English speaking background and with very limited English reading/writing skills. The Court further declared that APG breached various unsolicited consumer agreement provisions of the ACL. It ordered APG to publish corrective website and newspaper notices and contribute to the ACCC's costs.

In December 2013, the Federal Court ordered, by consent, that **AGL South Australia Pty Ltd** and its marketing company, **CPM Australia Pty Ltd**, pay \$60 000 for failing to leave a consumer's premises despite the 'do not knock' sign on their front door. As part of the same proceedings, in May 2013 the Court ordered, by consent, that AGL Sales Pty Ltd and AGL South Australia pay combined pecuniary penalties of \$1.55 million for other unlawful selling practices. CPM was also ordered to pay \$200 000 for its role in the conduct.

In December 2013, the ACCC instituted proceedings against **AGL South Australia Pty Ltd** for allegedly making false or misleading claims and misleading or deceiving consumers. The allegations relate to the claims AGL South Australia made to residential electricity consumers in South Australia about the level of discounts on electricity usage charges that could be obtained by consumers under its energy plans. The case is ongoing, with the ACCC seeking pecuniary penalties, declarations, injunctions, publication orders, a compliance program and redress for affected consumers.

In April 2014, the Federal Court ordered, by consent, that **EnergyAustralia Pty Ltd** (formerly TRUenergy), and four of its associated marketing companies pay \$1.49 million for unlawful door-to-door selling. The Court declared that EnergyAustralia, through some of its salespeople, made false and misleading claims and engaged in misleading and deceptive conduct while calling on consumers at their homes to negotiate agreements for the supply of retail electricity by EnergyAustralia. The Court also declared that EnergyAustralia, through its salespeople, breached various unsolicited consumer agreements provisions of the ACL. The Court ordered EnergyAustralia to correct the claims on its website and in newspaper notices. EnergyAustralia and the four marketing companies were also ordered to establish and maintain compliance programs.

In May 2014, the ACCC instituted proceedings against **Origin Energy Limited** for allegedly making false or misleading representations and engaging in misleading or deceptive conduct. The allegations concern claims by Origin to residential electricity consumers in South Australia in early to mid-2013 about the level of discounts off electricity usage charges available under its DailySaver energy plan for electricity and/or natural gas. This case is ongoing, with the ACCC seeking pecuniary penalties, declarations, injunctions, publication orders, a compliance program and redress for affected consumers.

In energy matters, AER staff provided expert advice on the energy industry to help the ACCC's enforcement efforts.

Non-court cases

In July 2013, the ACCC accepted a court enforceable undertaking from **Lumo Energy Australia Pty Ltd** about its door-to-door salespeople. The ACCC considers that Lumo Energy breached the ACL at least four times in Victoria during 2012 as its salespeople did not clearly advise consumers about the purpose of the call, indicate that they were obliged to leave the premises immediately on request, and give their own name or Lumo Energy's name and address. Lumo Energy has undertaken to comply with the relevant provisions of the ACL.

In September 2013, **Red Energy Pty Ltd** paid four infringement notices totalling \$26 400 and provided the ACCC with a court enforceable undertaking in relation to alleged misrepresentations by one of its telemarketers. In the undertaking, Red Energy admitted that a telemarketer employed by it to sell retail energy made false claims and engaged in misleading and deceptive conduct during unsolicited calls to consumers. This conduct was designed to mislead consumers about the salesperson's reason for calling, such as claiming he was calling about the consumer's current energy bill with another energy retailer, was affiliated with the consumer's current energy retailer and was not calling to sell anything. Red Energy undertook to publish corrective notices, provide a link to Energy Made Easy on its homepage for no less than 180 days, provide a remedy for affected consumers and review its compliance program.

Online consumer issues

Online trading is a rapidly expanding market, attracting many new business entrants and consumers. The digital economy can deliver increased choice and improved customer service for consumers and opportunities for small business. However, it presents a number of challenges in providing consumer protection activities and in detecting and gathering evidence of harmful conduct.

In 2013, we prioritised online consumer issues that may block emerging competition between online traders or limit the ability of small business to compete effectively online. Compliance and enforcement action included addressing misleading online group buying practices such as those of Scoopon Pty Ltd and misleading fake online reviews. These cases are highlighted below.

In 2014, we are focusing on comparator websites and the incremental disclosure of fees and charges by traders, referred to as drip pricing.

Fake online reviews

Australian consumers use online reviews of goods and services in making many purchasing decisions. While reviews can be helpful, fake online reviews potentially mislead consumers and can either give businesses an unfair competitive advantage or disadvantage them.

In December 2013, following industry liaison, the ACCC released a compliance guideline, *Online reviews—a guide for business and review platforms*. The case study on page 64 describes it further.

The ACCC's focus on online reviews also identified concerns about specific practices that were escalated for further investigation. Two matters have since been the subject of court action. The first, detailed further below, involved fake testimonials published on YouTube in relation to the sale of solar panels. The second, where proceedings were commenced in the Federal Court in July 2014 against A Whistle (1979) Pty Ltd, the franchisor of the Electrodry Carpet Cleaning business, alleged that the business was involved in the posting of fake online testimonials.

Court cases

In January 2014, the Federal Court ordered, by consent, that **P & N Pty Ltd** and **P & N NSW Pty Ltd** (trading as Euro Solar), **Worldwide Energy and Manufacturing Pty Ltd** (formerly trading as Australian Solar Panel), and their sole director, **Mr Nikunj Kumar Patel**, pay combined penalties of \$145 000, for publishing fake testimonials and making false or misleading claims about the country of origin of the solar panels they supply. The Court found that video testimonials published on YouTube by Euro Solar and written testimonials published by Australian Solar Panel on its website were not made by genuine customers of the companies.

Comparator websites

Comparator websites are an important marketing tool for businesses. They allow consumers to compare offers from providers and are popular in the energy, travel and insurance sectors. The websites can improve transparency and promote competition but can occasionally mislead consumers significantly.

In 2013–14, the ACCC worked with industry to improve standards for comparator websites. Following contact by the ACCC, eight companies in the energy sector removed statements from their websites which we considered likely to mislead consumers about the nature and extent of their energy price comparison service and the savings consumers could achieve by using it.

We are presently developing both business and consumer guidance about price comparison websites in particular sectors.

Drip pricing

Drip pricing involves the incremental disclosure of fees and charges in the online bookings process. It harms both competition and consumers. Consumers see a ‘headline’ price advertised when they start the booking process but find that additional fees and charges have been added at the payment stage. Drip pricing is not transparent, may mislead consumers and also makes it difficult for businesses to compete on a level playing field.

Court cases

In June 2014, the ACCC instituted separate proceedings against **Jetstar Airways Pty Ltd** and **Virgin Australia Airlines Pty Ltd** alleging that each airline engaged in misleading or deceptive conduct and made false or misleading representations in relation to particular airfares. The conduct which is the subject of the ACCC’s allegations in each of these proceedings is an example drip pricing. The ACCC alleges that Jetstar and Virgin each made representations on their websites and mobile sites that certain domestic airfares were available for purchase at specific prices, when in fact those prices were only available if payment was made using particular methods. These cases are ongoing.

Online group buying

Online ‘daily deals’ and group buying websites are channels for consumers to buy goods and services at discount prices. Online group buying sites typically negotiate these deals with businesses and market the deals to their members and the public through various means including social media. The ACCC and other ACL regulators have received a significant number of complaints since the group buying industry emerged in Australia in 2010. We have worked closely with other ACL regulators to address the issues and improve practices in the sector to reduce consumer and business detriment.

Case study

Integrity in online reviews

We designed *Online reviews—a guide for business and review platforms* with a dual purpose in mind. To help review platforms comply with the Act and to help reviewed businesses ensure the integrity of online reviews. In preparing the guide, we worked collaboratively with review platforms, marketing firms and industry representatives.

Together we developed three guiding principles:

- be transparent about commercial relationships
- do not post or publish misleading reviews
- omitting or editing reviews may be misleading.

We sent targeted letters attaching the guide to a number of key industry players and received good feedback. Some review platforms publically acknowledged the guide's release and incorporated some parts of it in their online review policies.

To support the guide, we updated our website with tips for consumers who rely on online product reviews. The tips encourage consumers to seek information from multiple sources and to look at multiple reviews, as well as to check whether review platforms have commercial arrangements with reviewed businesses.

We were also successful in court against Euro Solar for fake online reviews (see matter on page 62), and continue to seek out misleading online review cases suitable for enforcement action.

Concerns considered by the ACCC included complaints in relation to being denied refunds, because the voucher was sold 'subject to availability'; possible misleading representations about the product or service which was the subject of the actual deal; unreasonable delays in receiving goods; and difficulty in redeeming vouchers.

As part of its focus in this area, the ACCC has taken two proceedings against significant players in the industry. As noted below, the first, involving Scoopon Pty Ltd, led to court penalties of \$1 million. The second, against Spreets Pty Ltd was filed on 30 June 2014 and is also discussed below.

The ACCC action in this area reinforces that all businesses are subject to the Act and ACL:

- Businesses selling to consumers online have the same obligations under the ACL as all other businesses, and consumer guarantees, including refund rights, apply when consumers purchase online.
- Online businesses must ensure that they do not mislead consumers and that the price and any restrictions on a deal being offered are clearly and accurately stated.

Court cases

In December 2013, the Federal Court ordered, by consent, **Scoopon Pty Ltd** to pay \$1 million for making false or misleading claims to both businesses and consumers. The consumer claims concerned refund rights and the price of goods advertised in some deals. Those to businesses concerned the risks and costs involved in running a deal with Scoopon, and the voucher redemption rate. The Court ordered injunctions and declarations. It also ordered Scoopon to further develop and enhance its compliance program, and hold an educational seminar on ACL issues for other online group buying traders. Scoopon was also ordered to contribute to the ACCC's costs.

In June 2014, the ACCC instituted proceedings against **Spreets Pty Ltd** alleging that it engaged in misleading and deceptive conduct and made false or misleading representations to consumers in relation to deals offered on its online group buying website. The ACCC alleges that, in 2011 and 2012, Spreets engaged in misleading and deceptive conduct and made false or misleading representations about the price of certain deals, consumers' ability to redeem vouchers, and consumers' refund rights under the ACL. The case is ongoing.

Education and advice

In December 2013, the ACCC and the other Australian Consumer Law regulators launched a new video, *Shop Smart Online*, to help consumers and small businesses understand their rights and obligations when shopping or selling online. The video attracted over 30 000 visits in its first week.

Details of our online consumer education for tertiary students appear in the case study on page 66.

Highly concentrated sectors

As a result of history and geography, Australia has many highly concentrated sectors. These sectors, including the petrol and supermarket sectors, potentially raise consumer protection issues and therefore require close scrutiny. As a priority area, the ACCC will continue to focus on consumer issues in highly concentrated markets, in particular, the supermarket and fuel sectors.

Court cases

In May 2014, the ACCC commenced proceedings in the Federal Court against **Coles Supermarkets Australia Pty Ltd** and **Grocery Holdings Pty Ltd**, alleging that Coles engaged in unconscionable conduct regarding its Active Retail Collaboration (ARC) program.

Case study

Action on apps

Along with over 50 consumer protection agencies around the world, we participated in the International Consumer Protection and Enforcement Network Online Sweep Day.

The ACCC swept over 340 'app' games in the Google Play and Apple App Stores, identifying many 'free' apps that would appeal to children but did not adequately disclose the associated costs of game playing. The sweep highlighted the potential for misleading and deceptive conduct in the promotion of apps.

At home, we investigated concerns about misleading conduct regarding a number of apps and talked with the relevant platform operators and app developers. In general, we were satisfied with the steps taken to address the concerns raised. Due to combined local and international pressure, platform operators implemented additional protection for consumers from unauthorised or inadvertent purchases on smartphones and devices. Protection includes significant improvements to password settings and information disclosure prior to downloading.

Our investigation also highlighted the need to help businesses avoid possible breaches of the Australian Consumer Law. One way businesses can protect themselves is by applying the proposed principles for the online and app-based game industry developed by the UK Office of Fair Trading. We both support the principles and encourage developers to adopt them.

The ACCC provided detailed information on its website to educate consumers about how to protect themselves against the risks associated with children using apps on devices.

While our app investigation is complete, our work with international regulators on emerging issues continues. Additionally, we monitor complaints and will consider the need for further industry action in the consumer interest.

The ACCC alleges that, in 2011, Coles developed a strategy to improve its earnings by gaining better trading terms from suppliers, including through the introduction of ongoing rebates to be paid by suppliers for the ARC program. Coles' target was to obtain \$16 million in ARC rebates from smaller suppliers and, ultimately, an ongoing ARC rebate in the form of a percentage of the price it paid for the supplier's grocery products.

The ACCC alleges that Coles had engaged in unconscionable conduct towards 200 of its smaller suppliers, in breach of the ACL by, among other actions:

- misleading suppliers about the savings and value to them from the changes Coles had made
- using undue influence and unfair tactics against suppliers to make them pay the rebate
- taking advantage of its superior bargaining position by, amongst other things, seeking payments without a legitimate basis for seeking them
- requiring suppliers to agree to the ongoing ARC rebate without giving them sufficient time to assess the value, if any, of the purported benefits of the ARC program to their small business.

The case is ongoing. The ACCC is seeking pecuniary penalties, declarations, injunctions and costs.

These proceedings arise from a broader investigation by the ACCC into allegations that supermarket suppliers were being treated inappropriately by the major supermarket chains. That broader investigation is continuing.

Scams

As the national consumer protection agency, we play an important role in helping Australian protect themselves from scams, including through education.

In 2014, we are prioritising scams that rely on building deceptive relationships which cause severe and widespread consumer or small business detriment.

As reported in the most recent *Targeting scams* annual report, in 2013 the ACCC received 91 927 scam-related contacts from consumers and small businesses, with reported financial losses totalling \$89 136 975. However, scam contacts and associated losses reported to the ACCC are only the tip of the iceberg as scam victims may report to other authorities, may be unwilling to report their experience, or may not even realise they have been scammed.

The ACCC uses different media and communications channels to raise community awareness, such as the SCAMwatch website which received over 1.4 million unique visitors in 2013–14, and a radar alert service on emerging scams. For those consumers without internet access, we operate the SCAMwatch hotline (1300 795 995) for information and advice about scam-related issues over the phone. In 2013–14, the ACCC served nearly 44 000 contacts via the hotline.

We partner with the Australian Transaction Reports and Analysis Centre to identify patterns that may indicate scams and, as the next step, provide targeted information to affected consumers.

Case study

Online education for tomorrow's business leaders

On 8 November 2013, we launched a free online program to teach tertiary students—and future business leaders—about their rights and obligations under the Act.

The program is for students enrolled in management, marketing, economics or other commerce-related courses. It outlines the Act's key competition and consumer law provisions and some of the issues that the students are likely to encounter in their future careers. Each of the 12 modules explains a key competition or consumer issue and how it applies in the business world. Topics include misleading and deceptive advertising, unfair selling practices, cartel conduct and business scams.

Each module can be completed in isolation, or as part of a wider collection of topics.

Since November 2013, we have been actively promoting the program and encouraging tertiary institutions to incorporate it as part of their business courses, and developed an instructor's package to help. Depending on what a lecturer or tutor is teaching, they can choose and adapt the modules most relevant to their students.

From launch to 30 June 2014, more than 3800 users have accessed the website program. Thirteen educational institutions have been using program materials (slides and/or instruction manuals) or encouraging their students to use the program for further reading or self-directed learning.

The ACCC will update the material regularly so that students have the latest and most accurate information.

Court cases

In October 2013, the Federal Court sentenced **Mr Peter Foster** to three years in jail, with 18 months suspended, for breaching orders in *ACCC v Chaste Corporation Pty Ltd (in liquidation) & Ors* in 2005. In August 2013, the Federal Court had dismissed Mr Foster's appeal after he failed to surrender himself to the court as ordered. The ACCC began contempt proceedings against Mr Foster in 2011, alleging that from December 2009 to 2 September 2010 Mr Foster was:

- directly or indirectly knowingly concerned in the promotion or conduct of the business of SensaSlim, a business relating to weight loss
- knowingly concerned in SensaSlim, making or permitting to be made claims about the standard or quality of the SensaSlim Solution, without providing the representee, prior to making the claims, with a copy of the Chaste orders, or informing them of the orders and supplying the address of the Federal Court website.

In April 2014, the Federal Court found **SensaSlim Australia Pty Ltd** (in liquidation) (SensaSlim) engaged in misleading or deceptive conduct by failing to disclose Peter Foster's involvement in the SensaSlim franchise system in its franchise disclosure document. The Court also found that SensaSlim engaged in misleading or deceptive conduct by making false representations about the role of SensaSlim's officers, namely Mr Peter O'Brien and Mr Michael Boyle, the 'worldwide clinical trial' of the SensaSlim Solution and the earning potential of SensaSlim franchises. Mr Foster, Mr O'Brien and Mr Boyle were found to be knowingly concerned in and party to some of SensaSlim's contraventions. The matter is awaiting judgment on penalty.

Education and advice

As chair of the Australasian Consumer Fraud Taskforce, the ACCC works closely with the public, private and community sectors to educate the public and disrupt scams. Consumer fraud can have a significant impact not only on individuals, but businesses too, with a coordinated response the most effective approach to minimising consumer harm. The Taskforce will play an important role in the upcoming national relationship scams disruption project that the ACCC is coordinating.

SCAMwatch (www.scamwatch.gov.au), which we operate, is the Australian Government website for information on scams. In 2013-14, 20 SCAMwatch radar alerts on current scams were issued to over 26 000 subscribers as part of our free alert service. We also tweet about scams targeting Australian consumers and businesses via the SCAMwatch Twitter profile (@SCAMwatch_gov). The ACCC's *Little Black Book of Scams* also continued to be our most popular publication and continues to be considered international best practice; in March 2014 the Canadian Competition Bureau launched an e-book version of this publication. The ACCC also raised consumer awareness of scams through hundreds of media interviews throughout the year.

One of the key Taskforce initiatives is its annual National Consumer Fraud Week campaign. In 2014, the Taskforce urged Australians to 'Know who you're dealing with', and provided advice on how to identify, avoid and disengage from scammers.

Over 150 partners helped to raise community awareness about relationship scams.

The ACCC also released its fifth annual *Targeting Scams* report during Fraud Week, which received widespread media coverage. Key points from the report include:

- Nearly 92 000 scam-related contacts to the ACCC in 2013, almost \$90 million reported lost.
- Dating and romance scams moved to number one for financial losses, with over \$25 million reported lost.

- Scammers continued to favour phone deliver, with over half of the scams delivered via a telephone call or text message. However, scams delivered online caused the greatest financial harm with nearly \$42 million reported lost to scams online.

Unfair contracts

Unfair contract terms create an imbalance of consumers' rights and traders' obligations. These standard form consumer and small business contracts have in many instances been adopted industry wide and have a direct impact on all consumers acquiring goods or services in that industry. In response the ACCC has identified complexity or unfairness in small business or consumer contracts as one of its priority items.

Standard form consumer contracts, often adopted industry-wide, have a direct impact on all consumers acquiring goods or services in that industry. The ACL contains provisions that protect consumers from unfair terms in standard form consumer contracts. We continued to focus on unfair contract terms in 2013-14 and to work with industry to have them removed.

The Australian Government is currently looking to implement an election commitment by extending the unfair contract term provisions of the ACL to small business standard form contracts. On 23 May 2014, Treasury released a consultation paper and survey for community consideration and input. Submissions close on 1 August 2014.

Court cases

In July 2013, the Federal Court declared, by consent, that a number of clauses in **Bytecard Pty Ltd** standard form consumer contracts were unfair and therefore void. The terms were considered unfair as they created a significant imbalance in the parties' rights and obligations, were not reasonably necessary to protect Bytecard's legitimate interests and, if applied or relied upon by Bytecard, would harm consumers.

The case is the first the ACCC has brought based solely on the new unfair contract provisions of the ACL.

Credence claims

A 'credence claim' is one that a business makes about particular product qualities which a consumer is unable to verify at the time of purchase and must take on faith.

Credence claims are generally used to appeal to consumer-held values such as health, ethics and sustainability and are often used to market a business product as superior to other comparable products.

Such claims can legitimately be made as long as they are not misleading and can be substantiated. But honest businesses selling premium products need to be protected from unscrupulous competitors making false claims and consumers need to be protected from paying premium prices for non-existent attributes.

Credence claims

Credence claims were a priority for us in 2013–14. Of particular concern were credence claims that could potentially limit competition and adversely affect small businesses. For example, marketing and labelling that portrays large manufacturers as small niche businesses.

When large companies portray themselves as small businesses, they undermine a unique selling point for small businesses. This behaviour can potentially mislead consumers, particularly those who prefer to support Australia's small business community.

The result achieved in the CUB matter (detailed later) benefits both the small brewers and the consumers who support them.

In a separate matter, the Federal Court found that claims made by Coles Supermarkets Australia Pty Ltd that its 'Cuisine Royale' and 'Coles Bakery' bread was 'Baked Today, Sold Today' and in some cases 'Freshly Baked In-Store' were false, misleading and deceptive. These bread products were partially baked and frozen off-site, transported and 'finished' at in-store bakeries within Coles supermarkets.

In this case, we believed the claims placed independently-owned and franchised bakers that freshly bake bread from scratch each day at a competitive disadvantage.

Misleading credence claims go to the heart of market efficiency and harm both consumers and competition. We will act to ensure consumers can be confident in the claims made about the products they buy and the companies that manufacture them.

Court cases

In 2013–14, the ACCC began proceedings against:

- **Snowdale Holdings Pty Ltd** and **Pirovic Enterprises Pty Ltd** (two separate cases) relating to alleged false, misleading or deceptive 'free range' claims in relation to eggs.
- **Reebok Australia Pty Ltd** relating to alleged false, misleading or deceptive claims that walking in its EasyTone shoes increased muscle tone and strength more than walking in traditional walking shoes.

In October 2013, the Federal Court ordered **Baiada Poultry Pty Ltd** and **Bartter Enterprises Pty Ltd**, the processors and suppliers of Steggles branded chicken products, to pay \$400 000 for false, misleading and deceptive conduct. The businesses described on product packaging and in advertising that their meat chickens were 'free to roam in large barns', when this was not the case. The Court also ordered **Australian Chicken Meat Federation Inc.**, the peak industry body for Australia's chicken meat industry, to pay \$20 000 for false, misleading and deceptive conduct for claiming in publications on its website that chickens produced in Australia were 'free to roam', when this was not the case. Turi Foods Pty Ltd, the processor and supplier of La Ionica Poultry products, was previously a respondent in the matter but settled proceedings with the ACCC in December 2011. At that time, Turi Foods was ordered, by consent, to pay \$100 000, publish corrective advertisements and implement a compliance training program for false, misleading and deceptive conduct.

In November 2013, the Federal Court ordered, by consent, that **Luv-a-Duck Pty Ltd** pay \$360 000 for misleading claims about its duck meat products. The business falsely claimed on its packaging, website, brochures and promotions that ducks used in its products spent at least a substantial amount of their time outdoors, were raised in a spacious outdoor environment and were of a different quality than duck meat products processed from barn-raised ducks. This was not the case.

In June 2014, the Federal Court found that claims made by **Coles Supermarkets Australia Pty Ltd** that its 'Cuisine Royale' and 'Coles Bakery' bread was 'Baked Today, Sold Today', and in some cases, 'Freshly Baked In-Store' were false, misleading and deceptive. These bread

products were partially baked and frozen off-site by a supplier (in the case of Cuisine Royale, this baking and freezing took place overseas), transported and 'finished' at in-store bakeries within Coles supermarkets. These bread products were promoted at Coles' supermarkets with in-house bakeries as 'Baked Today, Sold Today' and in some cases 'Freshly Baked In-Store'. At some supermarkets, some of these products were advertised in-store as 'Freshly Baked' or 'Baked Fresh'. The Court found that the 'Baked Today, Sold Today', 'Freshly Baked' and 'Baked Fresh' claims made by Coles amounted to a misleading representation that the par-baked bread products had been baked on the day of sale or baked in a fresh process using fresh not frozen product. The matter is awaiting judgment on penalty.

Non-court cases

In November 2013, **Game Farm Pty Ltd** paid two infringement notices totalling \$20 400 and provided the ACCC with a court enforceable undertaking about representations made concerning its bird meat products. In its undertaking, Game Farm acknowledged a likely breach of the Act by claiming on its packaging and website that its chicken, duck, quail, spatchcock and turkey were 'range reared'. In fact its birds are grown in large commercial sheds with no outdoor access. Game Farm undertook to not make similar claims, send corrective letters to its major regular customers, which buy approximately 90 per cent of Game Farm's products, and establish and implement a trade practices compliance program.

In April 2014, **CUB Pty Ltd** provided the ACCC with a court enforceable undertaking and paid \$20 400 for claiming that its Byron Bay Pale Lager was brewed by a small brewer in Byron Bay when this was not the case. CUB undertook not to make such claims for the next three years, cease distributing the product with the relevant labelling, publish a corrective notice on its website and in the trade press and distribute point-of-sale corrective notices. It further agreed to organise additional training for its senior marketing managers.

The ACCC will write to others in the industry about this matter to ensure that marketing and labelling of beer appropriately reflect where and by whom beer is brewed.

In June 2014, **Basfoods (Aust) Pty Ltd** paid three infringement notices totalling \$30 600 and provided the ACCC with a court enforceable undertaking in relation to its 'Victoria Honey'. We considered that Basfoods had falsely claimed its 'Victoria Honey' was produced by honey bees on labelling and its website, when it was mainly comprised of sugars from plants including corn and sugar cane. We also considered that by naming and labelling its product 'Victoria Honey', Basfoods had represented the product as originating from Victoria, Australia, when in fact it was a product of Turkey. Basfoods provided the ACCC with a court enforceable undertaking admitting that its conduct contravened the ACL.

Carbon pricing

Carbon pricing was again a priority for the ACCC this year. As the Treasurer directed in July 2011 under s. 29(1) of the Act we are to:

- give priority to investigating businesses which make statements about the impact of a carbon price on their goods and services
- encourage compliance with the Act by informing and educating businesses about their responsibilities concerning such statements
- raise consumer awareness about their rights and the ban on misleading and deceptive business conduct or false or misleading claims about the impact of a carbon price on the supply of goods and services.

We received over 150 carbon pricing complaints and enquiries in 2013–14, a significant decrease from the previous year. Most complaints were about energy—approximately 40 per cent of all contacts received since 1 July 2013. Other sectors included synthetic greenhouse gases, local government, landfill and construction. The ACCC continues to assess carbon pricing complaints for evidence of conduct that may raise concerns under the Act.

Court cases

In May 2014, the ACCC took legal action against **Actrol Parts Pty Ltd**, a wholesaler of refrigerant gas, alleging it made false or misleading claims and engaged in misleading or deceptive conduct. The allegations concern claims by Actrol about the reasons for significant increases in the price of certain types of hydrofluorocarbon (HFC) refrigerant gas effective from 1 July 2012. The ACCC alleges that Actrol claimed that price increases for certain HFC products were due to the carbon tax scheme, when this was not the case. The case is ongoing, with the ACCC seeking pecuniary penalties, declarations, injunctions, publication orders, a compliance program and costs.

Carbon tax repeal

The ACCC has new enforcement powers and an enhanced monitoring role under amendments to the *Competition and Consumer Act 2010* (the Act). The *Clean Energy Legislation (Carbon Tax Repeal) Act 2014* was passed by Parliament on 17 July 2014. The amendments made to the Competition and Consumer Act commenced on 18 July 2014, the day after the carbon tax repeal Act received Royal Assent.

In addition to its existing powers, the ACCC has new powers to:

- monitor prices in certain sectors
- take action against certain businesses that exploit prices regarding the carbon tax repeal
- take action against businesses that make false or misleading claims about the effect of the carbon tax repeal or carbon tax scheme on the price for the supply of goods or services.

Carbon price monitoring

To assess the general impact of the carbon tax scheme, we began formal price monitoring in March 2014, as directed by the Minister under Part VIIA. The Direction to monitor prices, costs and profits covers the supply of regulated goods—natural gas, electricity and synthetic greenhouse gases—by corporations and the supply of goods by corporations identified as liable entities under the *Clean Energy Act 2011*. The Direction remains in force until 30 June 2015.

Consumer guarantees

Australian consumers have a set of rights called consumer guarantees when they buy goods or services. Under the Australian Consumer Law, products and services come with automatic guarantees on repair, replacement or refund. Questions and complaints about guarantees and warranties are one of the most common reasons consumers contact the ACCC and other ACL regulators.

Court cases

During 2013–14, the Federal Court handed down judgment on nine Harvey Norman franchises relating to false or misleading claims regarding consumer guarantee rights. The Court ordered declarations and injunctions against the Harvey Norman franchisees and pecuniary penalties totalling \$234 000. The franchisees are:

- **Avitalb Pty Ltd**, located in Albany, Western Australia (\$10 000)
- **Camavit Pty Ltd**, located in Campbelltown, New South Wales (\$32 000)
- **Gordon Superstore Pty Ltd**, Located in Gordon, New South Wales (\$25 000)
- **HP Superstore Pty Ltd**, located in Hoppers Crossing, Victoria (\$28 000)
- **Launceston Superstore Pty Ltd**, located in Launceston, Tasmania (\$32 000)
- **Mandurvit Pty Ltd**, located in Mandurah, Western Australia (\$25 000)

- **Moonah Superstore Pty Ltd**, located in Moonah, Tasmania (\$28 000)
- **Oxteha Pty Ltd**, located in Oxley, Queensland (\$26 000)
- **Salecomp Pty Ltd**, located in Sale, Victoria (\$28 000).

With the exception of Launceston Superstore Pty Ltd, Avitalb Pty Ltd and Mandurvit Pty Ltd, which have ceased trading, the franchisees must display in-store corrective notices and implement a consumer law compliance program.

The ACCC is awaiting judgment in a case against one other Harvey Norman franchisee for similar conduct.

In July 2013, the Federal Court ordered, by consent, **Hewlett-Packard Australia Pty Ltd** (HP) to pay \$3 million for making false or misleading claims to customers and retailers about consumer guarantee rights.

The Court found that HP made a number of false or misleading representations to consumers about their consumer guarantee rights, including that:

- the remedies available to consumers were limited to the remedies available at HP's discretion
- consumers were required to have their product repaired multiple times before they were entitled to a replacement
- the warranty period for HP products was limited to a specified express warranty period
- consumers were required to pay for remedies outside the express warranty period
- products purchased online could only be returned to HP at HP's sole discretion.

The above representations were made by HP staff working at call centres located around the world, as set out in HP's internal guidelines and scripts. Justice Buchanan noted the Court's disapproval of HP's conduct and the need for general and specific deterrence for such behaviour. The Court also ordered a consumer redress process for affected consumers, corrective advertising, a compliance program and contribution to ACCC costs.

In November 2013, the ACCC instituted proceedings against Fisher & Paykel Customer Services Pty Ltd and Domestic & General Services Pty Ltd alleging they made false or misleading claims about consumer rights under the statutory guarantee regime under the ACL in the course of offering an extended warranty. The proceedings also involve alternative allegations under the consumer protection provisions of the *Australian Securities and Investments Commission Act 2001*.

Non-court cases

In December 2013, the ACCC accepted a court enforceable undertaking from **Apple Pty Ltd** following an investigation into Apple's consumer guarantee policies and practices and claims about consumers' rights under the ACL. The ACCC was concerned that Apple had made a number of false or misleading representations to consumers regarding their consumer guarantee rights. Apple has acknowledged the ACCC's concerns and that some of its claims may have contravened the ACL. Apple has worked with the ACCC to resolve our concerns and committed to a number of compliance measures.

In its undertaking, Apple publicly acknowledged that, without limiting consumers' rights, it would repair, replace or refund in line with the consumer guarantee provisions of the ACL within 24 months of the purchase date. Apple also acknowledged that the ACL may allow remedies beyond 24 months for a number of its products. Apple undertook to:

- cease representations to consumers which were contrary to the ACL
- continue to offer a program allowing consumers potentially affected by the alleged conduct to have their claims re-assessed by Apple in accordance with the ACL
- continue to implement a program to improve ACL compliance, which includes improved staff training

- maintain a web page to clarify the differences between the coverage provided by the ACL and Apple's voluntary limited manufacturer's warranty
- continue to make available copies of the ACCC's Repair, Replace, Refund brochure in its Australian retail stores.

Consumer protection for Indigenous consumers

We seek to ensure that Indigenous Australians enjoy the same rights under the Australian Consumer Law as non-Indigenous Australians. We aim to assist Indigenous consumers through raising awareness of their rights, improving access to our services, increasing our capacity to detect unscrupulous traders operating in remote communities, and vigorously enforcing the law.

We continue to forge partnerships with remote communities and key stakeholders to improve consumer literacy, build the confidence of Indigenous consumers to complain about consumer law breaches, and detect and stop illegal conduct at an early stage. Our staff this year visited the Santa Teresa and Titjikala communities in the Northern Territory and the Yarrabah community in Queensland. We also worked very closely with state and territory consumer protection agencies, the Australian Securities and Investments Commission (ASIC), legal services and relevant non-government organisations to ensure Indigenous consumers have greater knowledge of their rights and greater confidence in exercising those rights.

We are moving our pilot Tiwi Islands Facebook page to a National Indigenous Consumer page to reach more Indigenous Australians. Our Indigenous consumer-oriented YouTube videos and educational materials have been distributed to Indigenous communities.

Court cases

In April 2014, **Startel Communication Co Pty Ltd** was ordered, by consent, to pay \$320 000 for misleading consumers about their rights under the ACL when cold calling consumers to sell mobile phone plans. The investigation was initiated by a complaint made during an ACCC outreach visit in the remote Indigenous community of Santa Teresa in the Northern Territory. Ultimately, the ACCC identified that more than 2500 customers Australia-wide were affected by Startel, including consumers in a number of remote Indigenous communities in the Northern Territory.

In June 2014, **Titan Marketing Pty Ltd** was ordered, by consent, to pay total penalties of \$750 000 for engaging in unconscionable conduct, making false and misleading representations, breaches of the unsolicited consumer agreement provisions of the ACL and failing to specify a single price for goods. The Court also declared, by consent, that Titan's director, Mr Paul Giovanni Okumu, was knowingly concerned in the systemic unconscionable conduct engaged in by Titan and ordered him to pay a penalty of \$50 000. An order was also made by consent disqualifying Mr Okumu from managing corporations for a period of five years.

Titan sold first aid kits and water filters by door-to-door sales, including to consumers in Indigenous communities of Far North Queensland and the Northern Territory. From 2011, Titan entered into over 7900 unsolicited consumer agreements. The Court also ordered injunctions against Titan and Mr Okumu, which include being conditionally restrained for five years from entering Indigenous communities that require permission from Elders or Administrators to enter to sell any goods. In addition, a community service order was made that Titan deliver the remaining first aid kits in its possession to Indigenous Community Health Care Centres in two Indigenous communities particularly affected by Titan's conduct.

Non-court matters

In April 2014, the ACCC accepted a court enforceable undertaking from **Tiny Tots Images Photography Pty Ltd** for misleading consumers about 'cooling off' or termination rights. Since at least January 2011, Tiny Tots has signed approximately 1400 unsolicited consumer agreements for photographic services, predominantly with Indigenous consumers in rural and remote communities via 'pop up shops'. Tiny Tots undertook to implement a compliance program, write to and offer refunds to affected consumers and ensure its Agreement Document for services complies with the ACL.

Education and advice

In December 2013, the ACCC launched *FairStore: a best practice guide for stores serving remote and Indigenous communities*, a joint ACCC/ASIC publication. FairStore details traders' obligations under the ACL, including fair sales practices, consumer guarantees and product safety. It also has important information for traders who offer credit services or book up (sometimes referred to as 'tiki') to their customers. As part of the launch, the ACCC sent copies of FairStore to hundreds of traders across Australia.

Other consumer protection outcomes

Unconscionable conduct

The Australian Consumer Law gives the ACCC a range of remedies and powers to effectively respond to breaches of fair trading and consumer protection laws. The ACL prohibits business from:

- engaging in conduct that misleads or deceives, or is likely to do so
- making false or misleading claims about goods or services, for example, about price, value or quality
- acting unconscionably, that is, so harshly it is against good conscience, in their dealings with other businesses or their customers.

Court cases

In August 2013, the Full Federal Court allowed ACCC's appeal and declared that **Lux Distributors Pty Ltd** engaged in unconscionable conduct in relation to the sale of vacuum cleaners to three elderly consumers in their homes. The matter was finalised in March 2014 pending a decision on penalty. Further details are in the case study on page 77.

In March 2014, the Full Court of the Federal Court of Australia allowed an appeal by the ACCC from penalty orders made by Justice Marshall against former Tasmanian Europcar franchisee, **BAJV Pty Ltd**, and BAJV director Mr Brendon Ayers. The Full Court also allowed a cross-appeal by BAJV and Mr Ayers on costs. Justice Marshall had ordered BAJV to pay \$200 000 for unconscionable conduct and for false or misleading claims regarding overcharging for hire vehicle repair costs and then failing to refund overcharged customers.

The ACCC appealed against the size of the financial penalties imposed on a number of grounds. These included that the judge had made an error of law by discounting the penalties imposed on BAJV and Mr Ayers because he considered that the ACCC should have been more proactive in responding to their lawyers' invitation to discussions before instituting proceedings. The Full Court accepted the ACCC's submission. Consequently it increased the penalty ordered against BAJV by \$20 000 to \$220 000, and the penalty ordered against Mr Ayres by \$4000 to \$44 000.

Case study: Lux Distributors Pty Ltd

The ACCC alleged that between 2009 and 2011 Lux engaged in unconscionable conduct in relation to the sale of vacuum cleaners to elderly consumers. The ACCC alleged that a Lux salesperson called on five elderly women promising a free vacuum cleaner maintenance check. The salesperson then unfairly pressured each of the women to buy a vacuum cleaner costing up to \$2280. The ACCC's appeal to the Full Federal Court related to three of these consumers.

The Full Federal Court set aside the judgment of Justice Jessup and made declarations that Lux engaged in unconscionable conduct in relation to the three consumers. The Full Court said 'the norms and standards of today require businesses who wish to gain access to the homes of people for extended selling opportunities to exhibit honesty and openness in what they are doing, not to apply deceptive ruses to gain entry'. The Court's decision represents a positive outcome for consumers and serves as a warning for businesses who engage in this behaviour. Lux sought special leave to appeal to the High Court and, in March 2014, Lux's application was dismissed. The matter is awaiting a decision on penalty.

False, misleading or deceptive conduct

Court cases

'Was/Now' pricing

In November 2013, the Full Federal Court upheld the decision of Justice Lander that the Jewellery Group Pty Ltd (trading as Zamel's) made false or misleading claims by using two price advertising in catalogues and a flyer. The Court found that, by using statements such as '\$99 \$49.50' or 'Was \$275 Now \$149', Zamel's represented to consumers who were unaware that they could obtain discounts outside Zamel's sales periods that they would save an amount being the difference between the higher and lower price if the items were purchased during the sale, when that was not the case. Zamel's was ordered to pay \$250 000, publish corrective notices, implement a compliance program and pay costs.

Non-court cases

In August 2013, **Collingwood Football Club Ltd** paid two infringement notices totalling \$20 400 relating to an advertisement promoting a membership offer. The ACCC had reasonable grounds to believe the advertisement failed to prominently state the total minimum price for the offer. The advertisement, which was published in the *Herald Sun* newspaper and emailed to more than 90 000 people in May 2013, offered consumers a three-game membership and Collingwood guernsey for 'only \$20*'. In fact, the total price was \$120, payable over six months. While the advertisement referred to a payment plan in fine print, it did not display the total price.

In April 2014, the ACCC accepted a court enforceable undertaking from **Coles Supermarkets Australia Pty Ltd** following an investigation into the video and cartoon, *Our Coles Brand Milk Story*, which the company published online. Coles admitted that both would be likely to contravene the misleading and deceptive provisions of the Australian Consumer Law. It agreed to publish corrective advertisements, not make similar claims and review its Australian Consumer Law compliance program.

Education and advice

In April 2014, we launched an updated *Advertising and Selling Guide*. The revised publication gives businesses and their advertising and selling agents detailed, practical information about how the consumer law applies to their specific selling and promotional activities.

New content includes guidance for businesses seeking to promote their products or services using 'was/now' or 'strikethrough' pricing, and advertising via social media or online reviews. Also included is advice for online group buying businesses. We produced a short video for small businesses on using 'was/now' pricing, which was released at the same time as the guide. We implemented a targeted education campaign following the release of the revised guidance to increase small businesses' awareness of their rights and obligations when advertising and promoting their goods and services.

Also in April 2014, the ACCC released its revised *Country of origin claims and the Australian Consumer Law* guide. The guide has information and examples of when businesses can legitimately say their goods are 'Made in', the 'Product of', or 'Grown in' Australia along with advice on how businesses can rely on the 'safe harbour' provisions in the ACL. The guide is on the ACCC website.

In revising and developing this guidance the ACCC consulted with members of a national working group of Australian Government agencies on country of origin labelling, state and territory ACL regulators and several industry stakeholders.

The ACCC worked closely with furniture and food industry groups to identify and put in place compliance guidance to address concerns.

Unit Pricing Code

The mandatory Unit Pricing Code requires large grocery retailers and online retailers selling the minimum range of food items to use unit pricing when selling non-exempt grocery items, such as fruit and vegetables, to consumers. Consumers can then easily compare the prices of products, regardless of their size or brand.

Through education and collaboration, we are helping grocery retailers to understand their rights and responsibilities under the code, and promote compliance. During 2013–14, we re-developed our consumer guidance on unit pricing, releasing it early in 2014–15.

We continue to engage with consumer organisations, such as the Queensland Consumers Association, on unit pricing issues.

Since the code's introduction in 2010, the ACCC has noted a decrease in the number of complaints about the use of in-store unit pricing.

2.2 Increase our effectiveness through partnerships

2013–14 Strategy:

Multiply the effectiveness of ACCC's compliance and enforcement initiatives through an active program of stronger and managed partnerships with ACL regulators and law enforcement agencies.

Measures:

- Outcomes and impact of actions to prevent or address consumer harm or unfair trading.
- Efficiency and effectiveness of actions to promote consumer safety and fair trading.

Australian Consumer Law partnerships

The ACL gives consumer regulators a single set of provisions to respond to fair trading and consumer protection issues. These replace the differing powers under previous national, state and territory legislation. The ACL also allows regulators to collectively work on broader issues and take proactive and timely compliance and enforcement action.

The ACCC continued to work with businesses, industry associations and consumer groups to promote awareness of the ACL. It also engaged with specific stakeholders, including peak industry associations, to promote industry-wide compliance with the requirements in the ACL regarding consumer guarantees and warranties against defects.

We continued to work closely with the Treasury, ASIC, and state and territory consumer protection agencies on several national projects.

The ACCC again actively supported the Council of Australian Governments Legislative and Governance Forum on Consumer Affairs.

We also participated in Consumer Affairs Australia and New Zealand and its advisory committees: the Education and Information Advisory Committee, the Compliance and Dispute Resolution Advisory Committee, the Policy and Research Advisory Committee and the Product Safety Consultative Committee. The role of each of the committees and their activities in 2013–14 are outlined below. Goal 4 covers our work with other bodies.

Education and Information Advisory Committee

We are members of the Education and Information Advisory Committee (EIAC) which comprises Australian, state and territory ACL regulators. The committee focuses on national cooperation and coordination of education and information activities relating to the ACL and consumer issues more generally. Under the collaborative leadership model for the ACL, it is taking advantage of new opportunities to support and promote policy and compliance activities.

To reach diverse audiences, the committee uses a range of media to communicate information on the ACL. Resources are developed collaboratively to minimise duplication and distributed nationally to ensure consistent messages.

In 2013–14, EIAC developed a range of educational tools to help Australian consumers and small businesses understand their rights and obligations under the ACL, including the *Shop Smart Online* video on what to look out for when buying or selling online; the *Be Smart Buy Smart* publication to help Indigenous consumers understand their rights when buying goods or services; and the *Small Business Checklist* to help Australian businesses check if they are complying with their obligations under the ACL.

Compliance and Dispute Resolution Advisory Committee

The advisory committee aims to ensure that compliance and dispute resolution across Australia is coordinated, efficient, responsive and, where appropriate, consistent. It is currently chaired by NSW Fair Trading which supports broader and targeted approaches to consumer law enforcement and, with the Fair Trading Operations Group, day-to-day liaison on enforcement issues.

In 2013–14, the advisory committee worked on a number of projects including cashback and was/nor pricing, extended warranties and false testimonials. Further details of this work can be found on the ACL website.

Policy and Research Advisory Committee

The committee aims to ensure that consumer protection research, policy development and legislative reform are best practice and undertaken in a nationally consistent and cooperative manner. It has participated in a number of national projects to improve policy coordination and research activities and supports the operation of Consumer Affairs Australia and New Zealand. In 2013–14, the advisory committee worked on a number of projects including egg labelling, unfair contract terms, olive oil, in-app purchases and credit card surcharging/drip pricing.

Product Safety Consultative Committee

The committee meets regularly to progress a range of national product safety matters, including the twice-yearly product safety surveillance program, and nationally coordinated consumer and supplier education campaigns. Chaired by the ACCC, the committee represents product safety regulators across Australian states and territories, as well as New Zealand and Papua New Guinea. It is a key forum through which the ACCC and state and territory fair trading agencies collaborate on a range of emerging product safety issues.

Cooperation between the ACCC and state and territory fair trading agencies has seen a high level of ongoing product safety promotion, for example, on the hazards of small powerful magnets in adult toys and an integrated approach to compliance with sunglasses regulatory requirements. This year the committee has been actively addressing safety hazards associated with portable pools and toys available in the discount variety sector through compliance activity for related product safety standards.

Product Safety Partnerships

Since the introduction of the harmonised national product safety system, we have continued to strengthen relationships with state and territory counterparts, also working in partnership with other agencies to deliver and coordinate actions that ensure better safety outcomes. We build relationships with organisations including the Australian Customs and Border Protection Service, National Roads and Motorists Association, Kidsafe, various industry associations, Standards Australia and state and territory fire safety agencies.

Recognising the impact of global marketplaces, we cooperate with the international safety community to address emerging safety hazards and harmonise regulatory approaches. Our international partners include such agencies as the US Consumer Product Safety Commission, European Union and Commission, Health Canada, the New Zealand Ministry of Business, Innovation & Employment and the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China (AQSIQ).

2.3 Protect consumers from unsafe products

2013–14 Strategy:

Identify and implement nationally integrated approaches to minimise the risk of injury and death from safety hazards in consumer products.

Measures:

- Outcomes and impact of actions to prevent or address consumer harm or unfair trading.
- Efficiency and effectiveness of actions to promote consumer safety and fair trading.

Emerging hazards and recalls

The ACCC uses an intelligence-led approach to assess current and emerging safety risks. In 2013–14, our product safety activities included a particular focus on unsafe imports and chemicals in consumer products.

We review a range of data sources to identify issues that may present a safety concern. Data sources include mandatory reports of serious illness, injury or death, recalls that have taken place internationally, and information received from the community. The ACCC assesses information received and, where warranted, takes action including:

- negotiating the recall of goods
- educating industry and consumers
- negotiating voluntary changes to packaging labelling or product design
- working to introduce changes to voluntary or mandatory requirements
- introducing and/or working to implement changes to product safety mandatory standards and bans.

Recalls

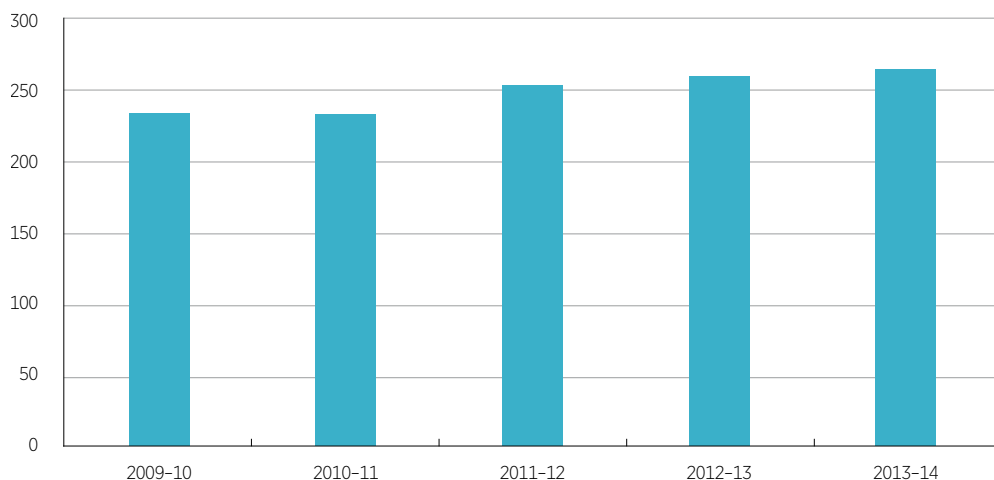
Suppliers are required to notify the Minister if consumer goods are recalled. These notifications are received by the ACCC and we often work with suppliers on the strategies that will be put in place to retrieve the goods. The ACCC also initiates and negotiates recalls where safety concerns are identified.

We received a total of 496 recalls in 2013–14, 267 related to general consumer goods, 158 related to motor vehicles, 64 related to food and seven related to therapeutic goods.

Of the 267 that fell within our area of responsibility, 91 we actively identified and negotiated. For example, we negotiated three recalls associated with ‘fire wallets’ (these are trick wallets that flame when opened). The recalled wallets contained asbestos.

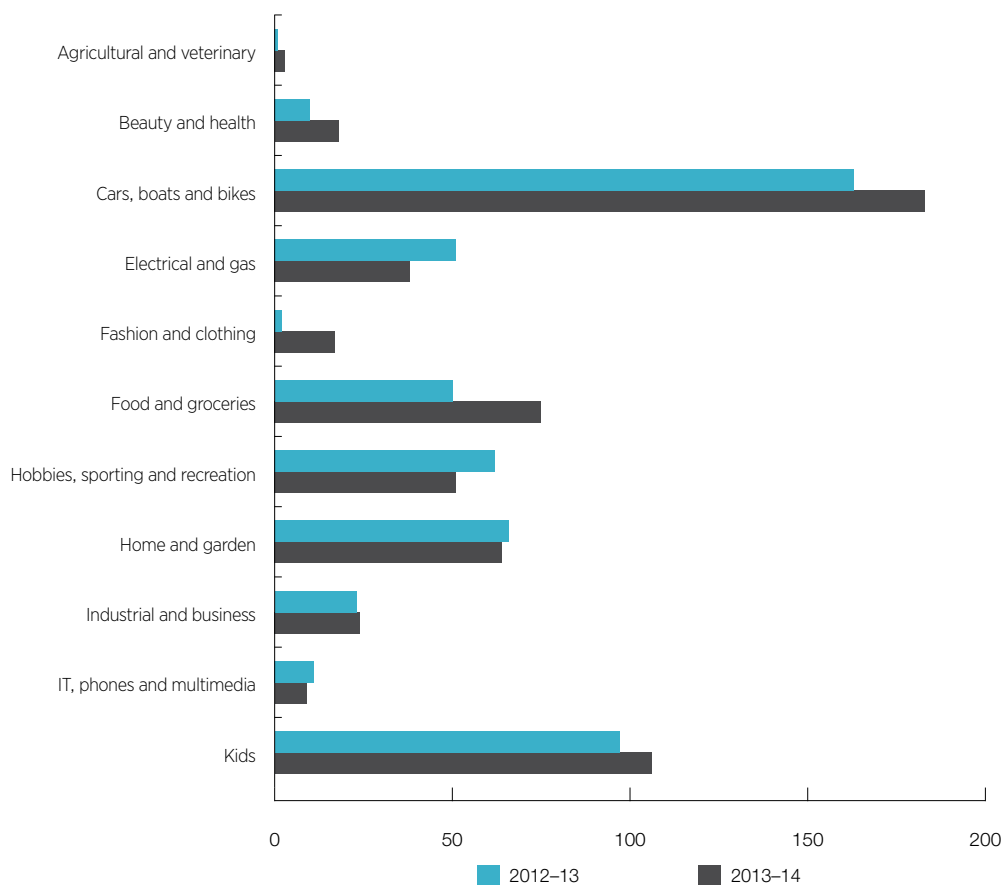
The number of recalls we have monitored has trended slightly upwards over the past five years as shown in the following graph.

Figure 3.1: Year-on-year growth (based on financial years) of recalls monitored by the ACCC



The graph below sets out a comparison of the recall activity in categories between 2012-13 and 2013-14. The number of recalls noted below is higher than the number of recalls received as recalls may appear in a number of categories.

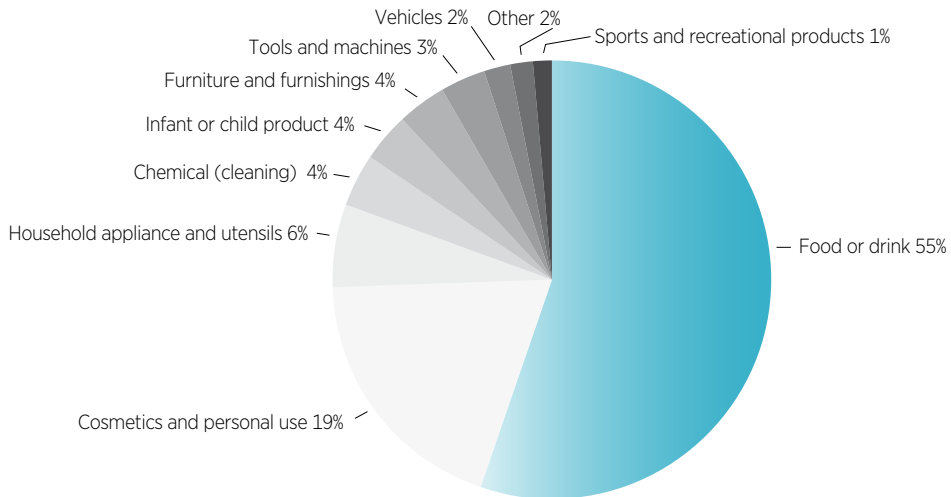
Figure 3.2: Recalls by category



Mandatory reports

The ACCC received 2601 mandatory reports in 2013–14. These are reports suppliers are required to submit when they become aware of serious injury, illness or death associated with a consumer product. We referred 1257 reports to other regulators and assessed 1344 ourselves. Twenty recalls resulted from products referenced in mandatory reports.

Figure 3.3: Mandatory reports by product category, 2013–14



ACCC initiated safety outcomes

After undertaking detailed assessments, we referred a number of issues to the Poisons Scheduling Committee or to standards technical committees to include in existing standards or to help develop new voluntary standards. These include:

- the need for ember protection on evaporative air conditioners
- improved warnings on fuel for ethanol burners
- finger entrapment issues on strollers
- flammability issues associated with wheat bags
- carbon monoxide emissions associated with portable gas generators
- stability concerns associated with televisions.

In many cases these changes will result in changes to product requirements.

The ACCC also continued to work collaboratively with industry to introduce changes to product design and labelling. As a result, for example, improved warnings on button battery packaging are beginning to come onto the market. The ACCC also expects to see improved labelling on charcoal briquettes.

Chemical concerns

Identifying and managing risks posed to consumers through chemicals of concern is a priority. One example is the testing to identify and address concerns with microbiological activity in 112 'aqueous-based' cosmetic products used around the eyes. Products with unacceptably high microbiological activity can cause skin reactions and infections. We examined products sold in stores and online. While the majority of tests did not raise concerns, we immediately negotiated recalls with three suppliers of such product.

The ACCC also negotiated voluntary product changes by industry in response to chemical issues. For example, Heritage Brands changed product packaging on its false nail applicator product, 'Nailene—Calcium gel tip nail kit'. The changes ensure that the ingredients list on the product reflects the product's formulation and is prominent and clearly legible for consumers. This action followed a consumer injury which led to the ACCC identifying deficiencies in the mandatory product ingredient list.

Another important example of the work undertaken in relation to chemical issues is the ACCC's work in relation to azo dyes that is discussed below.

Electrical cable

Between 2010 and 2013, Infinity Cable Co Pty Ltd imported and supplied substandard electrical cables to hardware retailers, electrical wholesalers, builders and electricians. The cable insulation is likely to become prematurely brittle, leading to risk of electric shock and possibly fires. While it currently presents a low safety risk the substantially reduced service life means the risk will increase over coming years. Infinity Cable Co went into liquidation after concerns were identified by state and territory regulators.

The ACCC formed the Infinity Cable Task Force to develop and implement a national response for thousands of consumers with potentially unsafe electrical wiring. The Task Force consists of officials from electrical safety regulators, building regulators and consumer affairs agencies from across Australia, chaired by the ACCC. It is liaising with relevant experts, the remaining suppliers of the cable, and associations representing electrical contractors and builders.

Retailers and wholesalers of the cable have agreed to recall and rectify installed cable early in the 2014–15 financial year. Consumers will contact their electrical contractor or builder, who will then liaise with the retailer or wholesaler to arrange cable replacement or to otherwise ensure that the installation is safe. A number of suppliers replaced installed cables in 2013–14. In the absence of specific recall insurance, some businesses are concerned about the cost of replacing installed cables.

Regulation

The ACCC makes recommendations to the Minister responsible for product safety, The Hon. Bruce Billson MP, Minister for Small Business, about amending or developing product safety regulations to address product hazards with the potential to harm consumers.

Product safety standards

New standards began for:

- portable pools—covering labelling requirements (30 March 2014).

A new service standard for corded internal window coverings was made in 2013 and will commence on 1 January 2015. This was the first service standard to be made since the power was introduced with the implementation of the Australian Consumer Law in January 2011.

An important new issue that progressed significantly in 2013–14 and will be the subject of consultation early in 2014–15 is the hazard associated with certain 'azo' dyes.

No standards were repealed during the reporting period.

Revised standards

The information standard requiring graphic health warnings on tobacco products was amended (July 2013), as was the baby walkers standard (15 April 2014) which covers construction, performance and labelling requirements.

The ACCC periodically reviews product safety standards to ensure that they are workable in a changing economy. The reviews are part of our ongoing contribution to the Australian Government's policy objectives, including its deregulation agenda.

The ACCC consulted on four reviews in 2013–14: bean bags, hot water bottles, motor cycle helmets and child restraints. The reviews examine opportunities to reduce compliance costs for business and the community while maintaining appropriate safeguards. The reviews should culminate in recommendations to the Minister in 2014–15.

The ACCC progressed a number of other reviews of existing standards in 2013–14. Reviews of pedal bicycles, household cots, bunk beds, and prams and strollers will result in public consultation early in 2014–15.

Product safety bans

A national interim ban on the supply of a range of dangerous synthetic drugs started on 18 June 2013. The ban prohibited the supply of 19 consumer goods containing synthetic drug substances and was needed to give state and territory health and law enforcement agencies time to update their drug enforcement laws to comprehensively outlaw these products that can kill or harm people.

The national interim ban lapsed on 13 October 2013 once state and territory laws were in place. Synthetic drugs are effectively banned via Schedule 9 of the Poisons Standard, which is now incorporated in state and territory drug laws. This action to protect consumers against unsafe substances demonstrates the effectiveness of a swift national response to consumer safety issues.

Compliance

To achieve our product safety compliance objectives we use three integrated and flexible strategies:

- encouraging compliance by educating and informing consumers and businesses about their rights and responsibilities under the Act
- enforcing the Australian Consumer Law by resolving possible contraventions administratively and by litigation
- working with other agencies to implement these strategies.

Supplier education

The ACCC continued to provide guidance to industry in relation to existing and new product safety regulations.

This year we developed supplier guidance for the baby walker standard to help businesses to meet new requirements. We also engaged with suppliers leading up to the start of the portable pools standard on 30 March 2014.

Portable pools are popular with Australian families but, regardless of their shape or size, can pose serious drowning risks to young children. We worked with state and territory consumer protection agencies to scrutinise portable pools in over 550 stores nationwide. We explained the changes and their obligations in a supplier factsheet. We helped consumers understand the risks through a consumer campaign over summer 2013–14. To ensure that the risk was

Case study

Button battery injuries

Button batteries power many common household products from remote control devices, to hearing aids, bathroom scales and flameless candles.

If swallowed, button batteries can cause significant, permanent injuries and even death. Coin-size batteries can get stuck in a child's throat where the saliva triggers an electrical current. This causes a chemical reaction that can severely burn tissue in as little as two hours. Serious injuries may also result from the insertion of button batteries into areas including the ears, eyes and nose.

In Australia an estimated five children a week present to an emergency department with a button battery related injury. Sadly, in July 2013, a four-year-old Queensland child tragically died after swallowing a coin-size lithium battery.

In 2013-14, the ACCC worked with industry to improve the safety of these batteries through voluntary improvements, including child-resistant packaging and warnings that highlight the dangers if the batteries are swallowed.

The battery industry gave strong support, with two thirds of suppliers, including all the major brands, promising to improve their button battery warnings, packaging or both. The first child-resistant packaging for coin-size lithium batteries was introduced in 2014. Some suppliers have also introduced products with the new warnings recommended by us. Others will do so over the coming months.

Since 2012, we have also been working with Kidsafe and industry on *The Battery Controlled* campaign to raise consumer awareness of the dangers associated with coin-sized lithium batteries. Its impact has been substantial. Our research showed a significant increase in overall consumer awareness of the issue in Australia from 27 per cent in 2011 to 72 per cent in November 2013.

In June 2014, we partnered with international product safety regulators in an International Awareness Week on button battery safety. We coordinated the week through the OECD and involved more than 20 jurisdictions. Those participating included Australia, Brazil, Canada, Columbia, the European Commission and a number of European member countries, Japan, Korea, Latvia, Mexico, New Zealand, Peru and the United States of America.

dealt with holistically we also disseminated consumer safety messages via different media in summer 2013–14. Further surveillance of portable pools is planned now the new standard is in place.

We have commenced preparations for similar action in relation to the new corded internal window coverings services standard, which comes into effect on 1 January 2015.

Compliance concerns

We receive information from a range of sources that suggests possible non-compliance with mandatory standards and bans. These matters are assessed and we take action where warranted issuing warnings or clarifications, instigating broad compliance or educative activity, or taking appropriate enforcement action.

Market surveillance

The ACCC regularly surveys the market to identify compliance concerns in relation to existing regulations and to assist in the identification of new hazards. We work in partnership with ACL regulators and other organisations to coordinate and conduct joint surveillance, testing and compliance to address safety concerns. We also respond to reports from other regulators, including concerns identified by the NICNAS.

During 2013–14, the ACCC conducted 2413 wholesale, retail, online and showbag inspections and 13 924 product inspections against 41 mandatory safety standards, bans or product types. Inspections resulted in suppliers withdrawing 99 product types from sale and recalling 38 product types.

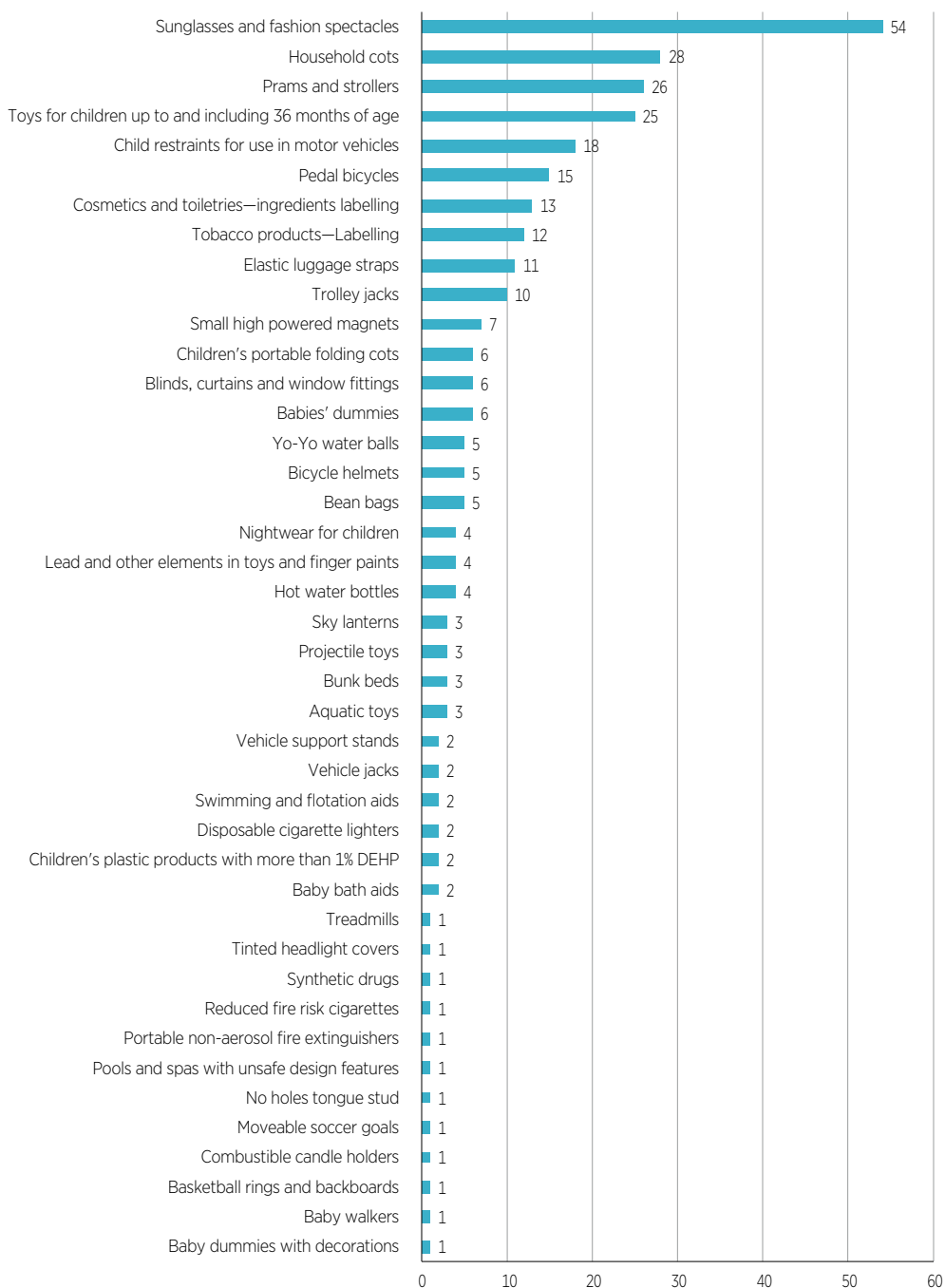
National sunglasses compliance campaign

During the year, the ACCC coordinated and worked in partnership with ACL regulators to conduct joint surveillance, testing and compliance to address safety concerns in relation to sunglasses.

A mandatory standard is in place for sunglasses as exposing eyes to high levels of sunlight can cause serious and sometimes irreversible eye damage. Lens category labelling is required and is important as it allows consumers to choose the right level of eye protection for both sunglasses and fashion spectacles.

In August and September 2013, 15 000 product lines were tested, and over 2400 sunglasses were removed from sale. In October and November 2013, follow-up surveillance activities were undertaken, with 86 per cent of those suppliers who had previously supplied non-compliant glasses now supplying only compliant glasses.

Market surveillance was supported by the *Safe Sunnies* consumer education campaign to increase consumer awareness about the importance of choosing the right pair of sunglasses. As a part of the campaign the ACCC partnered with the Optometrists Association Australia, to develop a new online tool to inform consumer choice. Market research undertaken to develop the campaign identified that consumers had a high level of concern about eye protection and helped us to develop an approach that achieved pleasing take-up rates.

Figure 3.4: Matters considered by standard/ban 2013–14

Case study

Clothing dyes put to the test

The ACCC and state and territory consumer product safety regulators play an active role in investigating potential chemical hazards in consumer products. While many chemical substances are essential in small amounts for the human body to function, larger amounts can be harmful. 'Azo' dyes are a large class of very effective synthetic dyes used for colouring a variety of consumer goods such as foods, cosmetics, carpets, clothes, leather and textiles.

Studies have concluded that, while health risks linked to consumer exposure to textiles and leather goods coloured with certain azo dyes (including benzidine-based dyes) are likely to be very low, the carcinogenic nature of the dyes gives cause for concern. As a result, exposure to certain azo dyes, including benzidine-based dyes, should be minimised or eliminated. This year, we took action to examine and address hazardous dyes in commonly used consumer products such as imported clothing and textile articles.

Overall, the results were reassuring: over 97 per cent of randomly selected articles tested were within the acceptable limit in initial testing although this proportion decreased when further more targeted testing was undertaken. Five articles from the first tranche of testing were above the acceptable limit, a result we immediately brought to the attention of the suppliers who initiated recalls.

The ACCC then undertook further testing, focusing on jeans and bedding. In total there were 12 voluntary recalls by suppliers of 37 product lines, major retailers recalled nearly 208 000 articles of clothing and linen in early 2014.

An effective partnership with the National Industrial Chemicals Notification and Assessment Scheme (NICNAS) helped us achieve this strong safety outcome for Australian consumers. The impetus for the initial survey came from a recommendation from the NICNAS which assessed the human health impact of 11 benzidine-based azo dyes. We continue to work closely with industry and other stakeholders to manage consumer safety issues associated with azo dyes in the longer term. We are consulting with industry and the public about whether regulation is needed to ensure better safety outcomes in this area.

Product safety enforcement

In 2013–14, we finalised two product safety enforcement matters:

- **Brand Republic Pty Ltd** paid five infringement notices totalling \$51 000 and provided a court enforceable undertaking relating to supply of children's nightwear garments that did not comply with the mandatory standard. Brand Republic operates three GAP retail stores selling clothes for men, women, children and babies. Between 22 July 2011 and 26 May 2013, Brand Republic sold five different children's nightwear garments that did not comply with the mandatory standard for children's nightwear. Brand Republic has undertaken that it will only supply products that meet the required standard, and will obtain specific evidence to demonstrate the compliance of products subject to a prescribed safety standard. It also undertook to publish recall notices on the internet, in-store and in certain newspapers, and implement a trade practices compliance program.
- **Bunnings Group Ltd** provided a court enforceable undertaking for selling window blinds that failed to comply with mandatory safety standards. The ACCC found that Bunnings sold Matchstick Blinds that did not carry mandatory safety warnings on the retail packaging. Bunnings undertook to implement a range of compliance initiatives as a part of the undertaking. It assured the ACCC that it will strengthen its current compliance program for window coverings, including pre-shipping inspections, introduce better training for management and buyers, and hold regular audits. Bunnings has already recalled over 3600 Matchstick Blinds sold between January 2013 and March 2013.

Effective education

The ACCC emphasised its active education and awareness program on safety issues. This has included a clear focus on the use of online tools and materials and the use of social media.

We utilise social media, particularly Facebook and Twitter, to continually build a strong following on product safety issues. By using social media we reached a wide Australian audience during major safety campaigns, such as our campaign on quad bike safety. It proved similarly effective in publicising critical product safety issues and recalls, such as azo dyes and microbial contamination in cosmetics. More than 10 000 individuals and organisations currently follow our Product Safety Facebook page while more than 4000 follow us on Twitter.

Online issues

The ACCC has actively engaged with online concerns in relation to product safety and this has included the development of education materials.

In March 2014, the ACCC released a new publication, *A guide for business: Consumer product safety online*, which advises online sellers about best practice and marketplaces about consumer product safety protections in Australia. We published the guide because we were concerned that some online suppliers, particularly those based overseas, may not be aware of Australia's product safety laws. The guide identifies compliance steps all online businesses can take to ensure the supply of safe products and avoid product recalls, consumer redress and reputational damage. These steps include:

- being aware of Australian product safety laws
- not supplying banned products
- only supplying products that comply with mandatory safety standards

- giving consumers enough details to make safe and informed decisions through good quality product descriptions, product images, ingredient lists and age-grading information on websites.

Education campaigns

In 2013–14, the ACCC undertook a mix of major and less intensive education campaigns.

We recently collaborated with child safety organisation Kidsafe and Olympian Blake Gaudry to raise awareness about the importance of trampoline safety in the *It's flipping important* campaign. Quad bike injury was another major campaign target.

Joint education initiatives with international jurisdictions included the International Product Safety Conference in October 2013 and the International Awareness Week on button battery safety in June 2014. Both raised worldwide awareness of product safety issues and their impact on global communities.

2.4 Support a vibrant small business sector

2013–14 Strategy:

Support a vibrant small business sector, deter anti-competitive and unconscionable conduct targeted at small business, and facilitate collective bargaining by small business operators.

Measures:

- Outcomes and impact of actions and policies to promote competition (including those affecting small businesses).
- Outcomes and impact of actions to prevent or address consumer harm or unfair trading (including those affecting small businesses).

Actively informing small businesses of their rights and responsibilities under the Act

The ACCC helps to ensure small businesses understand and comply with their obligations and encourages them to exercise their rights under the Competition and Consumer Act as the customers of larger suppliers. Our aim is to promote a competitive and fair operating environment for small business and, importantly, we seek to ensure small businesses understand how the legislation can help them.

Our main tools are:

- our website (which includes a link to a dedicated page for small businesses) and an online small business complaint form
- the Infocentre small business hotline
- the small business information networks, which small businesses can subscribe to, with information about enforcement action, new guides and changes to the Act
- targeted publications, mobile apps, online education modules and videos
- face-to-face and online education and compliance sessions.

Information for businesses includes instructions on how to notify us of any collective bargaining proposals. These help small businesses to get timely decisions on ventures that improve efficiencies and savings, result in public benefit and do not impede competition.

We also regulate commercial behaviour, including by:

- enforcing fair trading provisions
- protecting small business against misuse of market power
- promoting and enforcing codes of conduct
- allowing some trading arrangements in the public interest.

Case study

Quad bike campaign on track with social media

YouTube was at the centre of our quad bike safety campaign, *Would you risk it?*, which began just before the 2014 Easter break. Our video highlighted the dangerous acts that commonly cause quad bike accidents and urged riders to take safety seriously.

Prompting the campaign was the growing number of deaths and serious injuries relating to quad bike use. In the three years from 2011–13, 60 people died in quad bike accidents. At least one in three riders who died was not wearing a helmet and one in six deaths involved a child under 14.

Seven deaths were reported in the first six months of 2014.

The campaign aimed to:

- develop consumer awareness of the dangers related to unsafe quad bike use—particularly recreational use
- urge consumers to take care when riding quad bikes
- encourage existing and potential quad bike users to visit the campaign site and seek safety information.

Along with YouTube—where our video attracted over 39 000 views—we used Facebook and Twitter to build safety awareness. Engagement by Facebook users was particularly strong, with continuous commentary on the quad bike safety posts throughout the 44-day campaign. We reached 1.5 million people on Facebook alone via targeted information posts and advertising, while on Twitter we logged nearly 84 000 impressions.

State and territory consumer protection agencies enhanced our social media efforts through their own networks.

Along with using both social and traditional media, we enlisted the support of Australian quad bike suppliers and outdoor adventure companies.

In addition to its education efforts, the ACCC is working with others to better understand the safety problems associated with quad bikes. To this end, the ACCC funded the purchase and testing of recreational quad bikes to ensure that this element of the quad bike market is included in research currently being undertaken by the University of NSW for WorkCover NSW.

Enforcement activities

We aim to make markets work for everyone including small businesses by, for example, taking action on misleading product claims that can disadvantage competing businesses such as in our work on credence claims. As discussed earlier in this report, we use various compliance and enforcement tools, such as seeking court orders and obtaining undertakings enforceable in court to help ensure businesses do not breach the Act in trying to gain a competitive advantage.

Court cases

In December 2013, the Federal Court ordered Tuan Nguyen, the sole director, and Thuan Nguyen, the sales manager, of **Artorios Ink Co** to pay penalties totalling \$100 000 after they admitted to have been knowingly concerned in breaches of the ACL by acting deliberately to mislead and deceive small businesses to generate ink cartridge sales. The Court also made declarations by consent and accepted undertakings from both that they would not manage or act as the director of a corporation for five years.

The Court found that, during 2011 and 2012, Artorios Ink engaged in misleading and deceptive conduct and made false or misleading claims to small businesses. The Court further found that Artorios Ink demanded payment for ink cartridges that small businesses had never agreed to purchase.

In May 2014, the Federal Court ordered, by consent, that **Taxsmart Group Pty Ltd, Taxsmart Franchising Pty Ltd** and **Resultsmart Pty Ltd** (together **Taxsmart**) repay \$260 400 in franchise fees to five former franchisees for engaging in misleading and deceptive conduct. Taxsmart claimed that it was offering a graduate program and 12 months employment to accounting graduates that would enable them to register as a tax agent. The Court declared that Taxsmart did not have reasonable grounds for making this claim. The Court also declared that Taxsmart's sole director at the time, Mr Scott Andrews, aided and abetted the conduct. The Court accepted undertakings from Taxsmart and Mr Andrews that they would not, for three years, make the same or similar claims or offer employment only on payment of a fee.

Small business education and outreach

In 2013-14, the ACCC received over 12 900 small business and franchising related complaints and enquiries. There was an increase in the number of contacts about small business matters from 4735 in 2012-13 to 12 036 in 2013-14. The increase is partly attributable to improved data collection procedures.

The ACCC offers three free online education programs:

- A program for small businesses, which aims to help small businesses better understand their rights and responsibilities under the Act when dealing with customers, suppliers and other businesses. Since its launch in April 2013, more than 9700 unique visitors have accessed the program.
- A program for tertiary students, which was launched in November 2013. The program aims to educate students enrolled in business courses about Australia's competition and consumer laws and some of the issues that students are likely to encounter in their future business careers. More than 3800 unique visitors have accessed the program to date. The case study on page 68 has more information.
- A franchising pre-entry education program, run by Griffith University. The program is designed to help potential franchisees make an informed decision about whether to buy a franchise. Around 6000 people have enrolled in the program since its release in July 2010.

During 2013–14, other small business education and outreach activities included more than 90 speeches and presentations by ACCC staff to small business audiences, as well as attendances at expos and other events.

We also released two editions of *Small business in focus*, a twice-yearly summary of our activities in the small business and franchising sectors and update on industry codes. These reports also include facts and figures on issues relevant to small businesses, including a breakdown of complaints received from small businesses, franchisees and franchisors in the previous six months.

Codes of conduct

The ACCC is responsible for promoting and enforcing compliance with four mandatory prescribed industry codes—the Franchising Code, Horticulture Code, Oilcode and the Unit Pricing Code.

Franchising Code

The code aims to regulate the conduct of franchising participants and ensure that prospective franchisees are sufficiently informed before buying into a franchise. It also provides for a cost-effective and formal dispute resolution scheme for franchisees and franchisors.

We administer and enforce the Franchising Code and audit franchisor compliance with the code disclosure obligations (see Audit notices issued in appendix 7). Several investigations into alleged breaches of the code or the Act by franchisors are currently underway.

Horticulture Code

The purpose of the mandatory Horticulture Code is to improve the clarity and transparency of transactions between growers and wholesalers of fresh fruit and vegetables and establish a fair dispute resolution procedure.

Our role is to investigate complaints and, where necessary, take enforcement action against anyone who fails to comply with the code. It includes promoting compliance by publishing educational material such as guidelines, articles and factsheets as well as giving presentations through our outreach programs in each state and territory.

As in previous years, the ACCC liaised with the Department of Agriculture regarding the code and related matters. We also used our audit powers to review trader compliance of wholesalers with their disclosure obligations (see Audit notices issued in appendix 7).

Oilcode

The mandatory Oilcode came into effect on 1 March 2007. In general terms, the code regulates the conduct of wholesalers and fuel resellers, including suppliers, distributors and retailers, in the sale, supply or purchase of declared petroleum products (for example, unleaded petrol and diesel).

Legislative amendments

Franchising Code review

In January 2013, the Minister for Small Business announced a review of the Franchising Code by Mr Alan Wein. We made a submission to the review on a number of issues relating to disclosure, auditing and penalties. In April 2014, the Australian Government publicly released its proposed franchising reforms. The proposed changes include:

- introducing penalties and infringement notices for breaches of the Franchising Code
- broadening the s. 51ADD audit power
- requiring franchisors to give prospective franchisees a short information statement regarding the risks and rewards of franchising before they become emotionally and financially committed
- requiring franchisors to disclose their ability to compete online with franchisees.

The proposed changes also introduce a general duty on franchisors and franchisees to act in good faith during their dealings with each other. They are expected to take effect from 1 January 2015.

Proposed codes of conduct

The Australian Government is considering two codes of conduct which would be prescribed under the Act. These are the Wheat Code and the Food and Grocery Code.

Proposed mandatory code of conduct

Since 1 October 2009, wheat exporters who own and operate bulk wheat port terminal facilities have been required by the *Wheat Export Marketing Act 2008* (WEMA) to pass an 'access test'. This test can be met in part through an access undertaking that we have accepted under Part IIIA of the Act.

In accordance with amendments to the WEMA in December 2012, the Australian Government intends that, from 1 October 2014, terminal access will instead be governed by a mandatory code of conduct under the Act. The code of conduct would replace the current 'access test'.

Supermarket voluntary code of conduct

The Australian Food and Grocery Council, Coles and Woolworths drafted and presented a Food and Grocery Code of Conduct to the Minister in November 2013 with a view to it becoming a prescribed voluntary industry code under the CCA. The Australian Government will consult on the draft through a regulatory impact statement process.

Voluntary codes of conduct

We support voluntary industry initiatives to develop codes that promote good business practices consistent with the Act. Effective codes potentially increase consumer protection and reduce regulatory burdens for business.

During 2013–14, we gave guidance to the Australian Federation of Travel Agents and Fitness Australia about their draft codes. We also commented on the revised Jewellery Industry Code of Conduct.

Audits of code compliance

Under the Act, we can conduct audits to monitor trader compliance with prescribed industry codes.

Since 1 January 2011, we have served audit notices on 77 traders (15 on horticulture traders and 62 on franchisors) to produce documents.

In October 2013, we announced that we would audit franchisors in the takeaway food and fitness industries for compliance with the Franchising Code. These industries were selected because they consistently generate a significant proportion of the franchising complaints made to the ACCC. Since the announcement, we have issued audit notices on six takeaway franchisors and six fitness franchisors.

We have found that most traders complied with their respective industry code, with most of the concerns raised being minor in nature and resolved administratively.

Allowing collective bargaining in the public interest

The ACCC can grant protection from legal action for some arrangements or conduct that might otherwise breach the Act's competition provisions. Such protection is available only on public benefit grounds.

For example, collective bargaining would ordinarily raise anti-competitive concerns, as businesses are generally required to act independently of their competitors on pricing and other terms of doing business. However, smaller businesses can face challenges when negotiating on their own. By sharing negotiating costs, they can often have more effective input into contracts and may have greater bargaining power if they act together.

During 2013–14, we considered 13 collective bargaining proposals under the authorisation and notification provisions of the Act, the majority of which involved small business participants such as clubs, lottery agents, interpreter services, medical services, office supplies and wagering.

The Office Group was granted authorisation for six years. The Office Group represents 84 Office CHOICE members, 20 Office Connexions retailers, and 154 Office Brands franchises. It sought authorisation to continue collective negotiation on the terms on which suppliers sell office products to its members.

The collective bargaining arrangement has been operating since we first authorised it in 2007.

The ACCC found that collective negotiation can deliver cost savings and promote competition between office product wholesalers supplying the bargaining group. This will assist members of the group in competing with larger retailers and give consumers more competitive prices and greater choice.

Other decisions relating to small business

Table 3.2: Overview of authorisations 2013-14

Total authorisations decided (excluding minor variations)	36
Small business authorisations decided	19

In December 2013, we published *What you need to know about: Authorisation* to answer the questions we are most frequently asked about authorisation, particularly by small businesses.

We received and assessed more than 720 exclusive dealing notifications, a significant number of which related to small business arrangements. For example, the ACCC often receives third line forcing notifications covering franchise supply arrangements where franchisees are required to source equipment, point-of-sale systems and/or stock or ingredients from approved suppliers as a condition of franchise membership. In November 2013, we issued the guide *What you need to know about: Competition issues in franchising supplier arrangements* to assist franchisors and franchisees understand our role in reviewing these arrangements.

Further information on authorisation, notification and collective bargaining appears under Goal 1.4.

2.5 Empowering consumers

2013-14 Strategy: *Empower consumers to assert their rights under the Australian Consumer Law to secure fairer outcomes in the marketplace.*

Measure:

- Efficiency and effectiveness of actions to promote consumer safety and fair trading, and consumer awareness and assertion of their consumer law rights.

Empowering and educating consumers about their consumer rights is central to the ACCC protecting the interests and safety of consumers. The ACCC's educational campaigns also support consumers to navigate complex or difficult consumer choices to help them make smart choices.

We distribute targeted and general information, including tips and tools, to help consumers and small business via a wide range of channels. We liaise extensively with business, consumer and government agencies about the Act and our role in its administration.

As well as guiding consumers and small businesses, we also seek to maximise the effect of enforcement actions. In many instances we conduct consumer education and business compliance initiatives alongside enforcement activities, each reinforcing the message of the other. A penalty and reputational damage following a court judgment are powerful deterrents to other traders, encouraging compliance. Court cases can also highlight to consumers how they can use their rights.

We organise regular media appearances for the chairman and commissioners to offer consumer tips and advice, and provide many tips on our website, as well as videos and other tools. The ACCC has developed apps to provide consumers with mobile information and tools available while they shop to help make informed choices.

We also conduct specific campaigns to educate and empower consumers. For example, our campaign on button batteries raised consumer awareness of the hazards if they are swallowed from 27 per cent in 2011 to 72 per cent in November 2013. We also issued 20 SCAMwatch radar alerts on current scams to over 26 000 subscribers as part of our free alert service and served nearly 44 000 contacts via the hotline.

For examples of our actions to empower consumers see:

- consumer protection for Indigenous consumers on page 75
- other consumer protection education on pages 76-7
- the Effective education section on page 91
- our work with Australian Consumer Law partner agencies on page 79.

Ruby Hutchison Memorial Lecture

On 12 March 2014, the ACCC partnered with CHOICE to host the 2014 Ruby Hutchison Memorial Address. Professor Megan Davis, Director of the Indigenous Law Centre at the University of New South Wales, presented this year's Ruby Hutchison Lecture. Professor Davis has extensive experience in Indigenous affairs and shared her insights on what it means to be an Indigenous consumer today.

Professor Davis specifically focused on the experiences and challenges faced by Indigenous consumers in remote communities. She acknowledged the positive work undertaken by regulators and consumer policy people in responding to those challenges through engagement, enforcement and law reform measures.

National Consumer Congress

On 13 March 2014, the ACCC hosted the 2014 National Consumer Congress, the key annual event on the consumer landscape.

The Congress theme was 'Consumer rights in the digital age'—a timely look at consumers in the digital economy, especially given the growth of online shopping. The online focus looked at convergence and consumers, consumer data, ISP policing, empowering consumers to shop confidently online, and regulatory challenges in the online environment.

Beyond the online sphere, it also considered the then competition root-and-branch review and what this will mean for consumers, to debt collection practices, to ethical consumption.

Speakers at the Congress included our Chief Executive and Chairman; the Hon. Bruce Billson MP, Minister for Small Business; Alan Kirkland, CEO of CHOICE; and Dr Rebecca Giblin, a researcher from Monash University and co-host of ABC's 'Drive' Geek Club radio show.

Measures and performance for Goal 2: Protect the interests and safety of consumers and support fair trading in markets

Measures—Goal 2

- Outcomes and impact of actions to prevent or address consumer harm or unfair trading.
- Efficiency and effectiveness of actions to promote consumer safety and fair trading.

Performance indicators

Our performance and the results we achieved are described in detail throughout the report on performance. In this section we provide a short summary and some highlights of our performance in relation to consumer protection and fair trading.

1. Outcomes and impact of actions to prevent or address consumer harm or unfair trading

In 2013–14, we:

- instituted 18 consumer protection proceedings in the Federal Court
- received successful outcomes in 28 consumer protection cases, with penalties awarded totalling over \$12.1 million
- accepted 14 court enforceable undertakings to prevent or address consumer harm or unfair trading
- received payment for 23 infringement notices totalling over \$220 000.

To prevent harm to consumers from unsafe products we:

- finalised two matters, resulting in five infringement notices totalling \$51 000 and a court enforceable undertaking, as well as a further court enforceable undertaking to implement a range of compliance initiatives (cases are outlined in appendix 8, page 331 Product safety enforcement outcomes)
- conducted 2413 site visits, resulting in withdrawal of 99 product types and 38 product type recalls
- tested 112 'aqueous-based' cosmetic products resulting in a number of recalls and prompted 12 voluntary recalls of 37 product lines following survey and testing of consumer products for benzidine-based dyes (nearly 208 000 articles of clothing and linen).

We engaged directly with consumers and small businesses via the Infocentre, assessing complaints against our Compliance and Enforcement Policy for further action:

- 132 673 contacts served by telephone or received a written response
- 24 094 web form responses
- 1101 letter responses
- 106 668 calls answered.

2. Efficiency and effectiveness of actions to promote consumer safety and fair trading

- product safety regulations and unsafe products:
 - leading up to the commencement of revised mandatory standard for labelling and packaging for portable pools, proactive compliance work with states and territories in over 550 stores nationwide
 - through international collaboration, a significant increase in overall consumer awareness of button battery risks in Australia from 27 per cent in 2011 to 72 per cent in November 2013
 - through a 44-day campaign about quad bikes, over 39 000 YouTube views, 1.5 million people reached through Facebook and nearly 84 000 Twitter impressions.
- consumer education and awareness:
 - *Shop Smart Online* launched December 2013—over 30 000 visits in first week
 - free online program for tertiary students launched November 2013—3800 users accessed
 - 44 000 SCAMwatch hotline contacts
 - 3800 users of a tertiary student program.
- small business education and outreach:
 - 9700 unique visitors to small business program since April 2013 launch
 - 6000 enrolments in a franchising pre-entry education since July 2010.

Goal 3: Promote the economically efficient operation of, use of, and investment in monopoly infrastructure

Significant outcomes 2013–14

- Finalised NBN Co's Special Access Undertaking, establishing the framework for prices and other terms for access to the National Broadband Network (NBN).
- As part of the Fixed Services Review, extended and varied the existing declaration of six fixed line services and initiated the final access determination for these declared services.
- Reduced the prescriptiveness of economic regulation at GrainCorp's bulk wheat terminal in Newcastle in light of the increased competition from other facilities at that port.
- Expanded coverage of the access undertaking applying to ARTC's Hunter Valley coal rail network, providing certainty to coal producers in the Gunnedah Basin in NSW.
- Provided accurate, targeted and accessible information to inform stakeholders and consumers about the petroleum industry, container stevedoring and major airports.
- Determined regulated charges, for the first time, for a water infrastructure operator (State Water Corporation of New South Wales) for 2014–17.
- Finalised the fourth annual Water Monitoring Report, noting that water charge increases in the Murray-Darling Basin were modest and that compliance across the sector is improving.

Our regulatory objective

Our objective is to promote the long-term interests of end-users through competition and efficient investment in some of Australia's key infrastructure services. The ACCC regulates access to bottleneck infrastructure and the price for that access. In addition, the ACCC monitors and reports on the price and quality of goods and services available in these monopoly markets, and where relevant, business compliance with industry-specific laws.

We have regulatory responsibilities in relation to a number of key infrastructure sectors in the economy, including telecommunications, rail, water, ports and airports. As the infrastructure in each of these sectors is generally provided by one or only a few suppliers, efficient access to infrastructure may be limited, thereby undermining competition and investment in these markets.

Effective regulation of infrastructure services supports effective competition in upstream and downstream markets, enhancing community welfare and encouraging efficient use of resources. Regulation also promotes the economically efficient operation and use of, and investment in, Australia's key infrastructure, thereby promoting the long-term interests of Australian consumers.

Functions

Our key functions include:

- regulating access to a monopoly service needed by businesses to compete in upstream or downstream markets
- regulating prices where competitive pressures on a supplier are not sufficient to produce efficient prices and protect consumers
- monitoring and enforcing compliance with industry-specific laws for bulk water, energy and communications services
- monitoring and reporting on the prices and quality of particular goods and services to inform industry and consumers about the effects of market conditions
- disseminating information to assist stakeholders in understanding the regulations applying and the structure and operation of infrastructure markets
- on request, advising governments and policy agencies about how efficient regulatory outcomes and competitive, well-functioning markets can be achieved.

Strategies

Our strategies include to:

- deliver network regulation to promote competition and meet the long-term interests of end-users
- improve the workability of emerging markets by enforcing market rules and monitoring market outcomes
- respond to government requests to provide monitoring reports on industries in highly concentrated and newly deregulated or emerging markets
- improve regulatory practices and processes, including by building relationships with domestic and international regulatory agencies to leverage their experience.

Industries and sectors

We also seek to build a culture of regulatory compliance and confidence in the operation of key infrastructure sectors. To achieve this we refine approaches to regulatory pricing methodologies to better reflect efficient costs and pricing signals, and investigate major compliance matters in a timely manner and take appropriate enforcement action.

The following sections describe how we implemented our strategies in the sectors subject to regulation and monitoring, namely:

- telecommunications
- water
- fuel
- airports
- container stevedoring
- wheat export
- rail
- postal services.

3.1 Delivering sound telecommunications regulation

2013–14 Strategies: *Deliver network regulation to promote competition and meet the long-term interests of end-users.*
Improve the workability of emerging markets by enforcing market rules and monitoring market outcomes.

Measures:

- Timely, considered and evidence-based regulatory decisions based on constructive engagement and complemented by effective enforcement and compliance activities.
- Timely provision of accurate advice to government, including evaluating the effectiveness of frameworks such as access regimes.
- Accurate, targeted and accessible reports on industry and competitive conditions, including pricing practices.

Significant outcomes 2013–14

- Accepted NBN Co's Special Access Undertaking, which is a key part of the framework for prices and other terms of services supplied to access seekers over the NBN until 2040.
- Finalised the declaration inquiry for the Fixed Services Review extending the declaration of the six fixed line services for another five years. The review examined which of Telstra's network services communications providers need to access to offer competitive services to end-users.
- Released our final report on the domestic transmission capacity service declaration inquiry—the declaration was extended for another five years. The inquiry examined how competition is developing on transmission routes and how regulation should be modified.
- Released our final report into the declaration of the mobile terminating access service. We decided to continue to regulate mobile voice termination services for a further five years, and to regulate SMS termination services for the first time.
- Approved a range of measures to protect competition and consumers during the migration to the NBN.

Introduction

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

In Australia, the high costs of rolling out infrastructure to provide communications services generally make competitive duplication unviable. As a result, communications markets are often characterised by dominant monopoly providers with substantial market power. Communications markets in Australia have also historically been dominated by vertically integrated providers. Vertically integrated providers have strong incentives to favour their own retail arms and disadvantage rivals seeking access to their infrastructure to offer competing retail services. Targeted regulatory intervention, such as regulating access to a number of wholesale communications services, is therefore necessary.

Access regulation reduces barriers for competing operators to enter and compete in downstream markets and invest in new infrastructure. As a result of regulating access to monopoly wholesale communications services, new entrants are often able to grow and innovate. Consumers then benefit in terms of both price and service quality.

The telecommunications industry is currently experiencing prolonged change due to technological developments, new consumer use patterns and, principally, structural change from the rollout of the NBN. Some of our key work therefore relates to the transition to the NBN.

At the same time, we continue to examine competition issues in the mobile and broadcasting markets, the audio-visual content sectors, in spectrum developments, intellectual property markets and in emerging technologies.

We have additional responsibilities under the following national legislation:

- *Broadcasting Services Act 1992*
- *Copyright Act 1968*
- *National Broadband Network Companies Act 2011*
- *Radiocommunications Act 1992*
- *Telecommunications (Consumer Protection Services Standards) Act 1999*
- *Telecommunications Act 1997*.

More information on our communications role is detailed on the ACCC website and in publications such as ACCCount. We also publish a number of statutory reports specific to the communications industry, in particular, the ACCC Telecommunications Report, more details of which appear on page 114 under *Statutory reporting*.

Reasonable access to telecommunication services

In regulating the telecommunications sector, we aim to establish reasonable access terms that:

- balance the interests of infrastructure owners, users and the broader public
- achieve any-to-any connectivity
- encourage efficient investment in, and use of, infrastructure
- promote competition for the long-term benefit of consumers and businesses.

The ACCC regulates in a timely and transparent manner after consulting with stakeholders, as per the activities for 2013–14 described below.

Declaration of telecommunications services

Part XIC of the Act supports the development of a competitive telecommunications industry by allowing services to be ‘declared’, a process that determines which services are regulated by the ACCC. Once declared, a service must be supplied, on request, to other providers for use in their own services. This arrangement guarantees access to telecommunications services in the interest of competitive services to end-users.

The ACCC can declare a service by:

- holding a public inquiry and allowing access providers, access seekers and consumers to comment
- accepting a special access undertaking from the provider of a service which effectively declares a particular service.

In addition, there is another method for declaring a service which applies only to NBN corporations (such as NBN Co). Where NBN Co supplies or intends to supply a service and publishes a Standard Form of Access Agreement for that service on its website, that service is declared.

Fixed Services Review—declaration inquiry

In July 2013, the ACCC began the Fixed Services Review, which includes an inquiry into the existing declarations for six fixed line services which expire on 31 July 2014.

We were required to hold a public inquiry to decide whether the existing declarations should be extended, revoked, varied, allowed to expire or re-made. The fixed line services are the:

- unconditioned local loop service
- line sharing service
- local carriage service
- wholesale line rental service
- public switched telephone network originating access service
- public switched telephone network terminating access service.

The fixed line services enable retail telecommunications service providers to use Telstra’s copper network and other fixed line infrastructure to provide a range of retail fixed line telephone and broadband services.

On 17 April 2014, the ACCC decided to extend the declaration of all six fixed line services for a further five years. We also changed the scope of regulation to ensure that regulation is only applied where necessary to promote effective competition. The ACCC:

- clarified that resale voice services provided using the NBN are not regulated
- decided to regulate resale voice services supplied in CBD areas where infrastructure-based competition has proved ineffective
- changed the name of the ‘public switched telephone network originating access service’ to the ‘fixed originating access service’. The ‘public switched telephone network terminating access service’ became the ‘fixed terminating access service’. Both new names are technology-neutral.

Domestic transmission capacity service—declaration inquiry

On 11 July 2013, we began a review of the declaration of the domestic transmission capacity service (DTCS).

This is a high capacity transmission service capable of carrying large volumes of voice, data and audio-visual traffic. It is often used by telecommunications companies to carry the combined traffic of separate services across long distances.

We released a discussion paper on 11 July 2013. Following consideration of submissions on the paper, we released a draft decision for consultation on 13 December 2013. The ACCC made a final decision on 28 March 2014 to vary and extend the declaration, on a regional basis, for a further five years until 31 March 2019.

Mobile terminating access service—declaration inquiry

In May 2013, the ACCC started an inquiry into the declaration of the mobile terminating access service (MTAS). The existing MTAS declaration expired on 30 June 2014.

The MTAS is a wholesale service that one mobile network operator provides to another to carry or connect a call on its network. Network operators charge each other for providing the service.

In June 2014, the ACCC extended the MTAS declaration for five years and varied it to include SMS termination for the first time.

Access determinations

Once a service has been declared, the ACCC must make final access determinations for all services that it declares. These determinations enable us to set default price and non-price terms for declared services. The terms only apply where there is no commercial agreement between an access seeker and an access provider, creating a benchmark which access seekers can fall back on while still allowing parties to negotiate different terms.

We can also make interim access determinations in some circumstances, which operate before final determinations are made. More details on all final access determination inquiries listed below are available on the ACCC website.

Fixed Services Review—final access determination inquiry

On 11 July 2013, the ACCC commenced the Fixed Services Review, which includes a public inquiry into making final access determinations (FADs) that is, the terms and conditions of access, for the seven declared fixed line services.²

The current FADs for these services expired on 30 June 2014. Due to the complexity of the pricing issues involved, we decided that we would be unable to make new FADs before the current determinations expired. On 16 April 2014, we therefore extended the current FADs until the day before the new FADs come into force. We expect to make a final decision on new FADs in 2015.

In the interim, we held an inquiry into varying the current FADs for the wholesale line rental, local carriage, unconditioned local loop and line sharing services to:

- apply the current regulated charges for the wholesale line rental and local carriage services in CBD areas, when the CBD exemptions in the declarations are removed on 1 August 2014
- set a regulated charge for the internal interconnection cable service in the FADs for the unconditional local loop and line sharing services after the relevant determinations expired on 30 June 2014.

The ACCC commenced the variation inquiry on 16 April 2014 and completed it on 18 June 2014. Ensuring regulated prices are available for these services will promote competition by allowing access seekers to obtain the services on reasonable terms and conditions. Competition benefits consumers through a better choice of well-priced voice and broadband products.

² See section above on Fixed Services Review—declaration inquiry—the seven declared fixed line services are: the unconditional local loop service; the line sharing service; the public switched telephone network originating access; the public switched telephone network terminating access; the wholesale line rental; local carriage service; and the wholesale ADSL service.

Domestic transmission capacity service—final access determination inquiry

In May 2014, the ACCC began an access determination inquiry for the declared DTCS. The existing determination is due to expire on 31 December 2014.

Mobile terminating access service—final access determination inquiry

In May 2014, we commenced an access determination inquiry for the declared MTAS as the determination was due to expire on 30 June 2014. We extended the current determination until a new MTAS access determination comes into force.

Non-price terms and conditions and supplementary prices

On 23 May 2014, the ACCC started consulting on non-price terms and conditions and supplementary prices as part of the FAD inquiries for all of the declared services (the fixed line services, the DTCS and the MTAS).

Non-price terms and conditions range from commercial terms, such as billing and general dispute resolution processes, to the operational processes by which the declared services are to be accessed. Supplementary prices for these services refer to additional charges incurred in using them, for example, connection and disconnection charges.

The ACCC expects to release its final decision in early 2015.

National Broadband Network Special Access Undertaking

On 13 December 2013, the ACCC accepted the varied special access undertaking (SAU) lodged by NBN Co on 19 November 2013. NBN Co issued the undertaking in response to a variation notice we issued on 8 October 2013.

The SAU, which will operate until June 2040, includes terms and conditions for access to the NBN. It sets the broad regulatory framework for effective engagement between NBN Co and access seekers to negotiate commercial agreements. The SAU also continues ACCC oversight of changes in NBN Co's prices and products, while providing long-term regulatory certainty to NBN Co so that it can recover efficient investment and expenditure.

Access disputes under the Act

Following amendments to Part XIC of the Act, transitional provisions allowed notification of access disputes to the ACCC until a final access determination regarding a regulated service was made.

Access disputes under the Telecommunications Act 1997

The ACCC was notified of three disputes relating to the price of facilities access services in September 2012.

In January 2014, Telstra asked the Federal Court to review whether the ACCC has jurisdiction under the *Telecommunications Act 1997* to arbitrate the disputes, with Justice Flick dismissing their application in March 2014. Telstra subsequently appealed to the Full Federal Court. On 2 July 2014, the Full Federal Court overturned the original decision and found the ACCC could not hear or determine the disputes in question. The ACCC has subsequently ceased arbitration of these matters.

ACCC's role in market structure and equivalence

As part of our role in ensuring a smooth transition to the NBN, we oversee Telstra's Structural Separation Undertaking and migration plan. Together these outline how Telstra will progressively stop supplying telephone and broadband services over its copper and hybrid-fibre coaxial (HFC) networks and migrate those services to the NBN.

Telstra's Structural Separation Undertaking also includes commitments to safeguard competition until the NBN is built and Telstra has migrated its fixed line services to the new network. Of particular significance is Telstra's commitment to providing equivalent service levels to wholesale customers and its own retail businesses.

Telstra's compliance with its structural separation undertaking

Each financial year the ACCC must monitor and report to the Minister for Communications on Telstra's breaches of its structural separation undertaking and migration plan. The Minister tabled the ACCC's *Telstra Structural Separation Undertaking 2012–13* report on 26 May 2014.

The report outlines a number of breaches where Telstra did not meet commitments under its Structural Separation Undertaking. In particular, the report focuses on Telstra's failure to secure wholesale customer protected information from its retail employees.

The ACCC's *Telstra Structural Separation Undertaking—Compliance Report 2012–13* is available on the ACCC website.

The ACCC also published the following financial reports provided by Telstra under the Structural Separation Undertaking:

- Telstra Economic Model (TEM) public reports for 2012–13 and the first half of 2013–14
- TEM internal and external wholesale prices reports for June 2013, September 2013, December 2013 and March 2014
- TEM substantiation reports for June 2013, September 2013, December 2013 and March 2014.

These reports detail Telstra's costs, revenues and demand, as well as comparing internal and external wholesale prices.

Rectification proposals

If Telstra fails to meet its obligations under the structural separation undertaking, it may report possible breaches. After reporting, Telstra must, within 30 days, send the ACCC a proposal that sets out the steps needed to remedy the possible breach.

If we consider that the steps detailed will be effective, we can accept the proposal. If not, we can reject the proposal and direct Telstra to take alternative action on the possible breach.

The ACCC began consulting with industry on three rectification proposals in June 2014. The proposals relate to:

- rectification of basic telephone service faults
- service qualification checks used to determine whether a copper line can support an ADSL service
- processes that allow customers to confirm that services have been restored after a remote test has concluded that no fault is present on the line.

On 23 July 2014 the ACCC decided to accept Telstra's rectification proposal relating to the processes that allow customers to confirm that services have been restored, subject to a remote test having been conducted that shows no fault is present on the line.

The ACCC is considering submissions made in relation to the other two rectification proposals.

Migration plan required measures

Telstra's migration plan includes a commitment to develop processes for ACCC approval that will assist in migrating services to the NBN.

On 26 September 2013, we approved three of these 'required measures'. Two relate to how Telstra will disconnect the majority of remaining services (from copper or HFC networks) that have not migrated to the NBN within the switchover period. The third relates to how Telstra will rebuild copper lines that have been permanently disconnected in NBN rollout regions to supply services that cannot yet be provided over the NBN.

On 21 May 2014, we approved a required measure relating to Telstra's role in supporting NBN Co's possible use of 'pull through' to connect some premises in fibre-to-the-premises areas of the NBN. Telstra's measures will help service providers and consumers to manage the temporary loss of service during the pull through connection process.

We continue to assess a required measure relating to Telstra's NBN Information Security Plan, which covers information it receives under agreements with NBN Co to allow the latter to use Telstra facilities and for Telstra to migrate its subscribers to the NBN. The plan's purpose is to ensure that Telstra cannot use such information to gain an unfair commercial advantage over wholesale customers.

Minor variations to the migration plan

Telstra's migration plan restricts Telstra from supplying new copper services to premises in regions where NBN Co has started to supply fibre services. The 'cease sale obligation', as it is known, is designed to encourage consumers needing a new service to get an NBN service where one is available, instead of a copper service.

In June 2013, Telstra submitted a variation to the cease sale obligation to enable it to provide copper services to premises that are not yet NBN serviceable, even though they are in an NBN rollout region. The proposed variation lifts Telstra's cease sale obligation except for premises that are shown in NBN Co's systems as serviceable or where NBN Co's access to the premises has been frustrated. The ACCC agreed to the variation, and will formally approve it once an enabling regulation has been made.

In May 2014, the ACCC helped Telstra and NBN Co to implement additional consumer protections for consumers in the first 15 communities where an NBN migration period was due to expire.

Industry-specific codes and rules

The ACCC is also involved in reviewing and overseeing a number of industry-specific codes and rules.

Facilities Access Code

On 4 July 2012, the ACCC began a review of the Facilities Access Code following changes to the *Telecommunications Act 1997* and the Act. The Facilities Access Code sets out arrangements for carriers wishing to install their equipment on or in facilities owned by other carriers. The facilities covered by the code include telecommunications transmission towers, the tower sites, and underground facilities designed to hold lines.

We consulted on a draft decision to vary the code in May 2013. In September 2013, we decided to vary the code to remove obsolete references, reflect legislative changes and align it with Telstra's Structural Separation Undertaking.

Communications Alliance Local Number Portability Code

Local number portability allows consumers and businesses to retain their existing telephone numbers when moving between service providers. Effective local number portability is critical to facilitating consumer choice and competition between service providers.

Since October 2012, the ACCC has participated as a non-voting member in two Communications Alliance working committees reviewing portability processes.

The first committee reviewed the Local Number Portability Industry Code to ensure its suitability in the transition to the NBN. The committee completed its review in December 2013 and the revised changes came into effect on 1 March 2014. The review benefited consumers and improved competition.

The second committee is considering the longer-term portability requirements when rollout of the NBN is complete.

In November 2013, the Communications Alliance held a stakeholder forum on future local number portability requirements. It is yet to finalise its recommendations.

Building block model record keeping rule

Under the Act, the ACCC can make a rule on record keeping and require compliance by carriers and carriage service providers. We can specify what records are kept, how reports are to be prepared and when these reports are due to the ACCC.

In May 2013, we began an inquiry into varying the building block model record keeping rule to require Telstra to provide the information needed to estimate prices for the wholesale ADSL service using the ACCC's fixed line services model.

Statutory reporting

In response to statutory reporting requirements, the ACCC released the following reports, all of which are available on the website:

- *ACCC Telecommunications Report 2012–13* (discussed further below),
- *Telstra's compliance with retail price control arrangements 2012–13* (discussed further below)
- *Telstra's Structural Separation Undertaking—Compliance Report 2012–13* (discussed above in page 112)
- *NBN points of interconnection: Review of policies and procedures relating to the identification of listed points of interconnection to the NBN* (discussed further below).

ACCC Telecommunications Report 2012–13

In March 2014, we published the *ACCC Telecommunications Report 2012–13*. It comprises two reports as follows.

The *Telecommunications competitive safeguards for 2012–13* reported on:

- our role in the transition to an NBN and our regulatory and market monitoring activities in content markets and intellectual property
- the key consumer trends in 2012–13, namely:
 - an increase in popularity of mobile and wireless devices, although both complemented fixed line telecommunications services for the majority of consumers
 - continued dramatic increase in the demand for data
- trends in telecommunication companies as they compete for market share.

Changes in prices paid for telecommunications services in Australia 2012–13 noted that:

- Australian consumers have benefited from lower prices for fixed-voice, mobile and internet services over time
- the overall price of telecommunications services has declined by 20.9 per cent in real terms since 2006–07, primarily due to new technologies and greater competition.

The ACCC *Telecommunications Report 2012–13* is on the ACCC website.

Report on Telstra's compliance with retail price control arrangements 2012–13

- In December 2013, the ACCC published its report on Telstra's compliance with retail price control arrangements 2012–13, as per its statutory reporting obligations. The ACCC considered Telstra adequately complied with these arrangements in 2012–13 based on its review of an independently audited compliance report that Telstra supplied.

NBN points of interconnection: review of policies and procedures relating to the identification of listed points of interconnection to the NBN

On 5 November 2012, the ACCC published a list of points of interconnection to the NBN as required under s. 151DB of the Act. The list contains the location of 121 points of interconnections where retail service providers can connect with the NBN.

Under s. 151DC(1) of the Act, the ACCC was required to conduct a review of the policies and procedures relating to the identification of the listed points of interconnection before 30 June 2013. In accordance with this section, the ACCC conducted a review and invited industry participants to make submissions to the inquiry.

The main findings of the review were:

- the ACCC's processes in identifying the points of interconnections were appropriate
- given the early rollout stage of the NBN, the extent of interconnection was limited
- at the time of the review, only 32 of 121 listed points of interconnections were active and ready for access seeker interconnection.

In July 2013, the ACCC gave a copy of this report on the review to the Minister for Communications. This report was tabled in Parliament on 12 December 2013.

The report on this review can be found on the ACCC website.

Information to assist stakeholders

We publish the latest regulatory reports, determinations and issues papers on our website along with up-to-date information on ongoing processes such as:

- the ACCC's final determination of NBN Co's Special Access Undertaking
- implementation of Telstra's Structural Separation Undertaking and migration plan, including implementation of the independent telecommunications adjudicator scheme
- access determination inquiries
- lodgment of access agreements by carriers or carriage service providers relating to access to a regulated service.

These papers help inform stakeholders about key industry developments and current consultations.

Summaries of data obtained from some of the record keeping rules issued to telecommunications companies are also published on the ACCC website. These summaries assist stakeholders to engage effectively in the regulatory process.

In April 2014, the ACCC also released guidelines on submitting confidential information to ACCC communications inquiries. This guideline is intended to inform stakeholders about the process for submitting confidential information and how the ACCC will treat confidential information provided in submissions.

The *Confidentiality guideline for submitting confidential material to ACCC communications inquiries* can be found on the ACCC website.

In April 2014, we also released consumer information about the NBN on a variety of topics including:

- the compatibility of medical and security alarms with the NBN
- the disconnection of old phone and internet networks after the NBN becomes available in a particular area
- consumer rights regarding phone and internet services.

Consumer information on the NBN can be found on the ACCC website.

Enforcement and compliance

During 2013–14, the ACCC investigated several allegations relating to potential breaches of the Act and the *Telecommunications Act 1997* in telecommunications markets. In particular, we considered misuse of market power allegations under Part XIB of the Act, potential breaches of Telstra's Structural Separation Undertaking (discussed in detail above) and allegations of non-compliance with the 'level playing field' provisions in parts 7 and 8 of the *Telecommunications Act 1997*. None of these investigations resulted in formal enforcement action but, in some instances, positive action by the party subject to the complaint resolved compliance concerns.

Assistance to government and agencies

We made submissions to government and other agencies on communications-related reviews and discussion papers:

- the Australian Government's independent cost benefit analysis and review of regulation (further details below)
- the Department of Communications review of digital radio, its consideration of Telstra's retail price control arrangements and its *Mobile Coverage Programme Discussion Paper*
- the Australian Communications and Media Authority consultation paper, *Proposals for Reductions in Telecommunications Reporting Requirements*.

Copies of all submissions are available on the website.

Australian Government's independent cost benefit analysis and review of regulation

The ACCC wrote two submissions in response to the issues papers released as part of the above cost benefit analysis and review of regulation, the Vertigan Review. The review is examining the appropriate regulatory framework for Australia's future broadband market and, in particular, NBN Co's role within that market.

Both submissions reiterated our support for continued reform in the communications industry to achieve the structural separation of Telstra and a wholesale-only NBN. We noted that, where economically efficient, infrastructure-based competition is likely to promote the long-term interests of end-users. We further noted that there should generally be no constraints on non-NBN Co network operators deploying networks in competition with the NBN. However, we consider that, where these networks are monopolies, they should be wholesale-only and subject to open access regulation to support robust retail competition. We also noted that any subsidies to support the deployment of the NBN in non-commercial markets should be explicit and transparent.

Other significant events

Revocation of Accounting Separation Record Keeping Rules

On 28 March 2014, the ACCC revoked the Telstra Accounting Separation Record Keeping Rules, which had required Telstra to report to the ACCC on its wholesale and retail operations. The Minister for Communications had prepared the way by revoking a 2003 Direction requiring the ACCC to implement the accounting separation of Telstra.

Consultation on a possible broadband monitoring and reporting program

From late 2013 until mid-2014, we consulted on the possible introduction of a broadband monitoring and reporting program. We considered that such a program could, by comparing the performance of different fixed broadband access networks and retail internet service providers, give consumers reliable independent information for their broadband purchase decisions.

As part of this consultation, the ACCC published a discussion paper in August 2013 and open letter in October 2013. Both documents discussed the particular market failure that the program was intended to address as well as international approaches to implementing such a program.

Following extensive consultation with industry, in June 2014 we released a position paper which specifies the key attributes we consider necessary to any program the ACCC ultimately implements. A decision to go ahead with the proposed program has not been made.

3.2 Increasing the efficiency of Murray-Darling Basin water markets

2013–14 Strategies: *Improve the workability of emerging markets by enforcing market rules and monitoring market outcomes.*

Respond to government requests to provide monitoring reports on industries in highly concentrated and newly deregulated or emerging markets.

Improve regulatory practices and processes, including by building relationships with domestic and international regulatory agencies to leverage their experience.

Measures:

- Promote the economically efficient operation of, use of, and investment in monopoly infrastructure.
- Publish accurate, targeted and accessible reports on industry and competitive conditions, including pricing practices.

Significant outcomes 2014–14

- Determined regulated charges, for the first time, for a water infrastructure operator (State Water Corporation of New South Wales) for 2014–17.
- Finalised the fourth annual Water Monitoring Report, noting that water charge increases in the Murray-Darling Basin were modest and that compliance across the sector is improving.

The *Water Act 2007* (Water Act) aims to promote efficient water markets and sustainable management of water resources in the Murray-Darling Basin (the basin). It was introduced because of concerns about the impact of irrigation on the environment, over-allocation of water and increasing water scarcity. Our role helps ensure an efficient water market in the basin.

Under the Water Act, we are responsible for regulating and monitoring water charges. We also monitor and enforce compliance with water market and charge rules made under the Water Act. The rules:

- facilitate irrigators transforming their irrigation right with an operator into a separately held water access entitlement (transformation arrangements)
- regulate the maximum fee that an operator can impose on an irrigator who terminates their access to an irrigation network
- require infrastructure operators, water authorities and government departments to publish information about their regulated charges and, in some instances, their infrastructure-related investment plans
- allow the ACCC or another regulator to set the regulated charges of specific water infrastructure operators.

Access terms, conditions and prices

Under the Water Charge (Infrastructure) Rules 2010, the ACCC or an accredited state regulator may regulate charges for large, non-member owned water infrastructure operators in the basin. The ACCC is the regulator responsible for determining the regulated charges of State Water Corporation of New South Wales (State Water).

The ACCC's first determination for State Water covered charges for 1 July 2014 to 30 June 2017. The case study on this determination details the process the ACCC followed and illustrates how price determination promotes the economically efficient operation of monopoly infrastructure (see page 120).

Monitoring prices

The ACCC monitors regulated water charges, transformation arrangements and compliance with rules made under the Water Act across the basin. We report annually on the monitoring results.

In April 2014, we presented our fourth annual Water Monitoring Report to the Parliamentary Secretary to the Minister for the Environment and released the report publicly the following month. The report, which drew on information from operators and state water departments, includes key findings, a summary of market conditions, and analysis of ACCC monitoring of charges, transformation and rule compliance. It is available on the ACCC website.

Enforcing industry-specific laws

The ACCC enforces the water market and water charge rules made under the Water Act.

Over 2013–14, we saw operators continue to improve their understanding and application of rules under the Act. They proactively approach the ACCC to self-report suspected breaches or seek guidance on new policies that may raise compliance concerns with the rules. Guidance from the ACCC helped basin state departments and water authorities to understand the rules and their application.

Through monitoring and customer complaints, we identified concerns with the charging policies of two operators, agreeing to an administrative resolution for one operator's calculation of termination fees. The ACCC continued to work with basin state water departments regarding the disclosures they make for their regulated charges.

Timely advice to government and agencies

In 2013–14, the ACCC continued to assist the Murray-Darling Basin Authority (the Authority) in preparing guidelines on the water trading rules. The Authority released the guidelines in April 2014, well before their 1 July 2014 commencement under the Basin Plan.

Informing stakeholders

In 2013–14, we kept stakeholders informed by:

- promptly releasing on our website the information paper, draft determination and public submissions relating to the State Water determination
- publishing the *ACCC Water Monitoring Report 2012–13*
- responding to ministerial and public correspondence within agreed timeframes.

Case study

Water determination promotes cost recovery and price stability

On 26 June 2014 we released our final decision on the price determination for State Water, the largest rural water infrastructure operator in New South Wales.

The infrastructure associated with water supply and delivery exhibits natural monopoly characteristics, which means that competition is unlikely to develop between operators and may result in less efficient market outcomes. State Water, as a large non-member owned infrastructure operator, is subject to price regulation under the Water Charge (Infrastructure) Rules 2010 and was required to apply for a determination of its regulated charges by the ACCC.

Extensive consultations with stakeholders were important in arriving at our final decision. Following receipt of State Water's application in July 2013, we published an information paper in August 2013 and a draft determination in March 2014, seeking public submissions on both, and receiving 72 responses. We also had 25 stakeholder meetings where we met with State Water officials, customers and other key stakeholders to explain our preliminary view and seek further comment.

One of the key issues that we considered throughout the determination process was State Water's revenue volatility. In their application, State Water noted that low water usage through droughts reduced their revenues and compromised their investment program. In response, it proposed to increase fixed charges from 40 per cent of revenue to 80 per cent. The ACCC was concerned that the proposal did not appropriately balance State Water's interests in securing more stable revenue streams against irrigators' interests in having stable prices.

To address the issue of revenue volatility, our determination established an 'unders and overs account'. The account records under-recovery of revenues caused by low rainfall and low water usage. It also captures over-recovery of revenues when water usage is high. Each year, State Water can seek approval to adjust its charges to recover a portion of the unders and overs account. The account, combined with a 40:60 fixed to variable charge revenue split, will allow State Water to recover all of its costs over time while giving customers reasonable price stability.

The price determination we made runs from 1 July 2014 to 30 June 2017 and sets charges for each of State Water's basin valleys.

Details of the final determination are available on our website.

3.3 Petrol price monitoring

2013–14 Strategy: *Respond to government requests to provide monitoring reports on industries in highly concentrated and newly deregulated or emerging markets.*

Measure:

- Accurate, targeted and accessible reports on industry and competitive conditions, including pricing practices published and broadcast to the community and stakeholders.

Introduction

The ACCC monitors the downstream petroleum industry, including the refining, importing, wholesale and retail sectors, under Part VIIA of the Act. We keep abreast of industry developments and also formulate timely advice to government and the public. Our fuel monitoring program has three objectives:

- improving consumer awareness by increasing the information available about the petrol industry
- complying with the Minister's direction by analysing prices, costs and profits in the downstream petroleum industry
- focusing on areas where competition may be less effective, and on industry conduct that the ACCC may need to consider more closely.

We released our sixth monitoring report on the Australian downstream petroleum industry on 11 December 2013. Key findings from the report are as follows.

Prices

During 2012–13, Australian average annual retail petrol prices were slightly lower than during the previous year, but continued to be volatile.

The underlying factor remained international crude oil prices.

Australian retail fuel prices continued to remain relatively low when compared with other OECD countries, mainly owing to Australia's relatively lower rate of taxation on fuel.

Petrol price cycles are still evident in the larger capital cities. Our analysis found that petrol price cycles do not reflect changes in benchmark prices, but instead are due to petrol retailers' policies to maximise their profits.

Profits

Profits in the Australian downstream petroleum industry across all products and services increased by 86 per cent in real terms to \$775 million or 0.86 cpl in 2012–13. The higher profits compared with 2011–12 in part reflected lower losses in the refinery sector. Net losses in real terms were \$107 million for 2012–13 compared with \$609 million in 2011–12.

Industry net profits on petrol products were \$1.01 billion in 2012–13, compared with a net loss of \$9.7 million in real terms in 2011–12.

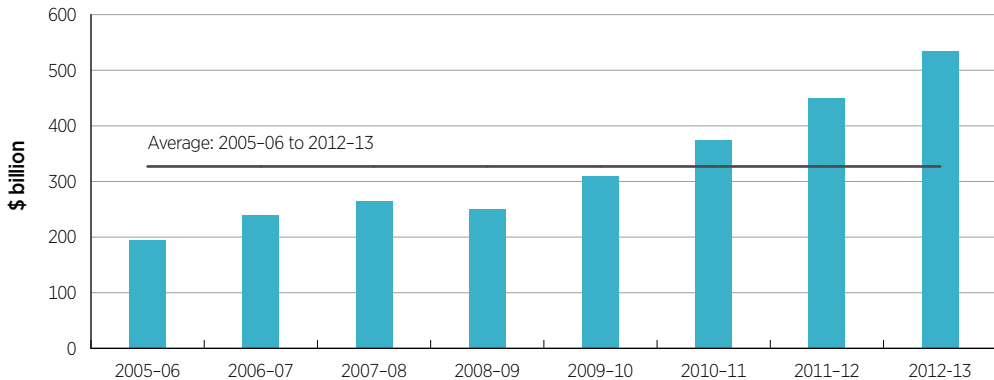
Since the Global Financial Crisis, the financial performance of the downstream petroleum industry has been affected by lower and more variable profits in the refinery and total supply sectors. In contrast, profits in the wholesale and retail industries have been higher and more consistent.

Fuel retailing

The retail sector has changed profoundly in recent years as two of the four refiner-wholesalers have withdrawn from retailing. The result has been a fall in the combined market share of integrated petrol companies' retail sales of branded petrol products from around 83 per cent in 2002-03 to 35 per cent in 2012-13. Specialist retailers and the supermarket alliances have increased their market shares.

Total profits in the fuel retail sector have trended upward since 2008-09, with total net profits increasing by around 114 per cent in real terms in the five years to 2012-13. Net profits of \$534.9 million across all products and services in 2012-13 represented an increase of 18.9 per cent in real terms on the previous year (see figure 3.5).

Figure 3.5: Retail sector net profits in real terms, all products and services: 2005-06 to 2012-13



Sources: ACCC calculations based on data obtained from firms monitoring through the ACCC's monitoring process; ABS, 6401.0 Consumer Price Index, Australia, Table 1, CPI: All groups, Index Numbers and Percentage Changes.

Note: Real values in 2012-13 dollars.

Price monitoring

The ACCC's monitoring of fuel prices covers:

- retail prices of unleaded petrol (including regular and premium unleaded petrol and E10 petrol), diesel and automotive liquefied petroleum gas (LPG) in all capital cities and around 180 regional locations
- movements in the international benchmark prices for the above fuels, international crude oil prices, published wholesale prices, the price differential between E10 petrol and unleaded petrol, and the price differential between capital cities and regional locations.

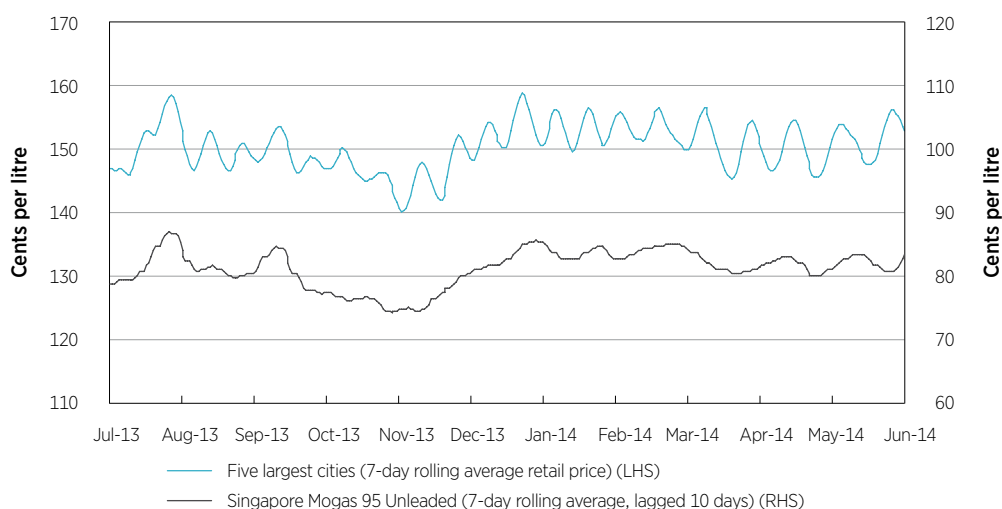
Petrol prices

The average retail price of regular unleaded petrol across the five largest cities (Sydney, Melbourne, Brisbane, Adelaide and Perth) in 2013–14 was 150.6 cpl, compared with 141.3 cpl in 2012–13. As can be seen from figure 3.6, average retail prices ranged from a low of around 140 cpl in mid-November 2013 to a high of around 159 cpl at the start of January 2014.

As in previous years, movements in domestic retail petrol prices in 2013–14 were primarily influenced by movements in international refined petrol prices (Singapore Mogas 95 Unleaded) and the Australian/US dollar exchange rate.

International petrol prices decreased between July and November 2013, influenced by an easing of tensions in Syria and an increase in US inventories. The increase in international petrol prices between November 2013 and January 2014 was due to a shortfall in Libyan crude output and strong demand for refined petroleum in the Asia-Pacific region. International prices were broadly stable for the remainder of the financial year.

Figure 3.6: Regular unleaded petrol price movements, 2013–14



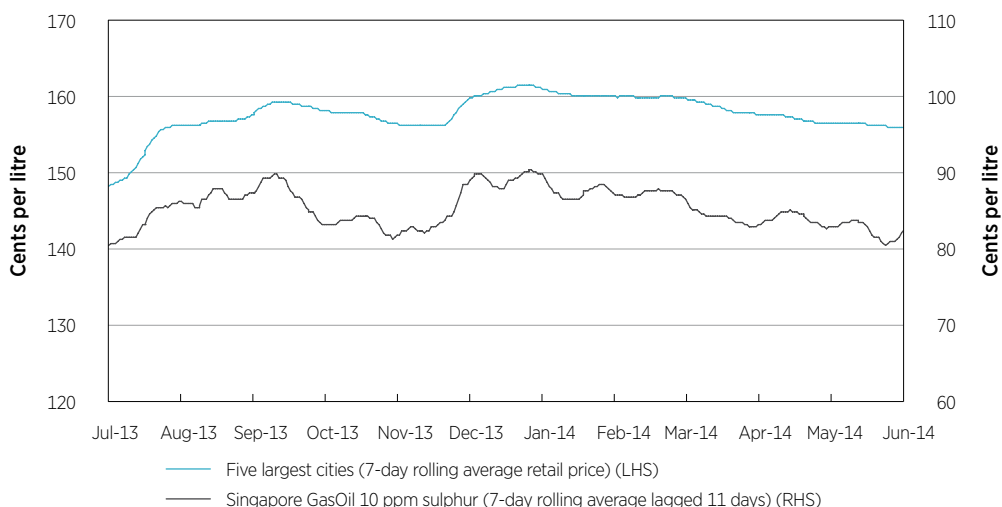
Source: ACCC calculations based on Informed Sources, Platts and RBA data.

Diesel prices

Average retail diesel prices across the five largest cities were broadly stable for much of 2013–14 (see figure 3.7). For the 11 months from August 2013 to June 2014, prices ranged between a high of around 162 cpl and a low of around 156 cpl (a band of six cpl). Diesel prices in Australia broadly followed movements in the relevant international refined diesel price (Singapore Gasoil 10 parts per million sulphur content). However, they tended not to move up or down as much as international prices in the short run.

The average retail diesel price in the five largest cities in 2013–14 was 157.8 cpl, which was 10.4 cpl higher than 2012–13.

Figure 3.7: Diesel price movements, 2013–14



Source: ACCC calculations based on Informed Sources, Platts and RBA data.

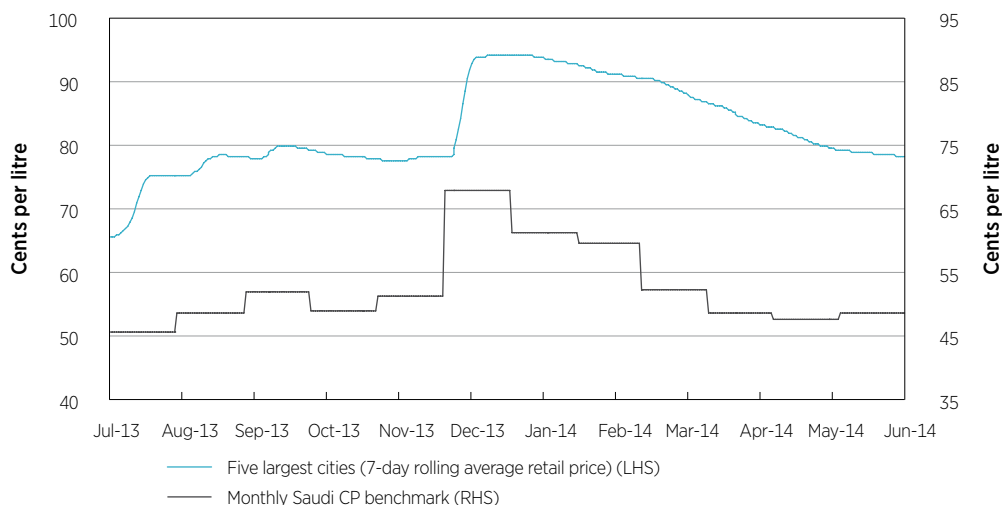
Automotive LPG prices

The average retail automotive LPG price across the five largest cities in 2013–14 was 83.0 cpl, an increase of 12.3 cpl (or around 17 per cent) on 2012–13. Prices ranged from a low of around 66 cpl in July 2013 to a high of around 94 cpl in January 2014 (see figure 3.8).

In December 2011, excise of 2.5 cpl was imposed on retail automotive LPG (prior to which it was excise-free). The Australian Government increased the excise to 5.0 cpl on 1 July 2012, to 7.5 cpl on 1 July 2013 and to 10.0 cpl on 1 July 2014.

The appropriate international benchmarks for automotive LPG in Australia are the Saudi Aramco contract prices for propane and butane, which are issued on the first day of each month. The Saudi international benchmark prices reached a record high of 68.2 cpl in December 2013 as a result of tight supply in the Middle East and strong demand from the Northern Hemisphere and South East Asia. The subsequent decrease in prices was due to ample supply in Japan and falling demand toward the end of the Northern Hemisphere winter.

Figure 3.8: Automotive LPG price movements, 2013–14



Source: ACCC calculations based on Informed Sources, Gas Energy Australia and RBA data.

Informing stakeholders

The ACCC released the 2013 *Monitoring of the Australian petroleum industry* report in December 2013, distributed hard copies to key stakeholders and contributors shortly afterwards and published the report on our website.

We regularly updated fuel-related consumer and industry information on our website and published petrol prices daily throughout 2013–14. The fuel pages are among the most-visited on the website. The site also showed how the price of unleaded petrol in the five largest cities tracked the international benchmark price for refined petrol.

In 2013–14, the ACCC received around 1000 consumer enquiries and complaints about fuel, many relating to high prices and price volatility, fuel price boards, fuel shopper-docket issues and potential anti-competitive behaviour. Most Ministerial correspondence on fuel-related subjects raised similar issues.

Our Fuel Consultative Committee met twice in 2013–14. This forum promotes meaningful dialogue between the ACCC, the fuel industry and motoring organisations. Information sharing through the committee increases our understanding of fuel industry issues and assists us in ensuring competition and consumer protection in the fuel industry.

3.4 Enhancing our regulation of national infrastructure

2013–14 Strategy:

Deliver network regulation to promote competition and meet the long-term interests of end-users.

Respond to government requests to provide monitoring reports on industries in highly concentrated and newly deregulated or emerging markets.

Improve regulatory practices and processes, including by building relationships with domestic and international regulatory agencies to leverage their experience.

Measures:

- Timely, considered and evidence-based regulatory decisions based on constructive engagement and complemented by effective enforcement and compliance activities.
- Timely provision of accurate advice to government including evaluating the effectiveness of frameworks such as access regimes.
- Accurate, targeted and accessible reports on industry and competitive conditions, including pricing practices.

Introduction

The ACCC has a range of responsibilities in industry regulation. These include promoting efficient investment and access to rail infrastructure and wheat port terminal services. We also monitor the four major airports and the container stevedoring industry, and assess proposed price increases for certain monopoly services (Airservices Australia, Australia Post and Sydney Airport regional air services).

Airports and air services

Monitoring airport services including car parking

Due to concerns that airports could use their position to earn monopoly profits to the detriment of consumers, the ACCC monitors the prices, costs and profits of aeronautical and car parking services at Brisbane, Melbourne (Tullamarine), Perth and Sydney (Kingsford Smith) airports under Part VIIA of the Act. Under the *Airports Act 1996*, we also monitor the quality of the aeronautical services and facilities provided at monitored airports. We publish our monitoring results in the annual Airport Monitoring Report.

The Australian Government has directed the ACCC to monitor the four major Australian airports until June 2020. The Productivity Commission will review our monitoring functions in June 2018.

Our airport monitoring program has twin aims. These are to increase the transparency of airport performance and discourage airport operators from increasing prices excessively and/or offering low quality services. However, we do not set prices for airport services.

Aeronautical services and facilities

The ACCC *Airport Monitoring Report 2012–13* released in April 2014 noted that total passenger throughput at the monitored airports increased by 4.9 per cent on the previous year to 104.1 million passengers. All airports reported increases in domestic and international passenger numbers.

Total aeronautical revenue increased by 9.9 per cent in real terms to \$1.26 billion in 2012–13. A combination of increasing passenger numbers and higher aeronautical charges was behind the substantial revenue increase. All monitored airports reported increases in aeronautical revenue in real terms.

We use average aeronautical revenue per passenger as a proxy for average prices. This measure increased at all monitored airports during 2012–13 in real terms. Sydney Airport continued to report the largest aeronautical revenue per passenger at \$15.53.

During the same year, total and unit aeronautical margins increased at all monitored airports in real terms.

Overall, the average quality of service remained virtually unchanged during 2012–13. Passengers, airlines and border security agencies rated Melbourne, Perth and Sydney Airports as 'satisfactory' while Brisbane Airport's rating increased from 'satisfactory' to 'good', the only airport to achieve this level.

Airlines' ratings of the airports declined at Brisbane, Melbourne and Sydney airports. In contrast, Perth Airport's airline rating increased marginally within the 'poor' category.

Congestion at monitored airports

All airports continued to invest in aeronautical and landside infrastructure, although not necessarily enough to avoid congestion, accommodate future growth and improve service levels. Our view is that substantial growth in passenger numbers over the past decade may have resulted in demand for infrastructure approaching capacity at some airports.

Car parking and landside

Our 2012–13 report noted that all monitored airports increased the number of car parking spaces and their car parking revenue in real terms that year. Total car parking margins for all monitored airports increased by 7.0 per cent. Changes in margins per car park space were mixed, with Brisbane and Perth airports reporting increases while Melbourne and Sydney experienced decreases.

Revenues earned from landside charges generally increased across all monitored airports. Taxi charges revenue increased in real terms at all airports except Melbourne Airport, where it decreased 6.2 per cent.

Review of airport quality of service monitoring

In 2013–14, we introduced a number of changes to the data collected for the airports' quality of service monitoring. These include:

- changing the indicators that assess check-in services and facilities, baggage systems, public amenities, runways, taxiways and aprons
- discontinuing surveys for border agencies
- initiating surveys for selected business operators that access an airport's landside area
- altering the reporting timelines for airports.

Industry facts—airports

From 2002–03 to 2012–13, passenger numbers at Perth Airport increased by 173.2 per cent, the greatest increase among the monitored airports.

Airservices Australia price notification

Airservices Australia must notify the ACCC of proposed increases in prices for terminal navigation, en route navigation, and aviation rescue and fire-fighting (ARFF) services.

We assess Airservices' price notifications under the Act and then decide whether or not to object to the proposed price increases.

2014 price notification

Airservices Australia submitted a price notification to the ACCC on 10 June 2014. In making our assessment, we consulted stakeholders to decide the extent to which Airservices had made reasonable progress in implementing its commitments under a long-term pricing agreement accepted by the ACCC in 2011.

Specifically, we examined whether Airservices had improved consultation on capital expenditure and developed key performance indicators. Our view was that Airservices had made reasonable progress on its commitments.

The proposed prices were generally the same as those outlined in Airservices' long-term pricing agreement. The price notification also identified that four new ARFF services at Ballina, Coffs Harbour, Gladstone and Newman will begin in during 2014–15.

On 25 June 2014, the ACCC decided not to object to Airservices' proposed price increases, which took effect from 1 July 2014.

Sydney Airport regional air services price notification

The ACCC has a role under Part VIIA of the Act in assessing proposed price increases for regular public transport air services operating wholly within New South Wales from Sydney Airport Corporation Limited (SACL). After assessing the proposed increases we decide whether to object or not object.

In August 2013, we decided to not object to SACL's proposed charges for regional airlines that serve passengers travelling within New South Wales.

The proposal resulted from the decision by Qantas to move its QantasLink operations from Terminal 2 to Terminal 3 but to keep charges the same as those previously notified or currently applying at the former terminal. The ACCC considered that regional airlines would not be affected by the proposal.

Stevedoring and shipping

Container stevedoring monitoring

Without continuing landside reform, Australia risks missing out on the full benefits of the current expansion and competition in container stevedoring terminals.

On 7 November 2013, we released our 15th annual Container stevedoring monitoring report. The three key findings about competition and efficiency were:

- the 1998 waterfront reforms have created a more productive and efficient stevedoring industry
- current reforms are being driven by opportunities for new entry and increased competition, and further industry improvements are expected
- future reforms are needed to ensure transport bottlenecks do not emerge in and around our growing container ports.

We identified three key areas for reform:

- reforms to heavy vehicle road provision and charging to better reflect the cost of road use so that the right investments in the right roads can occur
- improved signals for exporters and importers so they can make better decisions about whether to use road or rail for moving containers
- use of pricing to encourage better use of landside facilities by truck operators, for example, charging lower prices for off-peak access to terminals.

Each year we publish a monitoring report that informs government and the wider community about the performance of Australia's container stevedoring industry. In line with a direction from the Treasurer, we monitor the prices, costs and profits of container terminal operator companies at the ports of Adelaide, Brisbane, Burnie, Fremantle, Melbourne and Sydney.

Shipping

Part X of the Act relates specifically to international liner cargo shipping, providing limited exemptions from certain provisions of the Act for international liner cargo shipping conferences. A 'liner conference' or 'shipping conference' is an agreement between two or more shipping companies to operate a scheduled cargo service on a particular trade route, with particular shipping rates and terms of carriage that apply to the conference members.

We are responsible for investigating complaints relating to conference agreements under Part X. We did not complete any formal investigations in 2013–14.

In our submission to the Harper review, we noted that Part X is outdated and should be repealed.

Government reviews of Australian shipping

The ACCC participated in several reviews affecting Australian shipping in 2013–14.

In December 2013, we made a submission to the Productivity Commission on its inquiry into Tasmanian shipping and freight. Our submission identified several factors which may be affecting costs in Tasmanian shipping and freight. It also identified potential impediments to lower shipping costs and a more competitive freight industry, some of which require regulatory reform.

In May 2014, the ACCC responded to the Australian Government's *Options Paper: Approaches to regulating coastal shipping in Australia*. We consider that restrictions on competition in coastal shipping are not having the intended effect of preserving or 'revitalising' domestic shipping. Reforms have not made domestic shipping more competitive. Instead, they have imposed additional burdens on foreign lines providing

coastal shipping services, adding to freight costs for Australian businesses. Competition is the best way to achieve industry efficiency and the lowest possible freight rates for Australian businesses.

Wheat export port terminal services

Access undertakings

Bulk wheat exporters who also own and operate bulk wheat port terminal facilities are required by the *Wheat Export Marketing Act 2008* (WEMA) to pass an 'access test'. The purpose of the 'access test' is to ensure that vertically integrated wheat port terminal operators do not foreclose competition in related markets, such as markets for the export of bulk wheat.

In part, the access test can be passed by having an access undertaking accepted by the ACCC under the *Competition and Consumer Act 2010*. In addition to assessing proposed access undertakings, the ACCC also considers applications to vary undertakings and conducts compliance activities to ensure that operators meet their obligations.

The access undertakings aim to promote competition in the market for bulk wheat export through a framework under which infrastructure owners and access seekers can negotiate commercial access terms, conditions and prices. By allowing flexibility for commercial negotiation, the undertakings serve the interests of both port terminal operators and exporters. The undertakings include:

- obligations on port operators not to discriminate or hinder access in providing port services
- clear and transparent port loading protocols for managing demand for port terminal services
- obligations on port operators to negotiate in good faith with eligible wheat exporters
- recourse to arbitration in the event that negotiations fail.

On 25 September 2013, we accepted an undertaking from Emerald for its port terminal services to run from 30 September 2013 to 30 September 2014.

On 25 July 2013, Viterra submitted an application to extend its 2011 undertaking to 30 September 2015 and vary some provisions. Viterra sought the extension to obtain greater certainty about future regulation, pending the possible introduction of a mandatory industry code to replace the undertaking regime. On 30 January 2014, we issued a final decision to accept the application.

On 12 November 2013, GrainCorp applied to vary its 2011 undertaking regarding obligations at its Newcastle bulk grain terminal. Following a draft decision on 10 April, the ACCC issued a final decision to accept the application on 18 June 2014. The case study on page 131 has more information about the application.

On 14 March 2014, CBH lodged a proposed undertaking for its port terminal services with the ACCC for assessment. The proposed undertaking is intended to cover the period from when CBH's existing undertaking expires (30 September 2014) until 30 September 2017 or until acceptance of an access undertaking by the ACCC is no longer required (such as if a mandatory code of conduct replaces the current arrangements). The undertaking proposes to introduce long-term agreements for allocating port capacity. On 25 June 2014, the ACCC made a draft decision to accept the CBH proposal and undertook further consultation seeking further feedback from industry before making a final decision.

Case study

When less is more in economic regulation

GrainCorp applied to the ACCC in November 2013 to vary its 2011 undertaking regarding obligations at its Carrington port at the Port of Newcastle. It sought minimal regulation at the terminal but to continue the existing level of access regulation, as per the 2011 undertaking, at its six other port terminals.

In applying, GrainCorp submitted that it faced competition from two other bulk wheat export facilities and therefore its port should be subject to less regulatory oversight. The variation would give GrainCorp greater flexibility to compete with the other export operations.

GrainCorp also argued that neither of the other competing facilities was subject to access regulation, putting GrainCorp at a competitive disadvantage as a result.

We released an issues paper in December 2013, a draft decision in April 2014, and a final decision in June 2014.

Like the draft decision, our final decision accepted the GrainCorp application. Our view was that the level of competition and capacity at the port, and up-country, meant that the current level of regulation was unnecessary.

We also considered the different regulatory arrangements for the three operators at Newcastle and held that, generally speaking, such divergence in arrangements is not optimal. For example, the unregulated Newcastle Agri Terminal has greater flexibility to offer exporters customised shipping opportunities, priced accordingly, and can allocate capacity as it wishes.

The final decision reflects our support for a tiered approach to the regulation of wheat ports. Where there is sufficient competition, we believe minimal or no regulation is required. However, where wheat ports have significant market power or are a monopoly, and are owned by a wheat marketer in competition with others upstream, then regulation ensures farmers can sell their grain into a competitive market.

Mandatory code of conduct

The *Wheat Export Marketing Act 2008* is to be repealed on 1 October 2014 provided the Minister for Agriculture has approved an industry code of conduct for port access and the code is declared as a mandatory code under the Act.

The Minister must be satisfied that the code:

- deals with fair and transparent access by exporters to port terminal services
- requires compliance with continuous disclosure rules
- is consistent with the operation of an efficient and profitable wheat export marketing industry that supports the competitiveness of all sectors throughout the supply chain
- is consistent with any guidelines made by the ACCC relating to industry codes of conduct.

The ACCC will monitor and enforce the code.

The Department of Agriculture consulted with the ACCC during its development of the draft Code.

On 3 June 2014 the Department released the draft code and a Regulatory Impact Statement for public consultation, seeking comment on the appropriate future regulation of the industry.

Rail

The Australian Rail Track Corporation (ARTC), which manages the interstate railway track and the Hunter Valley coal rail network, is subject to access undertakings provided to the ACCC pursuant to Australia's National Access Regime (set out in Part IIIA of the Act). The National Access Regime aims to promote competition in markets that need access to infrastructure which has the potential to create bottlenecks (such as ARTC's railway tracks).

Two access undertakings are currently in place in relation to ARTC—one for ARTC's Hunter Valley rail network in New South Wales and one for its national interstate rail network. The ACCC has an ongoing role in monitoring compliance with these access undertakings.

Hunter Valley access undertaking

The Hunter Valley access undertaking, which the ACCC accepted in 2011, regulates access to the rail network in the Hunter Valley leased by ARTC. The network is predominantly used to transport export coal from the region's mines to the Port of Newcastle in the world's largest coal export operation. It is also used for domestic coal and non-coal freight.

The access undertaking requires ARTC to submit documentation to the ACCC annually demonstrating its compliance with the financial model and pricing principles in the undertaking. In May 2013, ARTC submitted its compliance documentation for the 2012 calendar year. From June 2013 to February 2014, we consulted with industry and asked ARTC for further relevant information. On 24 March 2014, we made a determination that ARTC had complied with the access undertaking and that its total 'under-recovery' of \$4.82 million should be recouped from producers using the Hunter Valley rail network.

In May 2014, ARTC submitted its compliance documentation for the 2013 calendar year. The assessment is ongoing.

Throughout 2013–14, the ACCC also assessed proposals by ARTC to vary the access undertaking. On 28 June 2013, ARTC submitted an application to include rail segments between Gap and Turravan in the Hunter Valley access undertaking. These segments service the coal mines of Gunnedah, Boggabri and Narrabri and, in future, will service proposed developments at Watermark and Maules Creek.

We released a position paper on ARTC's proposed variation on 12 December 2013. ARTC subsequently withdrew its application on 20 February 2014, submitting a revised version on 24 March 2014. This revised variation incorporates terms of access which were negotiated between ARTC and relevant stakeholders. We consulted on the variation and, on 25 June 2014, we released a final decision to accept the variation, providing regulatory certainty to stakeholders.

In January 2014, ARTC submitted an application to vary the Hunter Valley access undertaking to implement provisions relating to an efficient train configuration (Final Indicative Service) and associated indicative charges. In March 2014, we issued a consultation paper calling for comments from industry on the variation application. We also formally sought information from ARTC on the model underpinning the indicative charges.

The ACCC will release a position paper on the Final Indicative Service and associated charges in mid to late 2014.

On 29 May 2014, we initiated a review to give stakeholders clarity on ARTC's current revenue allocation practices. Consultations with interested parties will continue until 29 August 2014.

Interstate access undertaking

The interstate access undertaking, accepted by the ACCC in 2008, facilitates competition by regulating access for freight and passenger services on the interstate rail network leased by ARTC. ARTC must review the undertaking five years after commencement to determine the need for amendments due to changes in industry conditions or legislation.

In October 2013, ARTC sent stakeholders a letter describing the requirements and scope of the review and seeking their comments.

In April 2014, ARTC advised the ACCC that it did not intend to propose any amendments to the undertaking as the associated costs would outweigh any benefits.

Postal services

In regulating postal services we:

- assess price notifications for Australia Post's monopoly services, including the basic postage rate
- inquire into disputes about the terms and conditions on which Australia Post provides bulk mail services
- monitor for cross-subsidies between monopoly and contestable services.

Australia Post holds a monopoly for its reserved letter services, and some of these services are subject to the price notification provisions in Part VIIA of the CCA. Price regulation is applied only to 'notified services' and to 'declared persons' in markets where the Minister decides that competitive pressures are not sufficient to achieve efficient prices and protect consumers.

Australia Post price notifications

On 31 January 2014, Australia Post submitted a price notification proposing an increase in the basic postage rate from 60 cents to 70 cents from 31 March 2014. Australia Post also proposed increases in the prices of other large 'ordinary' letter services.

Under Part VIIA of the Act, the ACCC had 21 days to assess a price notification from Australia Post. The ACCC completed a high level review of the proposal within the time limit.

We found that Australia Post's letter services were under increasing financial pressure due to the declining number of letters, and that it is under-recovering on its reserved services costs. Even with the price increase, Australia Post is unlikely to recover more than an efficient level of costs.

We released our decision to not object to Australia Post's pricing proposal on 20 February 2014.

Australia Post cross-subsidy assessment

The ACCC scrutinises Australia Post's regulatory accounts and reports annually to determine whether or not the organisation is cross-subsidising its contestable services with revenue from its monopoly services.

We issued our cross-subsidy report for 2012-13 on 6 June 2014. The report concluded that, as in previous years, the regulatory accounts did not show that Australia Post was cross-subsidising its contestable services. On the contrary, the report found that these services were, as a whole, a source of subsidy.

Review of the National Access Regime

The Productivity Commission submitted its final report on the National Access Regime to the Australian Government on 25 October 2013 and released it publicly on 11 February 2014. It found that the regime is working effectively and should be retained. We contributed to the review, including participating in public hearings.

The government will respond to the Commission's report at the conclusion of the current competition policy review.

3.5 Improving regulatory practices

2013–14 Strategy: *Improve regulatory practices and processes, including by building relationships with domestic and international regulatory agencies to leverage their experience.*

The ACCC has implemented this strategy via a range of activities, including:

- Executive-level officers participated at the OECD Regulatory Policy Committee and Network of Economic Regulators. See section 4.2 for further details.
- We held the annual ACCC/AER Regulatory Conference, which brings together industry participants, policy makers, academics, and regulators from around the world to consider the latest ideas about regulatory theory and practice. See section 4.2 for further details.
- We participated in the Telco Regulators Roundtable and the Utility Regulator's Forum which allowed the ACCC to remain up to date with telecommunications and infrastructure issues and deal with issues in a consistent manner. See section 4.2 for further details.
- We engaged in cooperative initiatives such as the Service Continuity Assurance Working Group which allowed us to share expertise and encourage regulatory collaboration. See section 4.2 for further details.
- We participated, as an observer, in the Murray-Darling Basin Authority's Trade Working Group and Trade Operators' Panel, both of which discussed interstate water trade issues in the basin.
- We participated in the Trading Rules Working Group, which considers matters relating to the Basin Plan water trading rules.
- We advised relevant bodies on matters relevant to the rules made under the Water Act. See water consultation in Goal 4.

Regulatory Economic Unit

The Regulatory Economic Unit's (REU) role is to increase the quality of economic analysis available to the ACCC/AER and promote the consistent use of economic principles across the different sectors which the ACCC/AER regulates. REU economic specialists provide advice to all areas of the ACCC/AER, research and develop best practice regulatory techniques, and contribute to economic discussion, debate and training on regulatory issues.

To further develop our thinking on regulation, the REU provides a seminars program which features internal and external presenters speaking about regulatory economics and finance topics. This is in addition to the various other programs set out in the case study below.

Case study

Improving regulatory practices

The ACCC/AER is responsible for economic regulation in a number of sectors including energy, communications, water and transport. Economic regulation of infrastructure has been integral to the successful implementation of Australia's National Competition Policy. The purpose of economic regulation is to put monopoly infrastructure service providers under some of the pressures that competition imposes in order to achieve the main benefit of competition—greater efficiency for the long-term interests of consumers.

It is important to incorporate the latest thinking in regulatory economics into the ACCC/AER's work and, to this end, the ACCC/AER organises an annual Regulatory Conference. Held in Brisbane every year with over 400 delegates attending, this conference brings staff together with industry participants, policy makers, academics, and regulators from around the world to hear and discuss the latest ideas about the theory and practice of regulation.

In 2013, the conference looked at customer involvement in the regulatory process and pricing. The theme for the 2014 conference will be 'Regulating for Efficient Infrastructure Outcomes'.

Besides the Regulatory Conference, there are many other ways in which the REU ensures that the ACCC/AER remains at the forefront of thinking in regulatory economics. A regular external publication, *Regulatory Observer*, provides information and updates about international and Australian regulatory developments and decisions. The ACCC and the AER belong to the Utility Regulators Forum, which was established in 1997 to encourage cooperation between Australian, state and territory based regulators. REU edits *Network*, the publication of the Utility Regulators Forum, and distributes it quarterly.

The REU branch also publishes ACCC/AER staff working papers to disseminate information on work likely to make a valuable contribution to public policy debate in areas of competition law, economic regulation and consumer protection.

Measures and performance for Goal 3: promote the economically efficient operation of, use of and investment in monopoly infrastructure

Measures—Goal 3

- Timely, considered and evidence-based regulatory decisions based on constructive engagement and complemented by effective enforcement and compliance activities.
- Timely provision of accurate advice to government including evaluating the effectiveness of frameworks such as access regimes.
- Accurate, targeted and accessible reports on industry and competitive conditions, including pricing practices.

Performance indicators

1. Timely, considered and evidence-based regulatory decisions based on constructive engagement and complemented by effective enforcement and compliance activities

- The ACCC finalised the assessment of NBN Co's Special Access Undertaking after consulting with interested parties, including through an industry forum.
- After conducting a timely inquiry, we published our final decision to extend the existing declarations for the six fixed line services before they expired.
- The ACCC released its final decision on the price determination for the State Water Corporation of New South Wales after extensive consultation with stakeholders.
- The ACCC published a final decision to reduce the level of economic regulation at GrainCorp's bulk wheat terminal in Newcastle in light of the increased competition from other facilities at that port.
- After thorough consultation, the ACCC released a final decision to expand coverage of the Access Undertaking applying to ARTC's Hunter Valley coal rail network, providing certainty to coal producers in the Gunnedah Basin in NSW.
- The ACCC received price notifications from Sydney Airport (relating to regional air services), Australia Post, and Airservices Australia. We consulted with relevant stakeholders before deciding not to object to these notifications, all within statutory timeframes.

2. Timely provision of accurate advice to government including evaluating the effectiveness of frameworks such as access regimes

We met all statutory and other deadlines in advice on:

- digital radio markets in Australia (submission to the Department of Communications' review of digital radio)
- the regulatory framework for Australia's future broadband market (submissions to the Vertigan Review)

- the Australian Government's investment in the Mobile Coverage Programme (submission to the Department of Communications' Mobile Coverage Programme discussion paper)
- the Department of Communications' consideration of Telstra's Retail Price Control Arrangements
- the Productivity Commission's review of the National Access Regime
- government reviews relating to Australian shipping
- comprehensive and accurate monitoring reports for telecommunications, petrol, airports, container stevedoring and cross-subsidy in Australia Post.

3. Accurate, targeted and accessible reports on industry and competitive conditions, including pricing practices

We released:

- annual telecommunications reports for 2012-13 detailing industry trends, prices and the ACCC's regulatory activities
- a targeted report on Telstra's compliance with retail price control arrangements
- a comprehensive petrol monitoring report outlining prices, costs and profits in the Australian downstream petroleum industry. We continued to receive positive feedback from stakeholders and consumers about the usefulness, reliability and accuracy of ACCC petrol monitoring reports.
- an airport monitoring report analysing prices, costs, profits and quality of aeronautical and car parking services at the four major airports
- a container stevedoring monitoring report, which highlighted competition and efficiency outcomes and areas for further reform
- a report on cross-subsidy in Australia Post clarifying that no cross-subsidy occurred in 2012-13
- the Water Monitoring Report on regulated water charges, transformation arrangements and compliance with the water market and water charge rules throughout 2012-13.

We published all reports, together with related summaries and media information, in a range of accessible formats on the website, www.accc.gov.au.

Goal 4: Increase our engagement with the broad range of groups affected by what we do

Significant outcomes 2013–14

- Collaborated with a range of safety organisations including Kidsafe and Australian and international product safety regulators to deliver education initiatives raising awareness about safety issues associated with a broad range of products including trampolines and button batteries.
- Continued our engagement with the International Consumer Protection Enforcement Network (ICPEN), presenting at conferences, co-chairing the Intelligence Steering Group and sitting on the ICPEN Advisory Group.
- Continued our engagement with the International Competition Network (ICN), presenting at international workshops and teleseminars and co-chairing the Cartel Working Group.

4.1 Effective communication

2013–14 Strategy: *Implement a comprehensive strategy to ensure effective communication with our diverse audiences that supports our goals.*

Measure:

- Effectiveness and use of ACCC web sites, other media and campaign materials in raising awareness of the role, purpose and responsibilities of the ACCC.

Our approach to engagement

The ACCC is applying a strategic approach to tailoring messages and using communication channels to increase our connection with:

- consumers and groups representing various interests, including vulnerable and disadvantaged consumers
- small to medium businesses and the associations that represent them
- journalists who can help to spread compliance and consumer rights messages and publicise successful legal action that will deter illegal conduct
- infrastructure industries and regulated industries
- our state and territory counterparts, and other relevant regulators
- legal and business support professionals
- international forums and groups.

The ACCC's aim is to inform and educate so that consumers and small businesses feel confident to exercise their rights, and businesses have the knowledge and skills to comply with the law. We also give information to large businesses, their suppliers and consumers so they can understand the ACCC and AER's role in infrastructure and the measures we take to ensure competition and fair trading.

The channels the ACCC and AER use to engage the target groups include:

- the ACCC website, www.accc.gov.au and associated websites dedicated to product safety, product recalls, scams, the Australian Energy Regulator, energy price comparison and freedom of information
- mainstream and social media
- the ACCC Infocentre telephone lines, with general enquiries and complaints line and specific numbers for
 - Indigenous consumers
 - small businesses
 - unit pricing
 - carbon claims
 - energy price comparison
- education guides, DVDs, online learning modules, webinars and interactive apps
- information translated into languages other than English
- face-to-face education outreach for small businesses and compliance
- speeches by the chairman and commissioners
- guides and publications on a wide range of topics.

Infocentre and complaint investigation

The ACCC's Infocentre is the initial contact point for telephone and written enquiries and complaints on competition, consumer and fair trading issues. Infocentre officers record information received from businesses and consumers in the ACCC complaints and enquiries database. The majority of contacts are by consumers seeking information or making a complaint about business conduct that they believe may breach of the Act.

All complaints are assessed against the ACCC compliance and enforcement policy and, where appropriate, escalated for further assessment or investigation.

Responding to enquiries and complaints

We have continued our review of Infocentre operations this year to ensure we are as efficient and responsive as possible, within the available resourcing.

The contact statistics for 2013–14 show:

- 132 673 contacts were served by telephone or received a written response
- 24 904 web form responses
- 1101 letter responses
- 106 668 calls answered.

Of the contacts received, 2910 related to AER matters.

We continued to use Plain English in Infocentre communications and have made written response processes more efficient.

Our outsourcing contract has continued to be very effective and we have expanded it beyond SCAMwatch calls only. This supports our operating hours through to 8 pm Eastern Standard Time, despite the closure of our Perth Infocentre team.

The call statistics for 2013–14 show:

- 27 per cent of calls were answered within 60 seconds
- 70 per cent of written responses were sent within 15 working days.

Escalation to investigations

Complaints we receive may go through a series of increasingly intensive investigations.

An initial investigation is the first stage of a detailed complaint assessment by the ACCC. It may result in escalation to an in-depth investigation, the matter may be resolved administratively or no further action taken. The most serious matters may become in-depth investigations. Depending on the seriousness of the complaint, we may use our coercive investigative powers and resolve the complaint by using court-enforceable undertakings or infringement notices or by initiating legal action.

We analyse information in our complaints and enquiries database to establish complaint trends, identify issues for further inquiry, and develop compliance responses.

Table 3.3: Complaint actions

Category	2012–13	2013–14
Contacts received (phone, email & letters)	185 640	202 363
Contacts recorded in the database	163 796	160 039
Under assessments commenced	2 361	978
Initial investigations commenced	442	496
In-depth investigations commenced	146	131
Litigation	27	27

Table 3.4: Small business and franchising contacts

Category	2012–13	2013–14
About a small business matter	4 735	12 036
About a franchise matter	802	818
About an online trader or e-commerce	3 608	6 833

Table 3.5: Top 10 industries, excluding scams, for complaints and enquiries

Industry	2013-14
Other personal services	5 779
Non-store retailing	3 914
On-selling electricity and electricity market operation	2 472
Supermarket and grocery stores	1 728
Wired telecommunications network operation	1 652
Department stores	1 591
Other electrical and electronic goods retailing	1 589
Other store-based retailing	1 589
Motor vehicle manufacturing	1 531
Car retailing	1 443
Fair trading and consumer protection including Australian Consumer Law	
Guarantee as to acceptable quality	12 828
Misleading or deceptive conduct	10 255
Wrongly accepting payment	2 991
Guarantee as to due care and skill	2 901
False representation price	1 522
Safety standards	1 275
Guarantee relating to the supply of goods by description, sample or demonstration	1 224
Guarantee as to fitness for any disclosed purpose etc.	992
Guarantee as to fitness for any particular purpose etc.	805
False representations foods—standard, quality, value, grade, composition, style etc.	793
Effective competition and informed markets Part IV and IVB	
Misuse of market power	508
Codes	470
Exclusive dealing	305

Table 3.6: Geographic location of contacts recorded in the national database

State	ACL	Scams	Consumer protection		Restrictive trade practices		Industry codes		Other	
			2012-13	2013-14	2012-13	2013-14	2012-13	2013-14	2012-13	2013-14
New South Wales	13 544	28 522	36 876	42 066	718	738	124	119	5 882	7 480
Victoria	13 876	19 415	31 682	33 291	608	604	87	108	5 667	5 748
Queensland	11 067	18 512	30 310	29 579	516	465	110	134	3 961	4 033
South Australia	4 448	6 507	11 387	10 955	178	168	34	28	1 917	2 039
Western Australia	4 872	7 786	13 986	12 658	235	209	56	53	1 970	1 747
Australian Capital Territory	2 154	3 832	7 960	6 086	100	83	13	10	1 381	983
Tasmania	1 015	2 155	3 191	3 170	41	44	10	6	387	401
Other	743	1 689	11 955	2 432	108	127	21	9	1 111	496
Northern Territory	535	752	1 242	1 287	19	24	2	3	195	211

Intelligence, analysis and reporting

The ACCC continually invests in intelligence gathering and analysis to inform strategic enforcement and compliance priorities.

For example, we have introduced an intelligence trend analysis program to proactively identify new issues and threats. Regular analysis not only provides a safety net for complaints assessment but also enhances the ACCC's intelligence and industry knowledge and helps us identify new priority areas.

Our intelligence watch-list allows us to electronically monitor complaints and quickly identify new or re-emerging issues. Traders and individuals who have previously been subject to ACCC action or interest are monitored to ensure their prior conduct is not repeated.

We work with state and territory consumer agencies to further develop all ACL regulators' intelligence capabilities and enhance cooperation, including through the Compliance and Dispute Resolution Advisory Committee. At the same time, we engage with our intelligence counterparts overseas to inform our understanding of emerging consumer and competition issues likely to affect Australia.

4.2 Improving outcomes through effective partnerships

2013–14 Strategy:

Undertake an active program of stronger and managed partnerships with a broad range of organisations that can assist delivery of outcomes that impact favourably on consumer welfare.

Measures:

- Actions pursued through public and private sector partnerships to improve consumer and small business welfare.
- Impact and quantity of national and international advocacy and cooperation initiatives and technical assistance with an increased focus on the Asian region.

Introduction

We host and participate in a wide range of consultative committees and forums domestically and internationally to encourage discussion around consumer, competition, and regulatory issues relevant to our work.

Collaboration and partnerships with Australian regulators

In 2013–14, we consulted with various government agencies and external stakeholders, in particular, liaising with Australian Government agencies on the operation of the Act and Australian Consumer Law and proposed legislative amendments. The ACCC also worked closely with state and territory fair trading agencies to ensure the one law multi-regulator model produces positive outcomes for business, consumers and the community.

Communications

The ACCC consults regularly with other government agencies and regulators in the communications industry, including through the quarterly Telco Regulators Roundtable. Agencies represented on the roundtable include the Australian Communications and Media Authority, Department of Communications and the Telecommunications Industry Ombudsman. Roundtable interaction ensures that all regulators deal with upcoming telecommunication issues in a consistent manner.

Utility Regulators Forum

The Utility Regulators Forum encourages cooperation between Australian, state and territory government economic regulators. The ACCC provides secretariat services for the forum as well as editing and publishing its quarterly newsletter, *Network*. The forum met twice in 2013–14 to discuss regulatory issues common across Australia and New Zealand, including those relating to:

- pricing principles for regulatory determinations
- consumer engagement in regulation
- calculation of the weighted average cost of capital
- price monitoring.

Collaboration with ACL regulators

The ACCC engaged with Australian Consumer Law regulators through various committees of the Council of Australian Governments Legislative and Governance Forum on Consumer Affairs. These included: the Policy and Research Advisory Committee, Compliance and Dispute Resolution Advisory Committee and the Education and Information Advisory Committee.

Among other things, in 2013–14 we worked together with Australian Consumer Law regulators on a national compliance and education project on extended warranties. The project examined extended warranty products offered by a range of manufacturers and retailers and their promotion and sale methods. The project also sought to minimise the instances of consumers being misled about their consumer guarantee rights and the benefits of any extended warranty above and beyond these rights. Other work is detailed on the Australian Consumer Law website.

As part of a joint initiative of the Australian Consumer Law Regulators the ACCC also launched the *Shop Smart Online* video to help consumers and small business understand their rights and obligations when shopping or selling online.

See section 2.2 *Increase our effectiveness through partnerships* on page 79 for more information on our work with fellow ACL regulators.

The ACCC also collaborates with ACL regulators and a number of other government agencies as part of the Australasian Consumer Fraud Taskforce, which works to protect Australian consumers and small businesses against scams activity.

Government liaison

Assistance to parliamentary inquiries and government reviews

We assist parliamentary inquiries and government agencies in developing policy and legislation. In 2013–14, we contributed to the reviews and inquiries detailed below as well as those listed under *Timely assistance to government and agencies* in Goal 3.

ACCC reports

As part of its role, the ACCC is required to produce a range of reports, many of which are provided to the government and various government agencies. For a list of our monitoring and regulatory reports see appendix 11 on page 359.

Senate Select Committee on the National Broadband Network and Vertigan Review

The Senate Select Committee was established on 14 November 2013 and directed to inquire into and report on:

- the Australian Government's reviews of the National Broadband Network (NBN)
- governance of NBN Co.

The ACCC gave evidence to assist the committee on 11 December 2013. The committee tabled an interim report on 26 March 2014, with a final report due by 10 June 2014. In May 2014, this date was extended to the last sitting day of the 44th Parliament (i.e. up to 2016).

On 12 December 2013, the Australian Government announced the Cost-Benefit Analysis and Review of Regulation of the NBN, known as the Vertigan Review. The review is analysing the economic and social costs and benefits of increased broadband speeds and the

extent broadband should be support by government. The ACCC made two submissions in response to the issues papers released as part of the Vertigan Review. Details on the ACCC's submission can be found in section 3.1 of this report, or on the ACCC website.

Contribution to other inquiries and reviews

In addition to the contributions detailed above, in 2013–14 we:

- gave evidence and responded to Questions on Notice to an inquiry by the Senate Standing Committee on Rural and Regional Affairs and Transport into the Ownership Arrangements of Grain Handling
- gave evidence to an inquiry by the Environment and Communications Legislation Committee into the Clean Energy Legislation (Carbon Tax Repeal) Bill 2013 [Provisions] and related bills
- responded to Questions on Notice to an inquiry by the Senate Standing Committee on Economics into ticket scalping
- made a submission and gave evidence to an inquiry by the House of Representatives Agriculture and Industry Committee into country of origin food labelling
- responded to the discussion paper for the Australian Law Reform Commission's copyright inquiry
- made a submission to the Australian Government's Options Paper: Approaches to regulating coastal shipping in Australia
- made a submission in response to the Department of Agriculture's consultation paper on the exposure draft of a mandatory port access code of conduct for grain export terminals
- made a submission to the independent review of the operation of Division 16 of the Act. Division 16 relates to NBN Co conduct authorised under s. 51(1) of the Act and the ACCC's determination of the points of interconnection
- made a submission to the review of future arrangements for local number portability
- the AER provided the COAG Energy Council with a submission to its Review of Enforcement Regimes under the National Energy Laws
- the AER provided submissions to the AEMC in relation to rule changes for:
 - rebidding in good faith
 - expanding competition in metering and related services
 - annual network pricing arrangements
 - Network Service Provider (NSP) expenditure objectives
 - recovery of network support payments draft rule determination
 - governance of retail market procedures
 - distribution network pricing arrangements
 - publication of zone substation data
 - retailer price variations in market retail contracts
 - generator ramp rates and dispatch inflexibility bidding
- the AER provided submissions to the following AEMC reviews:
 - NEM financial market resilience national framework for transmission and distribution reliability
 - electricity customer switching
 - framework for open access and communication
- the AER made a submission to the Queensland Government's 30-year electricity strategy discussion paper
- the AER made a submission to the Australian Government's Energy White Paper task force issues paper.

Country of origin food labelling inquiry

In May 2014, the ACCC made a submission to and appeared before the House of Representatives Standing Committee on Agriculture and Industry Country of Origin Food Labelling Inquiry. The inquiry is examining how well Australia's country of origin labelling laws are functioning in relation to food. It is also considering the adequacy of labelling information for consumers making purchasing decisions, compliance with labelling laws and the scope for improvements to the current system.

Review of the National Access Regime

The Productivity Commission submitted its final report on the National Access Regime to the Australian Government on 25 October 2013 and released it publicly on 11 February 2014. It found that the regime is working effectively and should be retained. We contributed to the review, including participating in public hearings.

The government will respond to the Commission's report at the conclusion of the Harper Review of competition laws.

Harper Review of Competition Laws

On 27 March 2014, the Minister for Small Business announced the terms of reference for a 'root and branch' review of competition laws and policy and the appointment of experts to a review panel. The panel consists of Professor Ian Harper (Chair), Ms Su McCluskey, Mr Michael O'Bryan SC and Mr Peter Anderson. Two senior ACCC staff were seconded to the review secretariat and the ACCC provided its views to the panel in a submission on 25 June 2014.

Private health insurance report

In December 2013, the ACCC tabled in the Senate its 15th report on anti-competitive and other practices by private health insurers and healthcare providers. The report considered end of financial-year (EOFY) or 'tax time' advertising as a tool to encourage consumers to sign up to a fund, or transfer between funds, in order to avoid paying extra tax. We also examined consumer experiences of their health cover after signing up or switching between funds during EOFY, finding concerns in both cases.

International partnerships and collaboration

The ACCC won the Global Competition Review Agency of the Year—Asia-Pacific, Middle East & Africa Award in recognition of the sheer scale of our engagement in high-profile matters, both in competition law enforcement and merger control.

The ACCC and AER continued to build relationships and engage with international competition and consumer protection counterparts. From an economic regulatory perspective, it is important to learn from different regulatory regimes and, given the nature of investment flows, to determine whether Australian regimes are on a similar or different path to those of our international counterparts.

The ACCC and AER undertake a range of activities with their international counterparts, including cooperation on specific cases and discussions on international best practice and convergence. We participate actively in groups facilitating cooperation, such as the ICN, ICPEN, Organisation for Economic Co-operation and Development (OECD) and International Consumer Product Health and Safety Organisation. The ACCC and AER participate in these to help promote effective policies and enforcement internationally.

Bilateral engagement

The ACCC regularly engages and exchanges information with other regulators internationally on investigations and merger assessments. In 2013–14, we:

- received and responded, or made requests to over 140 agencies in Austria, Botswana, Brazil, Canada, Colombia, European Union, Fiji, France, Germany, Hong Kong, Israel, Italy, Japan, Jordan, Kenya, Korea, Latvia, Macau, Mexico, Mongolia, Namibia, Netherlands, New Zealand, Pakistan, Papua New Guinea, Philippines, Poland, Russia, Seychelles, Singapore, South Africa, Switzerland, Taiwan, United Kingdom, and United States. Sharing Australian evidence of contraventions and experience in best practice, helps to build capacity and strengthen relationships with regulators. Receiving information from regulators helps the ACCC to increase the efficiency and effectiveness of our merger and enforcement investigations
- hosted study visits by officials from China, Hong Kong, Kenya, Korea, Nigeria, Papua New Guinea, Philippines, Russia, Singapore, Sri Lanka, Thailand, Taiwan and the United Kingdom
- prepared reports and made presentations on Australian competition, consumer and regulatory law developments at many international events.

The ACCC was funded under the ASEAN Australia New Zealand Free Trade Agreement to send two experts on secondment to the Vietnam Competition Authority and Malaysia Competition Commission to assist those institutions build their capacity to enforce their respective competition laws.

Staff from the AER participated in exchanges with international regulators such as the Office of Gas and Electricity Markets in the United Kingdom and the Market Surveillance Administrator in Alberta, Canada, enhancing the skills of staff involved and developing the relations between the agencies.

Regional engagement

The ACCC recognises the benefits that efficient markets in the region deliver to Australian consumers and businesses and works actively in the Asia-Pacific region to promote the development of effective competition and consumer protection regimes. Activities in 2013–14 included participating in the:

- OECD-Korea Policy Centre training seminars
- ASEAN Experts Group on Competition and the first meeting of the Australia and New Zealand Free Trade Agreement Competition Committee
- East Asia Top Level Officials Meeting on Competition Policy and East Asia Conference on Competition Law and Policy
- third ASEAN Competition Conference
- APEC Competition Policy and Law Group Conference and APEC Regional Seminar
- Asian Forum on Consumer Policy
- Malaysia Competition Commission's first Competition Law Conference
- Inaugural New Zealand Commerce Commission Conference on Competition and Regulation
- 17th International Workshop on Competition Policy
- GCR Live third Annual Law Leaders Asia-Pacific Conference
- 2013 International Conference on Consumer Protection.

Full details of our regional engagement and participation are detailed in our quarterly report *ACCCount* on the ACCC website.

Case study

Strengthening competition law and enforcement in our region

The ACCC is ranked in the top 10 competition agencies in the world by the Global Competition Review. With that status comes responsibility to share our expertise with new or less experienced regulators. Economic growth in the Asian region combined with new competition law and enforcement agencies in a number of Asian countries is starting to increase calls for our assistance in establishing effective regimes for encouraging competition and protecting consumers.

Australian businesses stand to benefit from a more level playing field that comes with better enforced competition laws throughout the Asian region.

A key strategic priority for the ACCC is therefore developing stronger and closer cooperative relationships in Asia.

As part of our Asian engagement in 2013–14, we signed agreements with the Competition Commission of India and China's merger authority, the Ministry of Commerce. The agreements create a platform for closer cooperation on practical matters such as building agency effectiveness and cooperating on cross-border investigations.

We also sent experienced competition enforcement staff on secondment to the Vietnamese Competition Authority and the Malaysian Competition Commission. Both secondments helped build closer ties with those regulators and improved understanding of one another's competition enforcement regimes.

We delivered four-day investigations skills courses in Vietnam and the Philippines. Training involved an interactive workshop on practical skills, delivered with international law firm Baker & McKenzie, and ongoing help in the form of country-specific training manuals.

We will continue to explore opportunities to increase our engagement with Asian competition regulators.

ACCC/AER Regulatory Conference

We again hosted the annual ACCC/AER Regulatory Conference to bring together industry participants, policy makers, academics, and regulators from around the world to consider the latest ideas about regulatory theory and practice. The two main themes of the 2013 conference were 'Customer involvement and pricing'. Topics included the design of customer involvement, regulatory pricing challenges, and investor expectations and the regulatory framework.

ACCC and New Zealand Commerce Commission meetings

During 2013–14, the ACCC continued its regular meetings with the New Zealand Commerce Commission. The meetings, involving commissioners from both organisations, are held to discuss regulatory developments in both jurisdictions.

International Competition Network

We continued our long and active engagement with the ICN. Work included:

- co-chairing the Cartel Working Group's Enforcement Techniques subgroup
- organising and presenting at international workshops and teleseminars on competition issues, including mergers, cartels and unilateral conduct, for example, the ICN Annual Meeting in Marrakech, Morocco
- leading the team who redrafted the ICN anti-cartel enforcement manual chapter on developing and implementing an effective leniency program
- preparing to host the 2015 ICN Annual Meeting in Sydney in April 2015, which will have an Asian focus and address current regional issues.

OECD

At the OECD Competition Committee meetings we advocated for better support for international cooperation in competition investigations and proceedings, and contributed to numerous papers on competition issues impacting Australia and the region. Commissioner Dr Jill Walker continued as an active member of the OECD Competition Committee Bureau.

We attended two meetings of the OECD Regulatory Policy Committee, which included roundtables examining best practice principles for the governance of regulators and how to appropriately measure the performance of regulators.

We also attended two meetings of the OECD Network of Economic Regulators, an official subsidiary body of the OECD Regulatory Police Committee. In November 2013, the ACCC Deputy CEO for Regulation, Mark Pearson, was voted onto the Bureau by his fellow members.

International Consumer Product Health and Safety Week

The ACCC held its first International Consumer Product Safety Week in October 2013. The Week included a two day meeting of the OECD Consumer Product Safety Working Party, a regulator workshop on risk assessment and a two day conference which was jointly run with the International Consumer Product Health and Safety Organisation.

The conference brought together consumer safety and health experts, industry, consumer groups and regulators from across the world, attracting more than 200 delegates from more than 20 countries.

International Consumer Protection Enforcement Network

We continued our long engagement with the International Consumer Protection Enforcement Network (ICPEN), presenting at conferences, co-chairing the Intelligence Steering Group and sitting on the ICPEN Advisory Group. Work over the year included:

- gathering intelligence on consumer protection priority areas from members and preparing the twice yearly intelligence report
- participating in the ICPEN international sweep to identify smartphone and tablet apps that may mislead young children into making unauthorised in-app purchases (see the case study on page 66)
- attending the ICPEN best practices workshop on travel and tourism services and children's online games and applications.

Energy Intermarket Surveillance Group

The AER is a founding member of the Energy Intermarket Surveillance Group, the peak and only international group coordinating and sharing skills between energy market surveillance and enforcement bodies, such as the AER. See *Energy Intermarket Surveillance Group* on page 162 for more details of our work with this group in 2013–14.

Consulting with stakeholders

The ACCC's consultative committees continued to work with stakeholders in 2013–14. Consultation informed our compliance and enforcement activities, in particular our work in energy, telecommunications, carbon, door-to-door sales, online retailing and small business. The committees, whose activities are outlined below, also improved our understanding of disadvantaged and vulnerable consumers such as Indigenous Australians, senior Australians and young people.

Consumer Consultative Committee

The Consumer Consultative Committee (CCC) is chaired by Catriona Lowe and provides a forum through which consumer protection issues can be addressed collaboratively between the ACCC and consumer representatives.

Current membership includes: CHOICE, Consumer Action, Financial Counselling Australia, Public Interest Advocacy Centre, the Indigenous Consumer Assistance Network, the Council on the Ageing, Australian Communications Consumer Action Network, Australian Council of Social Services, Brotherhood of St Laurence, Youth Action and Policy Association, and Adult Multicultural Education Service.

In 2013–14, the CCC members continued to inform the ACCC's consumer protection work by providing information on current consumer issues, providing input into ACCC priority projects, and supporting ACCC initiatives through their networks and communities. Members also participated in working groups to assist the ACCC in developing the National Consumer Congress program and an upcoming research project on debt collection practices.

Small Business Consultative Committee

Our Small Business Consultative Committee allows industry and government to discuss the competition and consumer law concerns affecting small business. Meetings are chaired by ACCC Deputy Chair, Dr Michael Schaper.

Committee members include representatives from the Australian Chamber of Commerce and Industry, Australian Retailers Association, Institute of Chartered Accountants in Australia, Institute of Public Accountants, Optometrists Association Australia, Real Estate Institute of Australia, Master Builders Australia, Master Grocers Australia, and Council of Small Business of Australia.

The committee met three times in 2013–14, including a joint meeting with the Franchising Consultative Committee to discuss a range of issues including the Australian Government's proposed Small Business and Family Enterprise Ombudsman and extension of unfair contract term laws to small businesses.

Franchising Consultative Committee

The committee enables consideration of, and collaborative action on, competition and consumer law concerns relating to the franchising sector and other franchising issues. Committee members include representatives from the Franchise Council of Australia, Franchisee Association of Australia, Australian Motor Industry Federation and Federal Chamber of Automotive Industries. The committee is chaired by ACCC Deputy Chair, Dr Michael Schaper.

The committee met three times in 2013–14 (including a joint meeting with the Small Business Consultative Committee) to discuss a range of issues, including the Australian Government's announced franchising reforms.

Fuel Consultative Committee

Established in 2010, the committee promotes meaningful dialogue between the ACCC, the fuel industry and motoring organisations. The meetings are held twice a year and are chaired by ACCC Chair Mr Rod Sims. They provide an opportunity for the ACCC to increase its understanding of fuel industry issues and helps the ACCC fulfil its role on issues related to competition and consumer protection in the fuel industry.

During the year, the committee discussed a range of issues relating to the Australian downstream petroleum industry. Among issues discussed were: recent developments in domestic refining, importing and distribution, petrol price cycles and fuel price volatility, and the outcomes of finalised ACCC enforcement action.

Infrastructure Consultative Committee

Committee members represent a variety of infrastructure sectors including energy, telecommunications, water, rail, ports and airports as well as regulators the ACCC and AER. Meeting twice yearly, the committee is an important means for the ACCC and AER to gain feedback from stakeholders and allows infrastructure representatives to learn about issues affecting the regulation of other areas. Many of the issues discussed relate to achieving efficient infrastructure investment. The committee is chaired by ACCC Chair Mr Rod Sims.

Wholesale Telecommunications Consultative Forum

Established in June 2012, the forum focuses on implementation of and compliance with Telstra's Structural Separation Undertaking and migration plan. Participation allows the ACCC to identify and assist in resolving current and emerging issues in the forum's area of interest, and facilitate open communication between Telstra, wholesale customers and the ACCC. The ACCC hosted and chaired two forums in March 2014 and June 2014.

NBN Over-the-top services transition working group

The group is coordinated by the Communications Alliance and convenes monthly to consider issues about the ongoing operation of over-the-top services (including personal and emergency alarms) on the NBN. Over recent months, it has focused on implementation of the industry guidance note on the migration of personal and medical alarms to the NBN, including:

- the development of a medical alarm register of the identity and location of medical alarms to support the migration of customers to the NBN
- NBN Co's new web page, which provides high level information about testing of over-the-top devices.

NBN Co's Public Information on Migration (PIM) Campaign

During 2013–14, the ACCC gave feedback on an ad hoc basis on a range of PIM materials distributed to consumers and businesses throughout Australia, for example, NBN Co correspondence to consumers relating to disconnection.

Service Continuity Assurance Working Group

We take part in the Service Assurance Working Group. Its purpose is help resolve issues that may affect people's ability to rely on their telephones and internet as services are migrated to the NBN and Telstra's networks are decommissioned. The working group includes NBN Co, Telstra, Optus Communications Alliance and relevant government agencies.

Consultation on water-related issues

As an observer, we participate in the Murray-Darling Basin Authority's Trade Working Group and Trade Operators' Panel, both of which discuss interstate water trade issues in the basin. We also participate in the Trading Rules Working Group, which considers matters relating to the Basin Plan water trading rules.

Measures and performance for Goal 4: Increase our engagement with the broad range of groups affected by what we do

Measures—Goal 4

- Effectiveness and use of ACCC web sites, other media and campaign materials in raising awareness of the role, purpose and responsibilities of the ACCC.
- Actions pursued through public and private sector partnerships to improve consumer and small business welfare.
- Impact and quantity of national and international advocacy and cooperation initiatives and technical assistance with an increased focus on the Asian region.

Performance indicators

1. Effectiveness and use of ACCC web sites, other media and campaign materials, in raising awareness of the role, purpose and responsibilities of the ACCC

Website

- Responding to enquiries and complaints—24 904 web form responses.
- The latest regulatory reports, determinations and issues papers are published on the ACCC website along with up-to-date information on ongoing projects and processes to assist stakeholders about key industry developments and current consultation.
- A range of consumer information is published on the ACCC website, for example, consumer information sheets on a range of NBN-related topics, and fuel-related consumer information. The fuel pages are among the most visited on the ACCC website.

Media

The ACCC issued 342 and the AER 33 news releases in 2013–14. The ACCC responded to 2544 contacts from the media and receives extensive media coverage most days.

Speeches

The chairman, commissioners and senior staff undertook more than 139 public speaking engagements. Through the speeches program, the ACCC engages widely with many stakeholder groups. A small sample of the chairman's speeches follows.

- Empowering consumers in the digital age—Chairman, Rod Sims (13 March 2014)
 - Speech at the 2014 National Consumer Congress in Sydney. The chair discussed the ACCC's consumer protection activities as new technologies have emerged. He also provides an update on the ACCC's work in the areas of consumer guarantees, credence claims and unfair contract terms. The Chairman also outlined priorities for 2014 and discussed the Root and Branch review.

- A regulator's perspective: the NBN rebooted workshop—Chairman Rod Sims (18 November 2013)
 - An address to an industry forum hosted by CommsDay and the Communications Alliance in Sydney. The chair explained the ACCC's role in regulating the NBN will continue to focus on promoting competitive and efficient markets.
- A future regulatory outlook—Chairman Rod Sims (30 September 2013)
 - An address to the University of Wollongong's SMART international infrastructure symposium. The Chairman discussed the role that appropriate infrastructure regulation can play in the wider productivity debate. He explained the key factors underpinning efficient infrastructure in the areas of land transport, shipping, electricity, communications and water.
- Congestion pricing: a challenge for regulators—Chairman Rod Sims (25 July 2013)
 - In a keynote address to the 2013 ACCC/AER Regulatory Conference, the Chairman discussed congestion pricing, consumer involvement and the ACCC's regulatory agenda.

2. Actions pursued through public and private sector partnerships to improve consumer and small business welfare

- collaborative engagement with industry participants and other regulatory bodies in regulated industries to ensure consumers and small businesses are provided with adequate and accurate information on issues and developments in the market. See for example, the ACCC's involvement in a range of consultative forums and working groups listed in section 4.2.

3. Impact and quantity of national and international advocacy and cooperation initiatives and technical assistance with an increased focus on the Asian region

- Chairman Rod Sim's keynote address to the International Consumer Product Health and Safety Organisation Asia-Pacific Symposium.
- regular meetings with New Zealand Commerce Commission to discuss regulatory developments in Australia and New Zealand.
- regular involvement in policy formulation through the OECD Regulatory Policy Committee and Network of Economic Regulators, which allows us to influence and leverage international thinking on best practice regulatory frameworks.
- contribution to inquiries and reviews—May 2014 submission and appearance before House of Representatives Standing Committee on Agriculture and Industry Country of Origin Food Labelling Inquiry.
- co-hosted the International Product Health and Safety Organisation's conference in late 2014, progressing towards coordinated international action on product safety issues, including button batteries and consumers online.

Part 3

Report on Performance

Performance reporting framework

This chapter reports on our performance for 2013–14 using the framework in the 2013–14 Treasury portfolio budget statements (PBS). The ACCC and the AER jointly report against one outcome, with the ACCC reporting against Program 1.1 and the AER Program 1.2, as shown in table 3.1.

Table 3.1: Performance reporting framework

Drivers	<i>Competition and Consumer Act 2010</i> (Cth) (the Act) Portfolio Budget Statements ACCC and AER corporate and business plans
Outcome 1	Lawful competition, consumer protection, and regulated national infrastructure markets and services through regulation. These include enforcement, education, price monitoring and deciding access terms to infrastructure services.
Program 1.1	Australian Competition and Consumer Commission
Program objective	The ACCC program objective is to achieve compliance with the Act, and associated legislation in order to protect, strengthen and supplement the way competition works in Australian markets and industries to improve the efficiency of the economy and to increase the welfare of Australians. This means the ACCC will take actions that: improve consumer welfare; promote the long-term interest of end-users in regulated sectors; protect competition; open markets to competition; or stop conduct that is anti-competitive or harmful to consumers.
Goals*	To promote compliance with federal competition, fair trading, consumer protection and product safety laws, and to regulate markets where there is limited competition, the ACCC will: <ol style="list-style-type: none"> 1. Maintain and promote competition and remedy market failure. 2. Protect the interests and safety of consumers and support fair trading in markets. 3. Promote the economically efficient operation of, use of, and investment in monopoly infrastructure. 4. Increase our engagement with the broad range of groups affected by the ACCC's activities. 5. Increase our effectiveness as an organisation through a commitment to our people, planning and systems.**
Program 1.2	Australian Energy Regulator
Program objective	The Australian Energy Regulator (AER) is the national energy market regulator. The AER's roles encompass the retail and wholesale electricity and gas markets and energy network infrastructure. The objectives of the national energy legislation guide the AER's priorities and work program. The common objective through the legislation is to promote efficient investment in, and efficient operation and use of, energy services for the long-term interests of end-users of energy.

Goals*	<ol style="list-style-type: none"> 1. Maintain and promote competition in wholesale energy markets. 2. Building consumer confidence in energy markets. 3. Promote efficient investment in, operation and use of, energy networks and services for the long-term interests of consumers. 4. Strengthening stakeholder engagement in energy markets and regulatory processes. 5. Increase our effectiveness as an organisation through a commitment to our people, planning and systems.**
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* The ACCC and AER have slightly re-phrased these goals to better align with our organisational objectives and will be using the phrasing of these goals as published in our *Corporate Plan 2013–14*. These goals appear in the 2013–14 portfolio budget statements and we report against them in the quarterly ACCCcount publication.

** Although not listed in the PBS, the ACCC and AER are reporting against this joint goal in Part 4 *Management and Accountability* to provide greater transparency in its performance reporting consistent with its corporate plan.

Goals and strategies

Below are the goals the ACCC and AER work towards in achieving Outcome 1 and the strategies we used to reach each goal. Each strategy has its own measures, which are shown together with the results later in this chapter. The report on performance is separated into Program 1.1 (ACCC) and Program 1.2 (AER). In Part 4 *Management and Accountability* the ACCC and AER jointly report against the shared Goal 5.

Program 1.1 ACCC

Goal 1. Maintain and promote competition and remedy market failure

- 1.1 deliver outcomes to address harm to consumer welfare through anti-competitive conduct and improve competition under the priority areas identified in the ACCC's Compliance and Enforcement Policy
- 1.2 assess and review mergers to prevent structural changes that substantially lessen competition with a particular focus on concentrated and emerging markets and markets of significance to the Australian economy
- 1.3 make decisions on authorisation and notification applications and merger reviews thoroughly and efficiently and give clear guidance to merger parties, authorisation and notification applicants, and market participants
- 1.4 improve the workability of emerging markets by advising on and enforcing industry-specific rules and monitoring market outcomes.

Goal 2. Protect the interests and safety of consumers and support fair trading in markets

- 2.1 deliver outcomes under the priority areas identified in the ACCC's Compliance and Enforcement Policy to improve compliance with the Australian Consumer Law
- 2.2 multiply the effectiveness of ACCC's compliance and enforcement initiatives through an active program of stronger and managed partnerships with ACL regulators and law enforcement agencies

- 2.3 identify and implement nationally integrated approaches to minimise the risk of injury and death from safety hazards in consumer products
- 2.4 support a vibrant small business sector, deter anti-competitive and unconscionable conduct targeted at small business, and facilitate collective conduct by small business operators where that conduct is assessed to provide a net public benefit
- 2.5 empower consumers to assert their rights under the Australian Consumer Law to secure fairer outcomes in the market place.¹

Goal 3. Promote the economically efficient operation of, use of, and investment in monopoly infrastructure

- 3.1 deliver network regulation to promote competition and meet the long-term interests of end-users
- 3.2 improve the workability of emerging markets by enforcing market rules and monitoring market outcomes
- 3.3 respond to government requests to provide monitoring reports on industries in highly concentrated and newly deregulated or emerging markets
- 3.4 improve regulatory practices and processes, including by building relationships with domestic and international regulatory agencies to leverage their experience.

Goal 4. Increase engagement with the broad range of groups affected by the ACCC's activities

- 4.1 implement a comprehensive strategy to ensure effective communication with our diverse audiences that supports our goals
- 4.2 undertake an active program of stronger and managed partnerships with a broad range of organisations that can assist delivery of outcomes that impact favourably on consumer welfare.

Program 1.2 AER

Goal 1. Maintain and promote competition in wholesale energy markets

- 1.1 monitor wholesale electricity and gas markets to ensure compliance and take enforcement action where necessary
- 1.2 apply a risk based approach to compliance and monitoring activities
- 1.3 publish information on energy markets, including the annual State of the energy market report.

Goal 2. Building consumer confidence in energy markets

- 2.1 monitor the performance of energy retailers and distributors in respect of their obligations under the Retail Law and provide comprehensive, clear and regular reporting on performance to inform consumers
- 2.2 encourage a culture of regulatory compliance by energy businesses through provision of clear information on our expectations and through effective and timely enforcement action when appropriate

¹ Although not listed in the PBS, the ACCC is reporting against this strategy in Part 3 to provide greater transparency in its performance reporting consistent with its corporate plan.

- 2.3 engage with consumers and their representatives to identify, develop and implement strategies to address the barriers to effective engagement by consumers in energy markets
- 2.4 further develop the Energy Made Easy website as the source of trusted information for consumers on the energy market, protections available to energy consumers and how to find the best retail energy offer for them.

Goal 3. Promote efficient investment in, operation and use of, energy networks and services for the long-term interests of consumers

- 3.1 deliver network regulation that promotes efficient investment in and operation of energy networks in the long-term interests of energy consumers
- 3.2 develop and implement guidelines and incentive schemes in accordance with the new framework for network regulation to enhance our regulation of monopoly infrastructure
- 3.3 improve data analysis techniques and metrics to inform regulatory decisions and disseminate relevant information to stakeholders to allow them to better engage in the regulatory process
- 3.4 participate in the further development of the regulatory regime to provide efficient incentives for demand side participation by energy suppliers and customers and develop appropriate schemes and guidelines for this purpose
- 3.5 encourage businesses to implement consumer engagement strategies that are effective for all customers.

Goal 4. Strengthening stakeholder engagement in energy markets and regulatory processes

- 4.1 further develop ways of engaging with energy consumers and their representatives, particularly through appropriate consumer consultative forums such as the Consumer Consultative Group and the Better Regulation Program Consumer Reference Group
- 4.2 prepare written communications that are clear and provide consumers with information they value and help them engage more effectively in regulatory processes. For example, through publication of issues papers to guide consumers on considering material issues
- 4.3 establish a Consumer Challenge Panel to provide expert advice on issues of significance to consumers within the regulatory process.

Program 1.1 and Program 1.2

Goal 5. Increase our effectiveness as an organisation through a commitment to our people, planning and systems

- 5.1 build organisational capability and knowledge sharing through well trained and supported people
- 5.2 promote a safe, healthy and respectful work environment for our people
- 5.3 streamline our management of projects to maximise the use of people, skills and experience
- 5.4 transform our specialist legal and economic services to increase the effectiveness of our operations
- 5.5 transform our corporate support services and systems to increase the effectiveness of our operations.

Program 1.1

ACCC

Goal 1: Maintain and promote competition and remedy market failure

Significant outcomes 2013-14

- NSK Australia Pty Ltd and Koyo Australia Pty Ltd were ordered to pay \$3 million and \$2 million respectively for cartel conduct relating to the price of bearings.
- Mitsubishi Electric Australia Pty Ltd was ordered to pay \$2.2 million for resale price maintenance relating to air conditioning products.
- Court determinations were made in the following matters:
 - Flight Centre Ltd—the Court ordered penalties totalling \$11 million for repeatedly attempting to enter into anti-competitive arrangements with three international airlines. The matter is under appeal.
 - ANZ Banking Group Ltd—the Court dismissed the ACCC's case relating to alleging price fixing in relation to loan arrangement services. The matter is under appeal.
 - Cement Australia Pty Ltd—the Court declared that the parties entered into anti-competitive agreements, while dismissing the ACCC's misuse of market power allegations. The matter is awaiting relief.
- We accepted court enforceable undertakings from Woolworths and Coles which address our concerns on shopper docket offers.

Our role and powers in promoting competition

Competitive markets lead to lower prices, better quality products and services, greater efficiency and more choice, all of which benefit consumers. As Australia's only competition regulator, we work to enhance the welfare of Australians by:

- maintaining and promoting competition
- addressing market failures.

We do so by enforcing Part IV of the *Competition and Consumer Act 2010* (the Act) in relation to:

- cartels and anti-competitive agreements
- misuse of market power
- exclusive dealing and resale price maintenance
- mergers which substantially lessen competition.

We assess proposed mergers to determine whether or not a merger will, or will be likely to, substantially lessen competition. Where a merger potentially raises competition issues, the ACCC will conduct either a public or a confidential review. We publish information about public reviews on a public register to inform the public, along with businesses and their advisers, about the process and the reasons for our decision.

The Act allows the ACCC to consider applications for authorisation and notifications, which enables some anti-competitive conduct to go ahead where the public benefit outweighs the public harm, including harm from reduced competition. The types of conduct we have allowed on public benefit grounds include collective bargaining, codes of conduct and joint ventures or alliances.

Compliance and enforcement tools

Court cases

The ACCC takes court action where, after considering everything, we see it as the best way to achieve our enforcement and compliance objectives. We are more likely to litigate where we see the conduct as particularly bad, we are concerned about likely future behaviour or where the party involved fails to resolve the matter satisfactorily.

Enforceable undertakings

The ACCC often resolves alleged breaches of the Act by accepting court enforceable undertakings from the business involved. In these undertakings, which we record on a public register, the business usually agrees to:

- make good the harm they have caused
- accept responsibility for their actions
- establish or review and improve their compliance programs and culture.

If the business later breaches the undertaking, we seek to have it enforced in the Federal Court of Australia.

The ACCC may also use court enforceable undertakings where we have competition concerns with a proposed merger or acquisition. A business may agree in an undertaking to action addressing concerns about a substantial lessening of competition, allowing the merger or acquisition to go ahead. These agreed actions appear on the public register.

Administrative resolution

In some cases—for example, where the ACCC assesses the potential risk as low—we may accept an administrative resolution. Administrative resolutions generally involve the business agreeing to stop the conduct, compensate those who suffered, and take other measures needed to prevent future recurrences.

Education and advice

The ACCC runs regular educational campaigns to inform and advise consumers and businesses about their rights and obligations under the Act, and to encourage compliance. We believe that preventing a breach of the Act is better than acting after a breach has occurred. Our campaigns aim to educate both big and small businesses.

The ACCC publishes targeted and general information, including tips and tools, to encourage businesses to comply with the Act. All information goes out via a wide range of channels. Additionally, we liaise extensively with business, consumer and government agencies about the Act and our role in its administration.

1.1 Stopping anti-competitive conduct

2013–14 Strategy:

Deliver outcomes to address harm to consumer welfare through anti-competitive conduct and improve competition under the priority areas identified in the ACCC's Compliance and Enforcement Policy.

Measures:

- Outcomes and impact of actions and policies to promote competition.
- Improved levels of effective competition and more informed and better functioning markets.

2014 compliance and enforcement priorities

The ACCC's Compliance and Enforcement Policy sets out priorities for the year and the factors we take into account when deciding whether to pursue matters. In February 2014, we released a revised policy, which continues to prioritise cartel conduct, anti-competitive agreements and misuse of market power because of their significant harm to consumer welfare and competition.

We also identified as priorities competition and consumer issues arising in highly concentrated sectors, in particular the supermarket and fuel sectors.

Our 2014 compliance and enforcement priorities for consumer protection are outlined on page 57.

Cartels

A cartel involves businesses agreeing with their competitors to fix prices, rig bids, share markets or restrict supply of products and services. By conspiring to control markets in these ways, a cartel protects and rewards its inefficient members while penalising honest, innovative and well-run companies.

The ACCC has extensive powers to investigate cartels. We can compel anyone to give us information about suspected cartels and, under warrant, search company offices and the homes of company officers.

Companies and individuals, including cartel participants, help us detect cartels. Participants reporting cartels can ask us for immunity from civil and criminal proceedings by self-reporting their involvement in a cartel under our Immunity Policy for Cartel Conduct.

Court cases

Following litigation by the ACCC, the Federal Court ordered penalties in two separate cases in 2013–14 for cartel conduct. Both concerned the price of bearings.

- In October 2013, the Court ordered, by consent, **Koyo Australia Pty Ltd** to pay \$2 million.
- In May 2014, the Court ordered, by consent, **NSK Australia Pty Ltd** pay \$3 million.

The Court found that, in 2008 and 2009, Koyo, NSK and one other bearing company, Nachi (Australia) Pty Ltd, agreed to increase the price of ball and roller bearings to their aftermarket customers. In both cases, the Court also made orders restraining them from engaging in similar conduct for a period of three years and requiring them to implement programs to ensure they comply with the Act.

More information appears in the case study on page 32.

In December 2013, the ACCC instituted proceedings in the Federal Court against **Colgate-Palmolive Pty Ltd**, **PZ Cussons Australia Pty Ltd**; a former sales director of Colgate, **Mr Paul Ansell**; and **Woolworths Limited** regarding alleged cartel conduct and anti-competitive arrangements in supplying laundry detergents. We alleged that Mr Ansell and Woolworths were knowingly part of the alleged arrangements.

In May 2014, the ACCC started Federal Court action for an alleged egg cartel attempt against: the **Australian Egg Corporation Limited** (AECL); **Mr James Kellaway**, its managing director; two egg producing companies, **Ironside Management Services Pty Ltd** trading as Twelve Oaks Poultry and **Farm Pride Foods Limited**; **Mr Jeffrey Ironside**, a director of AECL and Twelve Oaks Poultry; and **Mr Zelko Lendich**, a director of AECL and a former director of Farm Pride. The ACCC alleges that the parties attempted to induce egg producers who were members of AECL to enter into an arrangement to cull hens or dispose of eggs, for the purpose of reducing the egg supply to Australian consumers and businesses. The ACCC is seeking declarations, injunctions, financial penalties, compliance programs, publicity orders and disqualification orders against the three individuals named and costs.

At year's end, the ACCC had seven proceedings alleging cartel conduct before the courts.

Education and advice

In April 2014, we asked for public comment on the draft of a new Immunity and Cooperation Policy for Cartel Conduct and supplementary frequently asked questions. Condensing the policy into one document and developing the frequently asked questions followed targeted consultations in 2013. The key changes coming from public comment are:

- streamlining processes for granting civil and criminal immunity
- clarifying the criteria for assessing eligibility for immunity
- including more detail on how the ACCC will assess cooperation by second and subsequent parties to a cartel.

The updated policy will be released in the 2014–15 financial year.

The ACCC collaborates with international counterparts such as through the International Competition Network (ICN). In 2013–14, we presented at the ICN conferences and co-chaired the ICN Cartels Working Group. See *International partnerships and collaboration* on page 148 for more information.

Anti-competitive agreements

The Act bans contracts, arrangements or understandings between two or more parties which aim to, or are likely to, substantially lessen competition, even if that conduct does not meet the stricter definitions of other anti-competitive conduct such as cartels. In line with our published priorities, the ACCC is focusing on competition in concentrated market sectors. We are reviewing agreements in the fuel sector on sharing price information and agreements by major supermarket chains about fuel discount 'shopper dockets'. At year's end, we had two cases in court alleging anti-competitive agreements.

Court cases

In November 2013, the Federal Court dismissed the ACCC's case alleging price fixing by **ANZ Banking Group Ltd**. We alleged that Mortgage Refunds Pty Ltd and ANZ were competitors in the market for loan arrangement services. We alleged that ANZ engaged in price fixing by limiting the refund Mortgage Refunds could give customers for arranging ANZ home loans. The Court dismissed our allegations, finding that ANZ was not a competitor in the market for loan arrangement services. In December 2013, the ACCC appealed to the Full Federal Court against the decision. The appeal is ongoing.

Case study

Ball bearing cartel

Following an immunity application, we successfully investigated and prosecuted a cartel involving Australian subsidiaries of international ball bearing suppliers.

Their conduct affected the price of bearings used for aftermarket customers, including those maintaining and repairing motor vehicles as well as household and industrial machinery. From 2007 to 2011, the total value of bearing products imported into Australia by all manufacturers was approximately \$370 million to \$400 million per annum.

We uncovered a pricing plan agreed over dinner by senior Japanese executives living in Australia. They represented three bearings companies: NSK Australia Pty Ltd, Nachi (Australia) Pty Ltd and Koyo Australia Pty Ltd. The deal ran from at least 2000 to May 2011.

In 2013–14, we worked closely with counterparts in the United States, Europe and Canada to investigate the alleged cartel, subsequently taking legal action against NSK Australia and Koyo Australia for attempting to fix the price of ball bearings.

Both NSK Australia and Koyo Australia cooperated with the ACCC's investigation and consented to Federal Court penalties of \$3 million and \$2 million respectively for their involvement in the conduct.

Our action and the penalties imposed send a strong message to local and international businesses about how seriously Australia views cartel conduct.

The ACCC thanks other international competition agencies for their assistance during the investigation.

- In March 2014, the Federal Court ordered **Flight Centre Limited** to pay \$11 million for repeatedly attempting to enter anti-competitive arrangements with three international airlines. Flight Centre's conduct sought to eliminate differences in the international airfares offered to customers. In April 2014, Flight Centre filed an appeal relating to both the liability judgment and penalties imposed. In May 2014, the ACCC lodged a cross-appeal on the penalties imposed. The ACCC's cross-appeal will contend that four of the five penalties imposed do not provide adequate deterrence, given the Federal Court's findings on the nature of the conduct and the size and financial strength of Flight Centre.

In February 2014, the ACCC began separate actions in the Federal Court against **Coles Group Ltd** and **Woolworths Ltd** for allegedly breaching the court enforceable undertakings made to us regarding fuel shopper dockets. On 6 December 2013, we accepted court enforceable undertakings from Coles and Woolworths to voluntarily limit fuel discounts linked to supermarket purchases to a maximum of four cents per litre (see page 34 for more details). The ACCC alleged that:

- Coles had breached the undertaking as it offered a bundled discount of 14 cents per litre (10 + 4 cents), which was only available to a customer who had made a qualifying supermarket purchase, exceeding four cents per litre
- Woolworths had breached the undertaking as it offered a bundled discount of eight cents per litre (4 + 4 cents) which was only available to a customer who had made a qualifying supermarket purchase, exceeding four cents per litre.

In April 2014, the Federal Court found that Woolworth's initial 4 + 4 cent offer to 9 March 2014 had breached the undertaking as the discount depended on a supermarket purchase. However, the Federal Court dismissed the ACCC allegations against Coles and Woolworths that their recent offers had breached their undertakings as the discounts did not depend on the customer having made on a qualifying supermarket purchase.

Non-court matters

In December 2013, the ACCC accepted two separate court enforceable undertakings from **Woolworths Ltd**, and Coles Group Limited, Coles Supermarkets Australia Pty Limited and Eureka Operations Pty Ltd (together Coles) following an investigation into whether fuel saving offers were causing a substantial lessening of competition in retail fuel markets.

The undertakings state from 1 January 2014 **Coles** and **Woolworths** will not make or allow fuel discounts where those discounts are not funded wholly by the fuel subsidiary or division of Woolworths or Coles; or greater in amount than four cents per litre and contingent on purchase of goods or services at a store or business separate from the retail fuel outlet.

See the case study on our shopper dockets investigation on page 34 for more details.

Misuse of market power

A business with substantial market power in a market is not allowed to use this power for the purpose of eliminating or substantially damaging a competitor, stopping another business from entering a market, or to deter or stop another business from acting competitively in any market. Such behaviour is called 'misuse of market power' and is prohibited under the Act.

Court cases

In February 2014, the ACCC instituted proceedings against **Pfizer Australia Pty Ltd** for alleged misuse of market power and exclusive dealing regarding its supply of atorvastatin to pharmacies. Atorvastatin is a medication used to lower cholesterol. Pfizer's original brand of atorvastatin, Lipitor, was protected by patent until May 2012. The ACCC alleges that, in early May 2012, Pfizer offered significant discounts and rebates on sales of Lipitor, provided pharmacies bought a minimum volume of Pfizer's generic atorvastatin product. The case is ongoing, with the ACCC seeking financial penalties, declarations and costs.

Case study

Shopper dockets—short-term gains vs long-term pain

Since 2009, we have voiced concern about the long-term competition impact of fuel savings offers, known as shopper dockets, by the major supermarkets.

In early 2012, we began investigating whether the fuel savings offers of the major supermarkets were substantially lessening competition in markets for the retail sale of fuel. The increased frequency, duration and amount of the offers were a major issue.

Our investigation focused on the offers of Coles and Woolworths of discounts of eight cents per litre, which were made for long periods in 2012 and 2013. We were concerned that, while large shopper docket discounts might benefit customers in the short term, the discounts might harm other fuel retailers and over time reduce competition, driving up fuel prices.

We consulted many industry participants, including fuel retailers and wholesalers and industry associations, to assess the impact of shopper dockets on prices and competition.

On 6 December 2013, the ACCC accepted voluntary court enforceable undertakings by Coles and Woolworths to stop offering fuel discounts which they wholly or partly funded outside their fuel retailing businesses. From 1 January 2014, both Coles and Woolworths agreed to limit fuel discounts linked to supermarket purchases to a maximum of four cents per litre.

The ACCC accepted the undertakings because they addressed the main competition concerns quickly and efficiently. We welcomed the voluntary cooperation of Coles and Woolworths.

From January 2014, Woolworths continued to offer bundled fuel discounts of eight cents per litre and, in early February 2014, Coles began to offer bundled fuel savings of 14 cents per litre.

On 25 February 2014, the ACCC took Coles and Woolworths to court, alleging they had breached their voluntary undertakings.

In April 2014, the Federal Court found that Woolworths' earlier bundled discount of eight cents per litre breached its undertaking because the discount was only available to customers who had made a qualifying supermarket purchase. The Court dismissed two other allegations against Coles and Woolworths.

The undertakings continue to prevent Coles and Woolworths offering fuel discounts that are subsidised by their supermarket operations and to prevent both from bundling supermarket fuel offers greater than four cents per litre.

The ACCC remains concerned about fuel discount offers funded by non-fuel retailing operations and any other fuel discount offers above four cents per litre, which are conditional on purchases of goods or services (other than purchases at the petrol station). We will continue to assess any such offers and take appropriate action to deal with anti-competitive conduct.

Online markets

The ACCC continues to assess behaviour which affects competitive online markets. We are focusing on traditional bricks and mortar businesses that try to limit competition from new online entrants. This may include misuse of their market power, exclusive distribution arrangements and price control through resale price maintenance.

Concentrated markets

The Australian economy has a handful of markets with a relatively small number of suppliers. Given the risk that these suppliers could misuse their power to prevent or damage competition, the ACCC closely monitors their behaviour. Competition and consumer issues in highly concentrated markets, in particular in the supermarket and fuel sectors, remain a priority area for the ACCC.

Other work promoting competition

Resale price maintenance

A supplier may recommend that resellers charge an appropriate price for particular goods or services but cannot stop them charging or advertising below that price. It is illegal for suppliers to pressure resellers to charge their recommended retail price or any other set price, for example, by threatening to stop supply, or to stop resellers from advertising, displaying or selling the goods below a specified price. In most cases, a supplier may, however, specify a maximum price for retail.

Where resellers are concerned, it is illegal for them to ask suppliers to use recommended price lists to stop competitors from discounting. Resale price maintenance restricts businesses from competing on price, which is anti-competitive regardless of its impact on competition. Section 48 of the Act specially prohibits resale price maintenance. However, where it would benefit the public, businesses can apply for authorisation from the ACCC.

Court cases

In December 2013, the Federal Court ordered, by consent, **Mitsubishi Electric Australia Pty Ltd** to pay a \$2.2 million penalty for resale price maintenance on Mitsubishi branded air conditioning products. The Court found that, three times between 2009 and 2011, Mitsubishi Electric had induced or tried to induce the dealer Mannix Electrical Pty Ltd not to sell Mitsubishi Electric branded air conditioning products at prices below a minimum specified price. It also found that Mitsubishi Electric had reduced the discounts Mannix Electrical received by terminating the latter's 'dealer' status for not complying with those minimum prices.

Non-court cases

In April 2014, the ACCC accepted a court enforceable undertaking from **Peter McInnes Pty Ltd** regarding resale price maintenance. Peter McInnes is an importer and wholesale distributor of KitchenAid kitchenware to retailers. The ACCC was concerned that Peter McInnes had engaged in conduct that constitutes or is likely to constitute resale price maintenance, on four occasions, by inducing or attempting to induce retailers not to sell KitchenAid stand mixers at a price less than the recommended retail price specified by Peter McInnes. Peter McInnes undertook to not engage in similar conduct for two years, write to all customers advising they were free to set their own prices, and implement and maintain a compliance program.

1.2 Assessing mergers to maintain competition

2013–14 Strategy:

Assess and review mergers to prevent structural changes that substantially lessen competition with a particular focus on concentrated and emerging markets and markets of significance to the Australian economy.

Measure:

- Prevention of structural change in markets (particularly concentrated markets, emerging markets and markets of significance to the Australian economy) that substantially lessens competition.

Informal clearance and pre-assessments

Section 50 of the Act prohibits mergers and acquisitions that substantially lessen competition in any market in Australia or are likely to do so. The 'informal clearance' process enables merger parties to seek the ACCC's view on whether a proposed acquisition is likely to have the effect of substantially lessening competition. There is no legislation underpinning the informal process; rather, it has developed over time to provide an avenue for merger parties to seek the ACCC's view prior to completion of a merger. Businesses may also apply to the ACCC for formal clearance of mergers.

The ACCC considers those mergers coming to our attention that potentially raise concerns under s. 50. Such mergers are generally flagged by the merger parties who request an informal clearance. Alternatively, the ACCC may become aware of a proposal, or a completed acquisition, through monitoring of media reports, from complaints or through referrals from Australian and overseas regulators.

For each merger considered, the ACCC uses the information available to determine whether a public review is required. Where we are satisfied that there is a low risk of a substantial lessening of competition, we may decide that a public review of the merger is unnecessary. These mergers are described as being 'pre-assessed'. Both public and confidential mergers can be pre-assessed, without market inquiries, on the basis of the information from the parties and other information before us.

Pre-assessment enables the ACCC to respond quickly where there are no substantive competition concerns. A significant proportion of the mergers we assess are pre-assessed.

Where pre-assessment is not applicable, the ACCC conducts a public review or, in the case of confidential mergers, discusses with the merger parties whether they want to proceed to a confidential review.

Merger reviews

The ACCC considered 297 matters under s. 50 of the Act in 2013–14. Of these, 242 were assessed as not requiring a public review (pre-assessed), an increase of 14 per cent on the 213 pre-assessments in 2012–13. The ACCC conducted a public review of 48 mergers and a confidential review of seven, a decrease of 25 per cent on the 64 public reviews and 42 per cent on the 12 confidential reviews in 2012–13.

In September 2013, the ACCC published revised the *Informal Merger Review Process Guidelines*. The revised guidelines reflect important recent developments in our approach to merger reviews, as well as incorporating changes to improve efficiency and transparency.

In reviewing mergers, we aim to work efficiently, transparently and effectively, taking account of the commercial needs of the parties involved. We also seek to inform the public, businesses and their advisers about the merger review process. We publish indicative timelines for mergers under public consideration in our online mergers register, except for mergers which are pre-assessed or subject to a confidential review.

Of the 55 public and confidential reviews conducted in 2013–14:

- 4 mergers were publicly opposed by the ACCC
- confidential opposition or concerns were expressed in 2 mergers
- 10 mergers were allowed to proceed after the ACCC accepted court enforceable undertakings under s. 87B of the Act to address competition concerns
- 2 merger reviews were either withdrawn by the parties before a decision could be made, or were confidential matters where no view could be formed without market inquiries
- 36 were not opposed and no undertakings were sought
- in 1 merger we accepted a requested variation to an existing undertaking.

The ACCC unconditionally cleared 65 per cent of those mergers that underwent a public or confidential review and 94 per cent of all mergers (including pre-assessments). In 11 matters we used our formal information-gathering powers under s. 155.

Statements of issues

The ACCC releases a 'statement of issues' when we reach a preliminary view that a merger raises competition concerns requiring further investigation. Our aim is to make the informal review process more transparent and obtain further information. After public consultation on a statement of issues, we may decide our concerns are valid and, where competition concerns remain, may consider any undertakings by the merger parties to resolve them. In 2013–14, we issued statements of issues in 10 mergers, publishing all statements on our online mergers register.

Public competition assessments

The ACCC helps the public to understand our analysis of the competition issues involved in certain merger reviews by issuing a 'public competition assessment'. The assessment provides a detailed summary of the issues we considered in deciding whether the merger would, or would be likely to, substantially lessen competition. We generally prepare and publish a public competition assessment on our online mergers register when:

- we oppose a merger
- a merger is subject to enforceable undertakings
- the parties to the acquisition seek the disclosure
- a merger is cleared but raises important issues that we consider should be made public.

In 2013–14, the ACCC issued public competition assessments in 10 mergers which included:

- Heinz's proposed acquisition of Rafferty's Garden
- Virgin Australia Holdings Limited's proposed acquisition of Tiger Airways Australia Pty Ltd
- Sonic Healthcare Limited's proposed acquisition of the pathology businesses of Healthscope Limited in Queensland, Western Australia and the Australian Capital Territory

Case study

ACCC opposes energy sale

Based on concerns of a substantial lessening of competition occurring in the New South Wales retail electricity market, on 4 March 2014 we opposed the proposed acquisition of Macquarie Generation by AGL following an informal merger review.

Macquarie Generation, a state-owned corporation, was offered for sale as part of the broader privatisation of electricity generation assets by the New South Wales Government. The key assets of Macquarie Generation included the Bayswater and Liddell power stations, respectively the second and fourth largest power stations in Australia. Macquarie Generation accounts for 27 per cent of New South Wales' electricity generation capacity and is the largest generator in the National Electricity Market.

AGL is one of Australia's three major energy retailers.

The proposed acquisition would result in:

- one of the three largest retailers in New South Wales owning the state's largest electricity generator
- the three largest retailers in New South Wales having a combined share of 70 to 80 per cent of electricity generation capacity or output.

We considered that other energy retailers would have difficulty entering or expanding in the New South Wales retail electricity market following the proposed acquisition. This was because the ACCC formed the view that the proposed acquisition would be likely to result in a significant reduction in both hedge market liquidity and the supply of competitively priced and appropriately customised hedge contracts to second tier retailers competing in NSW. Hedge contracts are required by non-vertically integrated electricity retailers in order to allow them to effectively compete in electricity retail markets. The ACCC was also concerned that post-acquisition, AGL would become the largest electricity generator in New South Wales, Victoria and South Australia.

After we opposed the proposed acquisition, AGL applied to the Australian Competition Tribunal for authorisation on 24 March 2014. In merger authorisation determinations, the Tribunal must apply a public benefit test under s. 95AZH of the Act. This differs to reviews under s. 50 of the Act where a substantial lessening of competition test is applied.

The role of the ACCC in the Tribunal process is to assist the Tribunal. This includes making inquiries, calling and examining witnesses, making submissions to the Tribunal, and preparing a report for the Tribunal. In its report, the ACCC expressed the view that the proposed acquisition was likely to result in consumers ultimately paying more for electricity, receiving lower quality service and being offered less choice.

On 25 June 2014, following an eight-day hearing, the Tribunal granted conditional authorisation to AGL after concluding that the proposed acquisition would result in such public benefit that it should be allowed to occur.

The Tribunal imposed conditions on its authorisation. The conditions place an obligation on AGL to offer not less than 500 MW of electricity hedge contracts to smaller retailers in New South Wales per year for a period of seven years.

The Tribunal did not agree with the ACCC's position, finding that the proposed acquisition was unlikely to lead to any substantial detriment in New South Wales arising from a lessening of competition in the electricity retail or wholesale markets. The Tribunal also found that there were significant public benefits in allowing the state government to privatise the relevant assets and use the sale proceeds for public infrastructure spending.

- Woolworths Limited's proposed acquisition of a supermarket site at Glenmore Ridge Village Centre
- Woolworths Limited and Lowe's Companies Inc's (JV) proposed acquisition of G Gay & Co hardware stores.

Section 87B undertakings

In 2013–14, the ACCC accepted 10 s. 87B undertakings to address competition concerns. Examples include:

- Baxter's proposed acquisition of Gambro AB
- Westfield Group and Westfield Retail Trust's proposed acquisition of Karrinyup Shopping Centre
- Gallagher Group's proposed acquisition of Country Electronics Pty Ltd
- BlueScope Steel Limited's proposed acquisition of OneSteel Sheet and Coil business from Arrium Limited
- MIRRAT's proposed acquisition of a long-term lease of the automotive terminal at the Port of Melbourne
- Peregrine Corporation's proposed acquisition of 25 BP Australia petrol retail sites in South Australia
- Caltex Australia Petroleum Pty Ltd proposed acquisition of the fuel division of Scott's Group.

Public s. 87B undertakings are summarised in appendix 8 on page 331.

Concentrated markets

In 2013–14, the ACCC focused on mergers in concentrated and emerging markets and markets significant to the Australian economy. Some of the public reviews we conducted during the year are detailed below.

BlueScope Steel Ltd—proposed acquisition of Orrcon Steel from Hills Holding Limited

(not opposed). The ACCC considered publicly available data, feedback from industry participants and information provided by BlueScope and Orrcon. All indicated that, after the proposed acquisition, alternative domestic manufacturers and imports would continue to be significant alternatives for the supply of pipe and tube inputs/products in Australia.

Perpetual Limited—proposed acquisition of The Trust Company (not opposed after accepting an s. 87B undertaking to divest a 13.4 per cent shareholding in competitor, Equity Trustees Limited). The merger would aggregate Perpetual and The Trust Company, two of the largest providers of trust services in Australia. However, the ACCC noted that the merged entity would continue to face competition in each trust services market from other existing suppliers, the threat of entry by new competitors and/or expansion in the offering of existing competitors. For some trust services, the merged entity would also be constrained by their corporate customers, who may provide the relevant services in-house or sponsor a new entrant if they are unhappy with price or service levels. The s. 87B undertaking, which required Perpetual to divest Trust Company's entire shareholding in Equity Trustees, addressed the ACCC's concerns about the competition effects of Perpetual also obtaining a shareholding in another important competitor.

Woolworths Ltd—proposed acquisition of Supa IGA Supermarket in Hawker, Australian Capital Territory

(not opposed). The ACCC concluded that the proposed acquisition would result in less competition in the local market, but that it was insufficient to reach the threshold of a substantial lessening of competition required to establish a breach of s. 50 of the Act. The ACCC found that the strongest competitor to the Hawker Supa IGA was Coles at Jamison. The ALDI supermarket at Jamison was also used by some customers to

Case study

Undertaking resolves competition concerns—Thermo Fisher Scientific Inc.—proposed acquisition of Life Technologies Corporation

The ACCC did not oppose the proposed acquisition of Life Technologies Corporation by Thermo Fisher Scientific Inc. after competition concerns were resolved by an undertaking given by Thermo Fisher to the ACCC.

At the time of the ACCC's review, Thermo Fisher and Life Technologies were both global companies operating in the life sciences sector. Both competed to supply products in the molecular biology, protein biology and cell culture sectors.

We were concerned that Thermo Fisher's proposed acquisition of Life Technologies would be likely to substantially lessen competition. At risk was competition in the supply of certain cell culture products, which are used to grow cells for academic research and vaccine production, and of siRNA (a specialised molecular biology product used to effect gene silencing) to Australian customers.

Thermo Fisher gave the ACCC a remedy undertaking under s. 87B of the Act to sell off its Australian cell culture and siRNA businesses. The undertaking complemented Thermo Fisher's remedy offered to the European Commission to sell its global cell culture and siRNA businesses.

While Thermo Fisher's offer to the European Commission provided for independent oversight of their global divestiture, its undertaking to the ACCC required the appointment of an Australian-based independent manager for the Australian cell culture business to transition the business to the approved purchaser. This was considered necessary as cell culture products sourced from Australia are premium products, and the Australian cell culture business is central to the overall global business.

Given the global nature of the companies' businesses and the supply links between those businesses in Australia and overseas, the ACCC liaised with relevant overseas competition authorities in reviewing the proposed acquisition and undertaking. We worked closely in particular with the European Commission, the New Zealand Commerce Commission and the United States Federal Trade Commission.

complement their main grocery shop. While there were existing Woolworths supermarkets at Kippax and Westfield Belconnen, customer surveys commissioned by the ACCC showed that they were not as close substitutes for the Hawker Supa IGA as the Jamison supermarkets. Therefore after the proposed acquisition, Woolworths would replace the Supa IGA at Hawker and compete most closely with Coles and ALDI at Jamison. Further, the customer surveys showed that, while customers valued non-price aspects of the Hawker Supa IGA, they were not enough to attract customers from adjacent suburbs.

Insurance Australia Group Ltd (IAG)—proposed acquisition of Wesfarmers’ insurance underwriting business (not opposed).

The ACCC public review focused upon the specific markets in Australia where IAG and Wesfarmers both underwrite insurance products. The areas of overlap included home and contents insurance, domestic motor insurance and commercial insurance such as heavy vehicle insurance and rural insurance. The ACCC also examined how the proposed acquisition might affect competition for acquiring key related inputs by insurers, particularly smash repair and windscreen repair/replacement services. Although IAG and Wesfarmers are respectively the first and fifth or sixth-largest general insurers in Australia, and the largest suppliers of rural insurance products, the ACCC considered that existing and potential competition would continue to constrain the merged firm.

Sonic Healthcare Limited—proposed acquisition of assets of Delta Imaging Group

(opposed). The ACCC concluded that the proposed acquisition of the assets of Delta Imaging (in liquidation) would be likely to substantially lessen competition in the market for the supply of MRI services in Newcastle and Maitland. Delta Imaging operated two radiology practices in Maitland and Newcastle, providing general diagnostic imaging and MRI services. Delta Imaging also had two Medicare-funded MRI units which operated from its Newcastle practice. The proposed acquisition would have prevented an alternative acquirer from acquiring the Delta Imaging assets through the liquidation process and operating them in competition with Sonic. This would have removed a significant competitive constraint on Sonic by making it the only supplier of Medicare-eligible MRI services in Newcastle and Maitland outside of the public hospital system.

The ACCC also concluded that the proposed acquisition would substantially lessen competition in the market for the supply of general diagnostic imaging services in Maitland. The proposed acquisition would result in Sonic being one of two private radiology companies that supply general diagnostic imaging services in Maitland, with Sonic operating four out of five radiology practices. The general diagnostic imaging market in Maitland was already highly concentrated before the proposed acquisition. As with the MRI services, the ACCC was concerned that the proposed acquisition would prevent an alternative acquirer of the Delta Imaging assets from operating the assets in competition with Sonic, and give Sonic the ability to increase prices for services such as X-ray, CT scans and ultrasounds.

Westpac Banking Corporation—proposed acquisition of the assets of Lloyds International Pty Ltd (not opposed).

Westpac (through its subsidiary St George) and Lloyds (through Capital Finance Australia Limited) primarily competed in providing bailment (‘floor plan’) finance and point-of-sale finance to motor vehicle dealerships. The ACCC found that Westpac would still face competition from remaining manufacturer-aligned and non-aligned financiers and that the proposed acquisition was unlikely to substantially lessen competition in any market.

1.3 Authorisations and notifications to allow arrangements in the public interest

2013–14 Strategy:

Make decisions on authorisation and notification applications and merger reviews thoroughly and efficiently and give clear guidance to merger parties, authorisation and notification applicants, and market participants.

Measures:

- Outcomes and impact of actions and policies to promote competition.
- Improved levels of effective competition and more informed and better functioning markets.
- Prevention of structural change in markets (particularly concentrated markets, emerging markets and markets of significance to the Australian economy) that substantially lessens competition.

Authorisations and notifications

The Act primarily aims to prevent conduct that damages, or is likely to damage, competition. However, if competitive markets are not working efficiently and failing to maximise consumer welfare, allowing some restrictions on competition may be in the public interest. Under the Act, the ACCC can give anti-competitive conduct legal protection when the public benefit outweighs the public detriment, including from any lessening of competition. Depending on the type of conduct, businesses may apply for an 'authorisation' or submit a 'notification' to the ACCC.

We can authorise conduct that contains:

- anti-competitive arrangements, including cartel provisions (such as price fixing, controlling output or sharing markets) and exclusionary provisions (such as an agreement to limit or restrict the supply or acquisition of goods or services to particular people)
- disclosures of pricing and other information
- a secondary boycott, where two or more parties prevent a third party such as a potential customer or supplier from doing business with a target
- exclusive dealing, which occurs when a person trading with another imposes restrictions on the other's freedom to choose with whom, in what or where they deal
- resale price maintenance where the supplier specifies a minimum price below which goods or services may not be resold
- dual-listed company arrangements that affect competition.

Notification procedures are usually more streamlined than authorisations but are only available for:

- collective bargaining when two or more competitors get together with a supplier or a customer to negotiate terms, conditions and prices
- exclusive dealing
- private price disclosures to competitors outside the ordinary course of business.

Both notification and authorisation processes are public. We publish the applications, public submissions and ACCC decisions on the public register on our website.

Authorisation applications

In assessing the likely public benefit and harm of conduct the subject of an authorisation application, the ACCC consults with the public, publishing submissions on the public register, unless confidentiality is requested. After considering submissions, we issue a draft decision, which the applicant and interested parties can discuss with us in a conference. We then reconsider the application in light of any further submissions and release our final decision.

During 2013–14, the ACCC issued 36 final authorisation decisions, excluding minor variations, for arrangements involving a wide range of industries. Among them were agriculture, manufacturing, health care, energy, airlines, finance, waste services and retailing. Applicants sought authorisation for conduct such as collective bargaining, industry codes of practice, industry levies, joint tender processes and other price or fee agreements. The case study on page 44 illustrates one such application.

Other authorisations

Virgin Australia and Air New Zealand (authorised subject to conditions for five years). The ACCC considered that the trans-Tasman alliance was likely to continue to result in material public benefits in the form of enhanced products and services (particularly through new frequencies) and the promotion of competition on the trans-Tasman routes. In addition, the ACCC considered that the alliance is likely to continue to result in small public benefits in the form of cost savings and efficiencies and the stimulation of tourism. Although the ACCC considered that the alliance is unlikely to reduce competition on most of the trans-Tasman routes, it was concerned that the alliance may affect competition on the routes between Christchurch–Melbourne and Christchurch–Brisbane; Wellington–Brisbane; Queenstown–Brisbane; Auckland–Gold Coast; and Dunedin–Brisbane. To address these competition concerns, the ACCC imposed conditions requiring Virgin Australia and Air New Zealand to maintain aggregate base capacity across these routes. Rather than prescribe a minimum growth factor for these routes, the ACCC considered it appropriate to review the airlines' capacity additions in light of actual demand growth over the next two years. This review will commence on 1 September 2015.

AgStewardship Australia Limited (authorised for five years). The authorisation allows AgStewardship, its members, Agsafe Limited and current and future participants to charge a four cent per litre/kilogram levy on the sale of agricultural and veterinary (AgVet) chemicals. The levy is passed on to end-users and funds the drumMUSTER® and ChemClear® programs for the collection and disposal of unwanted, empty AgVet chemical containers and chemicals. We considered that the programs are likely to produce significant environmental and efficiency benefits, particularly as program participation, and the number of drum collections, have increased since our 2009 authorisation.

Clean Energy Council Limited (authorised for five years). The Clean Energy Council's voluntary code of conduct covers the marketing and sale of solar photovoltaic (PV) systems. The code imposes standards on retail businesses that are additional to their existing obligations under consumer protection legislation. The ACCC decided that the code would promote confidence and consumer protection in the PV sector, and improve retailer standards and compliance through sanctions and public reporting.

Case study

Credit card coordination on mandatory PIN rules

Card payment providers such as Visa, MasterCard and American Express can independently decide whether to allow signatures or PINs as a method of authentication for card transactions without ACCC approval.

However, coordination between the card schemes and financial institutions in relation to the removal of signatures for most credit card transactions that are completed in person could breach the Act and as such they sought authorisation, which we granted in late December 2013.

We considered that a coordinated approach and a single message from industry were likely to lead to some efficiencies and less confusion for customers and merchants. Reduced competition more broadly is unlikely, as the card schemes will still compete on fees and all other products and services.

Coordination between the card schemes is also likely to lead to the earlier implementation of mandatory PIN at point-of-sale. Throughout our assessment, the card schemes and financial institutions kept us informed of their plans to engage with merchants and consumers on the proposed changes. Some financial institutions advised that, while PINs will be mandatory for most transactions, some consumers will be able to receive cards allowing them to sign for purchases if they are able to demonstrate that they are unable to use a PIN.

The ACCC granted authorisation until 30 June 2015.

Australian Society of Ophthalmologists Incorporated (authorisation denied). The Society sought authorisation to reach agreements within shared practices on the fees for ophthalmic services. The ACCC considered this was likely to result in higher prices for consumers given the small number of competitors in many geographic areas, the lack of alternatives for many ophthalmic services and the difficulties new providers face in getting established.

We considered that fee setting was likely to significantly reduce price competition as, instead of competition occurring between individual ophthalmologists, it would only occur between the relatively small number of shared practices in a region. The majority of benefits that the Society claimed arose from the operation of shared practices, in which most ophthalmologists already participated. We therefore saw the benefits from fee agreements as unlikely to outweigh the detriments.

Exclusive dealing notifications

Most exclusive dealing conduct breaches the Act only when it substantially lessens competition, although third line forcing, a type of exclusive dealing, is prohibited regardless of its impact on competition. Third line forcing involves supplying goods or services only if the buyer also acquires certain goods or services from a third party.

Businesses proposing exclusive dealing arrangements that provide public benefits can lodge a notification with the ACCC to protect them from legal action under the Act. A notification gives automatic legal protection from the lodgment date, or after 14 days in the case of third line forcing, and protection remains in place unless revoked by the ACCC. We can review the public benefit and harm from a notification at any time.

The ACCC may revoke protection for third line forcing if satisfied that the public detriment outweighs the public benefit. To revoke protection for other types of exclusive dealing, we must be satisfied that the conduct is likely to substantially lessen competition and that the public detriment outweighs the public benefit.

The ACCC received and assessed more than 720 exclusive dealing notifications involving 503 separate matters in 2013–14, 23 per cent more than the previous year.

During 2013–14, we consulted interested parties about a range of exclusive dealing notifications, including those covered in the case study and examples on page 46.

Port Hedland Port Authority (notification not opposed). The notification lodged by the Authority requires all vessels entering and exiting the port (other than small craft such as fishing vessels) to use an Authority-licensed towage service provider. To date, the Authority has only licensed BHP Billiton Minerals Pty Limited (BHP). Following consultation with interested parties and the ACCC, the Authority agreed to facilitate opportunities for additional towage service providers at the port.

The ACCC considers that competition in towage services through an additional licence should improve service quality, efficiency and price. To ensure that competition begins as soon as possible, the appointment of an additional towage service provider must be managed in a genuine, transparent and timely way. The Authority has agreed to regularly update the ACCC on the expression of interest and appointment process.

Qube Logistics (Vic) Pty Ltd & Ors (notifications not opposed). Qube provides handling, cleaning, maintenance and storage services for empty shipping containers, and access to container transport operators picking up or dropping off empty containers. Under two third line forcing notifications, Qube will allow access to its container parks provided container transport operators use an online booking system administered by Containerchain Pty Limited.

Case study

Undertaking protects customers in solar energy deal

By giving an undertaking to the ACCC which protects consumers, a company addressed the ACCC's concerns with its notification and gained legal protection for third line forcing.

In October 2012 and March 2013, Jasmin Solar lodged third line forcing notifications proposing to supply discounted solar panel systems in Queensland so long as customers use Diamond Energy as their energy retailer. Customers sign on for 16 years.

During sunny daylight hours customers can consume energy free of charge under the notified arrangement up to the amount generated by their solar panel system. However, they must use Diamond Energy as their energy retailer for:

- all energy consumed over that generated by their solar panel system during the day
- all energy consumed outside productive daylight hours, such as during the evening and night.

Aside from the upfront outlay, the customer effectively pays Jasmin Solar for the solar panel system by redirecting income generated by the system to Jasmin Solar. This income includes Feed-in Tariff payments generated throughout the 16-year term as well as the one-off Small-scale Technology Certificates payment.

On 4 September 2013, we accepted an s. 87B undertaking from Jasmin Solar and Diamond Energy. It ensures that the retail electricity prices charged to Jasmin Solar's customers reflect the prices charged to other customers with solar panel systems in the same geographic region. That way, Jasmin Solar's customers will not have to pay excessive prices for additional electricity that they must purchase from Diamond Energy. The undertaking also protects consumers from paying a termination fee if their solar system fails within a warranty period, unless they contributed to the failure.

With the undertaking in place, we are satisfied that the likely benefits from the third line forcing arrangement by Jasmin Solar will outweigh the likely public detriment.

Interested parties were generally supportive of the Containerchain solution and advised that there were fewer queues and fewer futile trips at the Port of Melbourne following its implementation. The ACCC also noted that government and industry broadly support the use of such scheduling systems at empty container parks. The ACCC considered that greater public benefits would result from the use of Containerchain than if Qube developed its own alternative booking system.

Collective bargaining arrangements

There are two ways that businesses can seek protection under the Act for collective bargaining arrangements:

- by lodging a collective bargaining notification, which protects against legal action for small business arrangements 14 days after lodgment. Protection will, however, end after three years
- by lodging an application for authorisation where legal protection begins if and when the ACCC grants authorisation. There is a six-month time limit for the ACCC to consider all new applications for authorisation. For small business collective bargaining a streamlined authorisation process is available, where we agree to issue a draft determination within 28 days and a final determination in three months. The ACCC can give protection under an authorisation for longer than three years depending on the circumstances.

In 2013–14, the ACCC issued 13 determinations authorising collective bargaining arrangements. There were no collective bargaining notifications allowed during the year. The arrangements we considered during the year involved clubs, lottery agents, interpreter services, medical services, office supplies, wagering and coal handling and supply. We detail some below.

Clubs Australia Incorporated (authorisation granted for five years). Clubs Australia sought authorisation to collectively bargain for current and future members with suppliers of major goods and services to registered clubs across Australia. The clubs submitted that suppliers, including wagering, energy and insurance companies, often presented clubs with standard form contracts and gave them little opportunity for negotiation. The ACCC considered that collective bargaining was likely to deliver transaction cost savings for clubs and suppliers and provide clubs with more effective input into contracts. Any potential harm would be limited—all parties can choose whether or not to participate in collective negotiations, and suppliers have a range of alternative customers for their goods and services.

Queensland Newsagents Federation (QNF) (authorisation granted for five years). The ACCC considered that collective bargaining by QNF members with Tatts Group (including Golden Casket) over the terms of lottery agency agreements should produce more efficient agreements. Authorisation will give Queensland lottery agents who are newsagents a choice of bargaining group because the ACCC has previously authorised Lottery Agents Queensland (LAQ) to represent all Queensland lottery agents. The ACCC considered that all Queensland lottery agents will have access to a better and more diverse offering of bargaining services, and newsagent lottery agents choosing not to join LAQ will have better representation.

Australian Wagering Council Limited (AWC) (notifications withdrawn after draft objection notice was issued). The AWC, on behalf of Bet365, Centrebet, Betstar, IASBet.com, Sportingbet, Sportsbet, Tomwaterhouse.com, UNIBet, Betfair, and Ladbrokes proposed to collectively bargain about the terms on which the sports betting companies acquire the rights to offer wagering services on NRL events. The AWC also proposed arrangements that would allow the group to agree only to negotiate with the NRL through the AWC, or to

collectively refuse to deal with the NRL, which would constitute a collective boycott. The NRL is the sole supplier of the rights to offer wagering services on its events. Betting agencies typically share a percentage of their revenue from such wagering with the NRL.

The ACCC has always recognised that collective bargaining arrangements can be mutually beneficial when participation is voluntary on both sides of the negotiating table. In this case, however, the ACCC was not satisfied that collective bargaining would produce public benefits. In particular, we did not consider that the AWC was in a weak position to negotiate with the NRL, nor did any information from the AWC suggest that the current arrangements caused inefficiencies or other public detriments. Moreover, collective bargaining could facilitate coordination between the betting companies, which could impact competition. In the event of a collective boycott, the NRL would be unable to negotiate with individual betting agencies.

The ACCC therefore issued a draft objection notice which prevented the legal protection from commencing. The AWC subsequently withdrew the notifications.

Other work assessing the public interest

Under the *Trade Marks Act 1995*, the ACCC has responsibilities for assessing Certification Trade Marks. Our role involves assessing rules for use of certification trade marks including:

- assessing the requirements that goods/services/persons must meet in order to be eligible to use a Certification Trade Mark, and assessing the proposed process by which compliance with certification requirements will be judged
- examining the rules to ensure they are not anti-competitive, misleading or deceptive.

One of the Certification Trade Mark rule assessments we made is detailed below.

Australian Made Campaign Ltd (ACML) (variation of Australian Made, Australian Grown rules approved). The owners of the well-known and widely used Australian Made, Australian Grown Certification Trade Mark (a gold kangaroo in a green triangle) sought to vary the rules for the use of the mark. One proposed change was to list production processes that would *not* be accepted as constituting the 'substantial transformation' in Australia needed for a product to qualify for the mark. The AMCL wished to rule out for example, bottling, mincing and pickling. When assessing variation applications, the ACCC must be satisfied that the amended rules would not cause public harm and would be in line with competition and consumer protection principles. The ACCC invited submissions on the rule variation from interested groups and individuals, including more than 1800 licensees that use the mark. After assessing submissions the ACCC approved the variation.

1.4 Improve the workability of emerging markets

2013–14 Strategy: *Improve the workability of emerging markets by advising on and enforcing industry-specific rules and monitoring market outcomes.*

Measure:

- Improved levels of effective competition and more informed and better functioning markets.

Improving competition and consumer outcomes online

The online environment offers consumers more choice—more products, competitive prices and detailed information. However, the ACCC is concerned that this choice is being eroded by various practices and conduct which look to limit consumer choice and in some cases restrict competition.

Concerned about these issues and practices emerging in online retailing, the ACCC ran a project to research and understand in-depth online competition and consumer issues. These issues include:

- conduct aimed at keeping new players out of the market or reducing the ability of smaller players to compete
- consumer issues unique to the online sector and supply chain
- issues that have been evident in traditional markets, but are exacerbated or exaggerated online due to the nature of the online environment
- emerging market issues such as m-commerce and fake online reviews.

Some issues, such as price discrimination and other competitive restrictions, whilst not prohibited by the Act, nevertheless potentially limit consumers choice and the ability of retailers to compete freely.

Our project encompassed research and industry engagement, education and awareness raising, monitoring international developments and identifying enforcement matters.

This work informed our approach to our input to the IT pricing inquiry (reference), and work with international competition and consumer agencies. It has also helped in our actions against emerging practices which harm competition or consumers such as group buying practices (reference) and drip pricing (reference).

Enforcement cases identified during the research phase are now under investigation or have been resolved using the ACCC's enforcement tools.

Our in-depth understanding of the issues and challenges involved placed us well to address them in our submission to the Harper review.

Measures and performance for Goal 1: Maintain and promote competition and remedy market failure

Measures—Goal 1

- Outcomes and impact of actions and policies to promote competition.
- Improved levels of effective competition and more informed and better functioning markets.
- Prevention of structural change in markets (particularly concentrated markets, emerging markets and markets of significance to the Australian economy) that substantially lessens competition.

Performance indicators

Our performance and the results we achieve are described in detail throughout the report on performance. In this section we provide a short summary and some highlights of our performance in relation to competition, including merger and authorisation matters.

1. Outcomes and impact of actions and policies to promote competition

- 200 initial investigations in competition matters.
- 56 in-depth investigations into competition matters.
- Eight competition cases were instituted.
- Successful outcomes in five cases.
- Penalties awarded totalling \$18.2 million.
- Three competition related court enforceable undertakings were accepted.

2. Improved levels of effective competition and more informed and better functioning markets

In determining 36 authorisation applications within statutory time frames, the ACCC improved the level of effective competition and stimulated more informed and better functioning markets across a range of industries, for example, by:

- facilitating small business collective bargaining to enable more efficient and informed negotiation outcomes
- enabling industry codes of conduct to address market failures
- enabling the operation of product stewardship schemes to more efficiently deal with product waste.

3. Prevention of structural change in markets (particularly concentrated markets, emerging markets and markets of significance to the Australian economy) that substantially lessens competition

- during 2013-14, the ACCC considered 297 mergers. All mergers were assessed in accordance with published guidelines
- 242 were pre-assessed as not requiring a public review. Public reviews of 48 mergers were conducted
- to prevent structural change in markets that would substantially lessen competition the ACCC accepted undertakings to remedy competition concerns in 10 of the mergers considered and opposed four transactions outright.

Program 1.2

Australian Energy Regulator

The Australian Energy Regulator (AER) is the national energy market regulator. The AER's roles encompass the retail and wholesale electricity and gas markets and energy network infrastructure.

The objectives of the national energy legislation guide the AER's priorities and work program. The common objective under the legislation is to promote efficient investment in, and efficient operation and use of, energy services for the long-term interests of end users.

The AER operates under the *Competition and Consumer Act 2010*, with functions as set out in national energy market legislation and rules. The AER has an independent board with one Commonwealth member and two state/territory members and shares staff, resources and facilities with the ACCC.

The AER's functions mostly relate to electricity and gas markets in eastern and southern Australia and include:

- setting the prices for using energy networks (electricity poles and wires and gas pipelines) that transport energy to customers
- fulfilling wide ranging responsibilities in retail energy markets
 - providing the Energy Made Easy comparator website (www.energymadeeasy.gov.au)
 - enforcing compliance with retail legislation
 - authorising retailers to sell energy
 - approving retailers' policies for dealing with customers in hardship
 - administering a national retailer of last resort scheme
 - reporting on retailer performance and market activity
- monitoring wholesale electricity and gas markets to ensure compliance with legislation and rules, taking enforcement action where necessary
- publishing information on energy markets, including the annual state of the energy market report.

The AER applies the following laws, regulations, and rules:

- National Electricity Law
- National Electricity Regulations
- National Electricity Rules
- National Energy Retail Law
- National Energy Retail Regulations
- National Energy Retail Rules
- National Gas Law
- National Gas Regulations
- National Gas Rules.

In Victoria, the AER also regulates cost recovery for mandated smart metering infrastructure under the *Victorian Electricity Act 2000*.

AER reporting

This annual report meets the AER's formal reporting requirements under the *Financial Management and Accountability Act 1997* and s. 44AAJ of the *Competition and Consumer Act 2010*. The AER separately published its first annual report on 19 September 2013 to provide a greater level of detail on its performance indicators, as well as information on activities, staff and expenditure. The AER's standalone report is published each year on the AER website www.aer.gov.au.

Goal 1: Maintain and promote competition in wholesale energy markets

Significant outcomes 2013–14

- Improved industry understanding of our role and approach by releasing a combined Enforcement and Compliance Statement of Approach to compliance in wholesale and retail energy markets.
- Issued three infringement notices for breaches of National Electricity Laws and Rules and National Gas Laws and Rules.
- Published weekly electricity and gas reports and significant event and high price reports on wholesale market performance.
- Published the *State of the energy market 2013* report.

1.1 Monitor wholesale energy markets

2013–14 Strategy: *Monitor wholesale electricity and gas markets to ensure compliance and take enforcement action where necessary.*

Measures:

- Effective enforcement and compliance activities that promote a culture of compliance in the energy sector and address identified harms and risks.
- Market rule and policy processes that improve energy market outcomes in the long-term interest of consumers.

Under our legislative framework, the AER is responsible for monitoring and enforcement in wholesale electricity and gas markets in all jurisdictions except Western Australia and the Northern Territory, namely:

- the National Electricity Market (NEM)—a \$12 billion per year spot market in eastern and southern Australia, in which more than 200 generators compete to dispatch electricity
- spot markets for gas, in which around 370 petajoules are traded each year in market hubs in Adelaide, Sydney, Brisbane, Victoria and Wallumbilla.

Network congestion and disorderly bidding

We have an ongoing focus on the issue of transmission network congestion resulting in disorderly bidding (generators making bids and rebids without reference to underlying supply costs) in the NEM. This bidding behaviour causes market volatility and damages inter-regional competition and trade in electricity.

In August 2013, we submitted a proposal to the AEMC to change the electricity rules to require the rate at which generators alter their output to reflect the plant's technical capability at the time, rather than the current minimum requirement of three megawatts per minute (or 3 per cent for generators below 100 megawatts in capacity). If implemented, we

expect this change would reduce the effects of disorderly bidding, as it would allow AEMO to move generators more quickly during periods of network congestion. We also consider the rule change would improve market efficiency more generally—for example, by precluding generators from limiting their output rate for commercial reasons.

In 2013–14, we also applied a revised service target performance incentive scheme for transmission businesses (see Energy Networks). One of the revised scheme's aims is to reduce network congestion.

Generator rebidding

In 2013–14, we focused on the effectiveness of the provision in the electricity rules that requires generators to offer energy to the NEM in 'good faith'. This provision requires a generator to honour its offer unless there is a change in the material conditions on which the offer was based. Rebids not made in good faith can adversely affect the accuracy of information on which market participants rely, in turn affecting efficient market operation.

In November 2013, the South Australian Government submitted a proposal to the AEMC which would change the electricity rules to address concerns that the current good faith provision does not sufficiently control participant behaviour. The change would require generators to demonstrate to the AER the change in material circumstances that justified a rebid. Generators would have to take into account all existing material circumstances when making a bid and, if any circumstances had changed, to reflect those changes in rebids as soon as practicable. The AER wrote a submission to the AEMC supporting the rule change and participated in stakeholder forums.

Alongside this contribution, in 2013–14 we progressed work on an index of the extent of rebidding in the NEM, to inform industry and policy makers. We drew on the analysis in our submission to the AEMC's rule change process. In 2014–15, we will look to further refine the index and consider how it might inform our ongoing market monitoring.

Quarterly compliance reports

The AER publishes quarterly compliance reports to outline our compliance monitoring and enforcement activities in the wholesale gas and electricity markets. The reports summarise the results of investigations (including special reports into significant market or power system events), compliance audits, targeted compliance reviews and rebidding inquiries undertaken during the quarter. The AER published compliance reports on:

- 23 July 2013, for the April to June 2013 quarter
- 22 October 2013, for the July to September 2013 quarter
- 11 February 2014, for the October to December 2013 quarter
- 9 May 2014, for the January to March 2014 quarter.

Generator performance standards

On 12 August 2014, the AER published an information booklet on generator performance standards. The National Electricity Rules set out technical performance requirements for generator owners as well as requiring them to implement and maintain specific compliance programs. The booklet outlines the AER's compliance monitoring approach to the performance standards regime, including our technical compliance audits and treatment of generators in dry storage.

Market monitoring

We expanded our market monitoring activities in 2013–14 to include the gas supply hub at Wallumbilla, which began operating on 20 March 2014. The AER developed mechanisms to monitor market outcomes and participant activities and reports on these outcomes in the weekly gas reports.

Energy Intermarket Surveillance Group

The AER is a founding member of the Energy Intermarket Surveillance Group (EISG), the peak and only international group coordinating and sharing skills between energy market surveillance and enforcement bodies, such as the AER. It is a not-for-profit organisation whose members represent 17 electricity markets from North and Latin America, South East Asia, Australia and New Zealand. The EISG:

- provides a forum to privately exchange of ideas about issues, techniques, procedures and other matters by monitors of wholesale energy markets
- develops common ideas on information requirements, market performance indicators and the types of conduct that should be subject to monitoring, mitigation or sanction.

The AER hosted a meeting of the EISG from 14–16 October 2013. Sixty-two energy market monitoring agency representatives gathered in Adelaide to discuss electricity market monitoring, compliance and design issues.

Attendees included market monitors from California, Ontario, Alberta, Japan, Singapore, Australia, New England, New Zealand, Philippines, Texas and the PJM market in the United States (the largest electricity market in the world covering 14 US states).

Staff from the AER also participated in exchanges with international regulators such as the Office of Gas and Electricity Markets in the United Kingdom and the Market Surveillance Administrator in Alberta Canada, enhancing the skills of staff involved and developing the relations between the agencies.

1.2 Risk-based compliance

2013–14 Strategy: *Apply a risk-based approach to compliance and monitoring activities.*

Measures:

- Effective enforcement and compliance activities that promote a culture of compliance in the energy sector and address identified harms and risks.
- Compliance and enforcement actions that improve market outcomes for market participants and consumers.

Combined enforcement and compliance approach

On 17 April 2014, the AER released a combined *Enforcement and Compliance Statement of Approach* to replace two previous statements of approach—one that applied to the National Energy Retail Law (the Retail Law) and the other to the National Gas and Electricity Laws. We combined the two statements to reflect the consistent enforcement of energy laws across all markets and recognise that many businesses participate in both retail and wholesale markets and across both the electricity and gas sectors.

Infringement notices

The AER monitors, investigates and enforces compliance with the national energy legislation and can issue an infringement notice or institute proceedings for specific breaches. In 2013–14, we received payment for the following infringements:

- Epic Energy paid \$20 000 on 9 January 2014 for submitting incorrect pipeline data
- Red Energy paid \$20 000 on 21 March 2014 for failing to test metering equipment
- Lumo Energy Australia Pty Ltd paid \$20 000 on 21 May 2014 for enabling unauthorised access to an AEMO market system.

In 2013–14, we published an investigation report for each of the infringement notices issued. The reports detail relevant incidents, the main findings, the reasoning behind those findings, and the outcomes of infringement action to educate industry and other stakeholders on the National Electricity and Gas Laws.

Targeted compliance projects

The AER undertakes a small number of strategic compliance projects each year in wholesale energy markets. These projects involve identifying a compliance problem, inefficiency, harm or risk and working to solve it or reduce its severity. We designed tailored metrics for the projects to assess how successfully we, and industry, rectify the identified problem.

In 2013–14, we commenced a strategic project reviewing the quality of information published by transmission network businesses in their annual planning reports. The reports promote transparent and efficient investment by providing third parties with an indication of the current and likely future state of the network, including opportunities for non-network investment. This project is ongoing.

We also completed seven strategic compliance projects relating to wholesale energy markets:

- MT PASA data accuracy—the Medium Term Projected Assessment of System Adequacy provides electricity supply-demand prospects for the next 24 months. Accurate data is critical to AEMO's ability to ensure security of supply and effective risk management in financial markets. Following a comparison of projected and actual generation availability by generation portfolio, we made further enquiries of two participants. Each business undertook to review its MT PASA processes to ensure future compliance.
- Performance of ancillary services for regulation—this project assessed whether providers of frequency control ancillary services deliver the services they are paid to provide. Ancillary services maintain the power system frequency within standards to safeguard system security. The AER in conjunction with AEMO will continue to refine processes to monitor and ensure the services are appropriately delivered.
- Upgrades to metering installations—we examined AEMO data to ascertain whether consumers have the appropriate metering installation, and to address any widespread non-compliance. Following the review we wrote to 20 retailers and distributors regarding their obligations, and will continue to engage with them on this matter.
- Metering data quality—we worked with AEMO to refine metering data quality metrics. The metrics will help us to effectively target future metering compliance and enforcement work.
- Trends in power system operating incident reports—AEMO's power system incident reports assess the response of network businesses and market participant facilities to power system disturbances (such as an unexpected trip causing a sudden loss of generation). Our analysis of the reports led us to tailor the framework for our technical audits of generators and transmission network businesses.
- Demand forecasting in the gas STTM—this project was in response to ongoing poor demand forecasting by a number of gas STTM participants. We compared forecast demand to actual demand, and contacted those market participants with poor forecasts. While we subsequently observed improvements, we will continue to monitor compliance and engage with participants.
- Generators not following dispatch instructions—this project involved monitoring instances of generators not following dispatch instructions. We contacted participants whose actual generation for a unit differed from its target measured against predetermined thresholds. We will continue to monitor compliance in this area using new monitoring techniques developed for this project.

The AER also publishes a range of reports outlining our market monitoring activities.

1.3 Report on energy markets

2013–14 Strategy: *Publish information on energy markets, including the annual state of the energy market report.*

Measure:

- Accurate, targeted, timely and accessible reports on the industry.

State of the energy market 2013

On 20 December 2013, the AER published the *State of the energy market 2013* report. It targets a wide audience including market participants, policy makers and the wider community. Included in this yearly report are an overview of energy markets and detailed analysis of activity and performance in each segment of the electricity and gas supply chain. The report draws on information from a range of sources, including our internal monitoring and intelligence, regulatory reviews of energy networks and external resources. It uses non-technical language to consolidate material, highlighting key trends and issues across the electricity and gas industries. We publish the report on our website each year.

Weekly reports on wholesale energy markets

Our weekly reports cover:

- wholesale market activity in the NEM
- more detailed analysis and reporting of extreme prices in the NEM (above \$5000 per megawatt hour) as they occur
- activity in the Victorian gas market
- activity in the short-term gas trading markets operating in Adelaide, Sydney and Brisbane, including significant price changes.

Significant event reporting

The AER must publish a report whenever the spot price for electricity exceeds \$5000 per megawatt hour. We also have an obligation to publish a report when the ancillary service price exceeds \$5000 per megawatt for a sustained period. These reports identify and describe the factors contributing to the high prices, including rebidding, network issues or changes to demand and generator availability. During 2013–14, we published five such reports

- on 18 March 2014, regarding high spot prices on 15 January 2014 in South Australia and Victoria
- on 27 September 2013, regarding a significant gas price change on 25 June in the gas short-term trading hub in Adelaide
- on 13 December 2013, regarding high ancillary service prices on 1 October 2013 in South Australia
- on 20 February 2014, reports regarding two high spot prices on 19 and 20 December 2013 in South Australia and New South Wales respectively.

Special report on South Australian market

On 2 August 2013, the AER released a special report on market outcomes in South Australia during April and May 2013. During that time South Australia saw the tightest supply conditions in the state since the summer of 2009, leading to unusually high spot prices. While a number of factors can contribute to tight supply/demand conditions, these normally occur in South Australia during the summer when electricity demand peaks.

Given their unusual nature and timing, the AER published a special report to examine the price spikes in more detail. The report highlighted a combination of factors which contributed to the tight supply conditions and high prices. Among these were:

- some generators reducing the amount of capacity available to the market
- inconsistent output levels from wind generators
- limits on transmission network interconnectors
- step changes in demand due to off-peak hot water load
- changes in generators' pricing strategies.

Our website

The AER publishes information about wholesale markets on www.aer.gov.au, including charts and tables on a range of key market factors such as:

- spot prices, including extreme prices, in the NEM
- electricity contract (derivative) prices
- electricity demand and generation, including by plant technology
- electricity trade between regions
- costs of managing frequency variations in electricity supply
- spot gas prices in the short-term trading market and Victorian gas market, including prices of ancillary services.

Goal 2: Building consumer confidence in energy markets

Significant outcomes 2013-14

- Released Retail Law annual performance and compliance reports.
- Published a small customer billing review report.
- Granted six authorisations for the sale of electricity and gas in retail markets.

2.1 Monitor and report on retailer and distributor performance

2013–14 Strategy:

Monitor the performance of energy retailers and distributors in respect of their obligations under the Retail Law and provide comprehensive, clear and regular reporting on performance to inform consumers.

Measures:

- Successful implementation of the Retail Law in those jurisdictions which adopt the Law.
- Accurate, timely and accessible performance reports on the energy businesses in respect of their Retail Law obligations.
- Clear, accurate and accessible information for consumers on energy retail markets, including through the Energy Made Easy website.

Our role in retail markets

Under the National Energy Retail Law, the AER regulates retail markets in New South Wales, South Australia, Tasmania and the Australian Capital Territory. New South Wales adopted the Retail Law on 1 July 2013. The Retail Law sets out the obligations of energy retailers and key consumer protections. These include requirements on how retailers market their offers and retailer responsibilities to help customers in financial hardship. The AER's role includes:

- monitoring and enforcing compliance with the law and its supporting rules and regulations
- managing market entry
- authorising retailers to sell energy or granting an exemption from this requirement
- developing a retailer of last resort scheme to protect customers if a business fails
- reporting on the performance of the market and energy businesses, including energy affordability and trends in disconnection of customers for non-payment of energy bills
- approving energy retailers' policies for assisting residential customers experiencing financial hardship and requiring assistance to manage their energy bills
- developing and managing an energy price comparison website to assist small energy customers to compare generally available energy offers.

Performance reporting

On 26 November 2013, we released the first annual performance report, *AER annual report on the performance of the retail energy market 2012–13*. It looked at the retail market and retailers' performance, including the number of active retailers, customer switching rates, the number of customers in debt, average debt levels, the numbers disconnected for non-payment and assistance provided to customers experiencing payment difficulties. We also examined the customer service levels provided by retailers, including the performance of their call centres and the rates of complaints across retailers. We analysed energy affordability and the impact of energy bills on the budgets of low income households in Victoria, New South Wales, Queensland, South Australia, Tasmania and the Australian Capital Territory.

On 11 February 2014, the AER revised and republished the report to reflect resubmitted data on complaints and hardship from one operator, as well as minor amendments to payment plan data from another operator.

Additionally, we published quarterly performance reports based on data from energy retailers. The reports were as follows:

- on 13 February 2014 for the quarter ending 30 September 2013
- on 25 March 2014 for the quarter ending 31 December 2013
- on 21 May 2014 for the quarter ended 31 March 2014.

Small customer billing review

On 20 February 2014, we released our report *National Energy Retail Law: Small customer billing review*. It examined whether retailers were meeting obligations under the Retail Law including the basis for calculating bills, the frequency and content of bills, undercharging and overcharging, and billing disputes and errors. The review, which focused on retailers active in the small customer markets of South Australia, Tasmania and the Australian Capital Territory, found retailers were mostly compliant with the Retail Law. The main issue of non-compliance concerned missing content in bills.

Retailer authorisations and exemptions

Under the Retail Law, retail energy businesses must apply to the AER for authorisation to sell energy. Businesses must demonstrate the capacity and suitability set out in the law. We publish the details of all authorised retailers in a public register and also any applications for authorisation or to transfer or surrender an authorisation. In 2013–14, the AER granted five authorisations to the following energy retailers:

- People Energy Pty Ltd (electricity), 11 October 2013
- CO Zero Pty Ltd (electricity), 12 December 2013
- Pooled Energy Pty Ltd (electricity), 12 December 2013
- CovaU Pty Ltd (gas and electricity), 21 February 2014
- Macquarie Bank Ltd (electricity), 11 April 2014.

On 14 March 2014, the AER approved the surrender of Australian Power and Gas's electricity and gas retailer authorisations. The AER decided, on 30 June 2014, to amend the surrender date so that the surrender will take effect on 30 June 2014, or once all APG's customers have been transferred (whichever is the later), but no later than 14 September 2014.

Energy retailers can apply to the AER for exemption from the requirement to obtain authorisation to sell electricity and gas under certain conditions. In 2013–14, the AER granted 16 individual exemptions.

Reviewing hardship policies

Under the Retail Law, authorised retailers must have a policy concerning how they will help residential customers experiencing payment difficulties to better manage their energy bills. The AER assesses the hardship policies of any new entrant retailers, and monitors and assesses compliance with all approved hardship policies. We also assess retailers' proposed amendments to approved policies.

In 2013–14, we approved hardship policies for CovaU Pty Ltd, Pacific Hydro Pty Ltd and Pooled Energy Pty Ltd and amendments to the Aurora Energy and Qenergy hardship policies.

2.2 Encourage regulatory compliance

2013–14 Strategy: *Encourage a culture of regulatory compliance by energy businesses through provision of clear information on our expectations and through effective and timely enforcement action when appropriate.*

Measure:

- Compliance and enforcement actions that improve market outcomes for consumers.

Retail market compliance initiatives

National energy retail law annual compliance report

Under the Retail Law, the AER must report on compliance activities.

On 26 November 2013, we issued our first annual Retail Law compliance report. It covers the period from 1 July 2012 to 30 June 2013 in respect of South Australia, Tasmania and the Australian Capital Territory where the Retail Law was adopted.

Retail prices and the proposed carbon tax repeal

On 3 April 2014, the AER issued a compliance statement regarding energy retail prices affected by the proposed repeal of the carbon tax. Our approach, as set out in the statement, was to remove any regulatory impediments to lower consumer prices as soon as possible following repeal of the legislation.

The Australian Government abolished the carbon tax on 17 July 2014.

The repeal legislation operates retrospectively to remove all associated liabilities from 1 July 2014. Although no carbon liabilities will be incurred by energy businesses from that date, a number of factors may prevent prices for some retail customers from immediately reflecting removal of the tax. Wholesale energy hedging costs and network charges paid by energy retailers may continue to reflect a carbon component for a period of time following repeal. Further, retailers require time to implement price changes in their billing systems. Despite this, it is expected that the retailers will take steps to ensure customers receive the full benefit from the effective date of repeal.

Draft amendments to compliance procedures and guidelines

On 13 June 2014, the AER released and called for submissions on proposed draft amendments to the AER compliance procedures and guidelines. The guidelines establish an exception reporting framework that applies to all retailers and distributors in jurisdictions that have adopted the Retail Law. The proposed amendments seek to refine the reporting framework and improve the quality of reports submitted by regulated entities.

Exempt selling (retail) guideline

Under the Retail Law, a person wishing to sell energy must either hold a retailer authorisation, or a valid exemption from that requirement. On 4 July 2013, the AER released a revised *Exempt selling (retail) guideline*. It outlines those selling activities, known as deemed and registrable exemptions, which will be exempt from the requirement for a retailer authorisation. The guideline outlines situations where an energy seller should seek an individual exemption from the AER and explains how to apply.

Alternative energy sellers

The Retail Law regulates the sale of energy. The AER is responsible for regulating anyone who sells energy and for administering retailer authorisations and exemptions.

After the Retail Law commenced, a range of businesses offering new and innovative energy products approached the AER.

On 14 October 2013, we published an issues paper setting out our proposed approach to regulating alternative energy selling models under the Retail Law. The paper discusses several emerging business models, including solar power purchase agreements, which differ from the traditional energy retailing model.

Stakeholders were invited to lodge submissions by 22 November 2013. After considering the 26 submissions received, we issued the final AER Final Statement of Approach on 23 June. Along with the statement we issued specific industry guidance on our approach to regulation of solar power purchase agreements.

2.3 Engage with consumers

2013–14 Strategy: *Engage with consumers and their representatives to identify, develop and implement strategies to address the barriers to effective engagement by consumers in energy markets.*

Measure:

- Clear, accurate and accessible information for consumers on energy retail markets, including through the Energy Made Easy website.

The AER engages with consumers and consumer groups, actively consulting to ensure their concerns are considered in our decisions. We publish information in a range of formats to assist energy customers to better understand their rights and more actively participate in energy markets.

AER websites and publications

Websites

The AER's website (www.aer.gov.au) has up to date links to all our regulatory, monitoring, reporting and enforcement activities, including access arbitrations, arrangements, undertakings and inquiry findings. Consumers can also find a range of energy related publications to assist them in their dealings with energy businesses.

Our Energy Made Easy website (www.energymadeeasy.gov.au) gives energy consumers in New South Wales, South Australia, Tasmania and the Australian Capital Territory details of the available energy offers in their area. Other tools are also available to assist consumers to compare their energy usage and understand their consumer rights in energy markets.

Energy and your business brochure

On 30 June 2014, the AER published a brochure for small businesses, *Energy and Your Business*, about their rights and options as energy consumers. It includes information about comparing and switching offers, resolving problems with energy retailers, energy efficiency tips and buying energy from a landlord or building owner.

Power to you publication

In 22 July 2013, we published a new information brochure for residential consumers. *Power to You* offers useful tips and information on key energy issues such as shopping around, customer rights and using the Energy Made Easy website to find and compare offers. We worked closely with our stakeholder networks to widely distribute the brochure.

Managing energy at home

On 22 July 2013, the AER released *Managing energy at home*, a publication for caseworkers with detailed information about consumer rights, contracts, billing, dispute resolution, marketing and disconnections. We also released a postcard with the slogan 'Compare, Understand, Control' on the AER's price comparator website, Energy Made Easy. Over 40 000 postcards were distributed to consumers and to strategic partners such as the South Australian Government, Kildonan and the Energy and Water Ombudsman of New South Wales.

In addition, we continued to build relationships with consumer stakeholders. Highlights included attendance at conferences and forums organised by Financial Counselling Australia, the Consumer Utilities Advocacy Centre and the Home Energy Save Scheme.

Service charter

The AER's Service Charter, published on 31 October 2013, sets out how we respond to stakeholders when they contact us and includes useful information for consumers who may be experiencing problems with energy businesses.

Consumer engagement

Customer Consultative Group

The AER Customer Consultative Group was established in 2009 to help the AER understand consumer and small business perspectives on retail energy issues. Members representing a range of stakeholder interests use the meetings to highlight issues of importance to their constituents, which informs our development of communication and engagement strategies. Further information appears under section 4.1 on page 187.

Consumer Reference Group

The Consumer Reference Group gives consumers a pathway for input to the AER's Better Regulation program (described below). Section 4.1 on page 188 of this report has more details on the group.

Consumer Challenge Panel

The AER established a Consumer Challenge Panel in July 2013 to allow ongoing input into price determinations for energy network businesses. See section 4.3 on page 190 for more details.

Stakeholder engagement framework

On 31 October 2013, we released our Stakeholder Engagement Framework, which sets out the principles that will guide public engagement with consumers, energy businesses and other stakeholders affected by our activities. It commits us to communicate in a timely and clear way, to be accessible, inclusive and transparent, and to measure how well our engagement strategies are working.

2.4 Develop the Energy Made Easy website

2013–14 Strategy:

Further develop the Energy Made Easy website as the source of trusted information for consumers on the energy market, protections available to energy consumers and how to find the best retail energy offer for them.

Measure:

- Clear, accurate and accessible information for consumers on energy retail markets, including through the Energy Made Easy website.

Website redevelopment

As required by the Retail Law, the AER maintains a price comparison website, Energy Made Easy (www.energymadeeasy.gov.au), to help customers find the best energy offers for their needs. The site provides:

- clear, accurate, current and consistent information to help energy customers make more informed decisions about offers
- useful features, including a price comparator, household electricity usage benchmarks, energy efficiency tips and information about consumer rights.

New South Wales commenced the Retail Law on 1 July 2013, joining the Australian Capital Territory, Tasmania, and South Australia. Residential and small business customers in jurisdictions covered by the Retail Law are also able to access gas and electricity offers through the website. Customers in states and territories yet to adopt the Retail Law can access some of the site's features but are unable to compare energy offers in their state or territory until the Retail Law has been adopted.

In 2013–14, we began to redevelop the sites to improve accessibility and ease of use for consumers. We consulted with stakeholders on the proposed changes in September 2013 and considered their feedback in the redevelopment. The AER expects to launch the redeveloped website in the second half of 2014.

On 17 December 2013, the AER released two resources to help consumers control their energy services: the Energy Made Easy postcard—which is discussed earlier, and the Energy Made Easy poster—a resource for Centrelink offices with valuable tips for consumers needing assistance to pay their bills.

Goal 3: Promote efficient investment in, operation and use of, energy networks and services for the long-term interests of consumers

Significant outcomes 2013-14

- Made placeholder, amended and final determinations for 11 network businesses and commenced work on 16 determinations.
- Considered and approved annual pricing proposals for 43 network businesses.
- Completed the Better Regulation program and published six new network guidelines, including a consumer engagement guideline.
- Lodged submissions on AEMC rule changes to improve demand side participation in energy markets.
- Commenced work on the development of a database to collect, store and report data from network businesses.

3.1 Regulate networks for efficient investment and operation

2013–14 Strategy: *Deliver network regulation that promotes efficient investment in and operation of energy networks in the long-term interests of energy consumers.*

- Measures:**
- Timely, considered and evidence-based network regulatory decisions, through constructive engagement, enhanced technical expertise and greater use of data analysis and intelligence.
 - Regulatory determinations and other decisions in accordance with the prescribed processes and timeframes.

Network pricing decisions

The electricity and gas rules require that network businesses periodically (usually every five years) submit regulatory proposals (electricity) and proposed access arrangements (gas) to the AER for approval. We must assess the regulatory proposals of network businesses and justify their network pricing decisions with regard to the legislative criteria, taking account of any issues raised in consultation. Network businesses can appeal our decisions at the Australian Competition Tribunal.

To determine network prices and allowable revenue, the AER must account for a network business's need to provide efficient and appropriate levels of transmission or distribution services. Total revenue must be sufficient to ensure it can cover at least the efficient costs incurred in providing services. Costs include capital costs (such as for wires, poles, pipes and buildings) and operating costs (such as for labour and maintenance). In assessing these costs, we consider whether they reflect the costs that a prudent and efficient service provider would incur.

Network businesses must also earn an appropriate return on capital, which can account for more than half of their total revenue. Three factors determine the return on capital: the size of a network's asset base, new investment added to the base, and the rate of return necessary to cover a commercial return on equity and interest on loans (efficient debt costs). Small changes to the return on capital—also known as the weighted average cost of capital—can materially affect network charges.

The AER must undertake extensive consultation in making network pricing decisions. After considering the 'framework and approach' of a price review process, we must release an issues paper, draft decision and final decision. Additionally, we must hold public forums and consult heavily with the network businesses and other stakeholders, including consumer representatives, governments and investment groups. The newly formed Consumer Challenge Panel will play a significant role in the AER pricing process, advising on issues important to consumers.

In 2013–14, the AER completed eight network pricing decisions. We issued:

- our final decision on SP AusNet's (the Victorian electricity transmission network service provider) revenue proposal for the three-year regulatory period beginning 1 April 2014

- made a determination for AEMO in its role as a provider of transmission services in Victoria
- transitional determinations for the 2014–15 regulatory period for:
 - New South Wales electricity transmission and distribution network businesses TransGrid, Ausgrid, Endeavour Energy and Essential Energy
 - Australian Capital Territory distribution network business ActewAGL
 - Tasmanian transmission network business Transend.

The AER commenced 16 price reviews in 2013–14. Twelve are for electricity distribution in New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory. The others relate to electricity transmission in New South Wales and Tasmania, the Queensland to New South Wales interconnector and New South Wales gas distribution.

Oversight of network regulation

The AER's role in network regulation extends beyond making price determinations and approving access arrangements. We monitor compliance with our decisions and network businesses' obligations, approve annual tariffs, assess businesses' compliance with incentive schemes, develop and amend guidelines as required, and make other decisions that impact on network businesses' charges. The Australian Competition Tribunal can send regulatory decisions back to the AER if a network business successfully appeals our decision.

We carry out some roles regularly, such as tariff approvals, while others such as cost pass throughs are more ad hoc. Our roles include:

- tariff assessment—we annually review network tariffs for electricity distribution businesses, and for gas transmission and distribution businesses
- cost pass throughs—under the regulatory framework, network businesses can apply to the AER to pass through to customers those costs that arise from events outside their control and were not anticipated when their price determinations were made
- access (connection) disputes—we receive and resolve customer disputes with the distribution businesses on the cost and, sometimes, the terms and conditions of connection offers
- customer and stakeholder complaints—we investigate complaints and advise the complainants of our findings. If we find that a distribution business has breached its regulatory obligations, we use our enforcement powers to ensure future compliance
- regulatory investment test for electricity—we monitor and enforce compliance of the network businesses applying the regulatory investment test for transmission
- performance reporting—we publish information from network businesses about their revenues, prices, expenditures, operations and service delivery
- incentives for improved performance—we develop incentive schemes for network businesses to improve their performance. We then administer those schemes and ensure compliance. The service target performance incentive scheme is discussed in section 3.2 below
- other guideline development—we develop and update other guidelines, for example the Better Regulation Guidelines in 2013–14, as also discussed in section 3.2 below
- regulatory decision remittals—network businesses can ask the Australian Competition Tribunal for a merits review of the AER's decisions. If the Tribunal reviews a network pricing decision, we become a party to the review and must act as a model litigant. The courts can also review the AER's decisions on administrative grounds.

Annual tariff assessment

The AER reviews network tariffs to ensure changes to tariffs do not breach revenue or pricing limits under the regulatory determinations or approved access arrangements. We also ensure tariffs relate to underlying costs so they are consistent with applicable pricing principles.

In 2013–14, the AER reviewed 28 tariff applications from businesses in New South Wales, Victoria, Queensland, South Australia, Tasmania and the Australian Capital Territory for tariffs applying in 2014–15 (or 2014 for Victorian businesses). The applications concerned proposals from 13 electricity distribution businesses and 15 gas transmission and distribution businesses.

For the Victorian electricity distribution network businesses, the AER approved new flexible (time varying) tariffs, which came into effect progressively from 1 July 2013. This decision follows the Victorian Government's initiative to allow consumers who have a smart meter—or advanced metering infrastructure (AMI)—to move to these tariffs if they choose to do so.

AMI charges assessment

In 2013–14, the AER approved revised AMI charges. These charges are for the metering infrastructure provided to small consumers by the Victorian electricity distribution network businesses. The 2014 charges for AMI services were originally forecast when the AER set the budgets for 2012–15 in October 2011. The businesses must revise the charges each year based on actual expenditure and any forecast expenditure updates.

We also approved charges for AMI remote services. These services were previously provided through a field officer visit but now are offered remotely to consumers using AMI technology. They include remote special meter reads, remote meter reconfiguration and remote re-energisation and de-energisation.

Cost pass-throughs

Before approving any pass-through amounts, the AER must consider the efficiency of the network business's decisions and actions to mitigate costs. In 2013–14, the AER assessed and approved 11 cost pass-through applications from electricity and gas network businesses.

Network business performance reporting

Performance reporting helps the public make an informed contribution to our decision-making and ensures business accountability. Our performance reports will in future incorporate benchmarking reports.

In 2013–14, the AER published information on the operational and financial performance of regulated electricity distribution network businesses in New South Wales, Queensland, South Australia, Tasmania and the Australian Capital Territory for 2012–13. The information was supplied by the businesses in response to AER Annual Reporting Regulatory Information Notices. The reports also include information on the services provided by electricity businesses and the cost of those services.

The AER also issued the 2010–11 electricity performance report for electricity transmission businesses in the NEM. The report shows comparative trends against the expenditure forecasts and service standards set in our revenue determinations.

We issued our report on the performance of providers of distribution services for gas in Victoria for 2012. Covering Envestra, Multinet and SP AusNet, the report discusses their financial performance, reliability and customer service outcomes and highlights some key performance trends over the past five-year period. The AER took over responsibility for setting Victorian gas distribution network charges in 2013.

Dispute resolution

When customers are dissatisfied with a connection offer from a distribution network business, they can request a review by the AER. We published a factsheet and guide to inform customers how we resolve these disputes.

During this financial year, the AER received the following disputes from energy customers:

- five disputes for electricity connections, of which four have been resolved. The connection charges of three customers were substantially reduced
- one dispute for gas connection. While we found that the charge was reasonable, the distribution business offered to interest neighbours in gas connections to share the cost across a larger number of customers. Unfortunately, no other customers were interested.

Appeals against regulatory decisions

The Australian Competition Tribunal considered three network pricing decision appeals in 2013–14.

Victorian gas access arrangements

The AER released final decisions on the access arrangements for the Victorian gas distribution and transmission networks in March 2013. Two Victorian gas businesses subsequently sought merits review from the Tribunal of the AER's decisions.

APA GasNet, the transmission network owner and operator, then sought a merits review on several aspects of our decision. APA GasNet claimed that the prices were too low to allow efficient pipeline operations. In September 2013, the Tribunal agreed with our decision on two important aspects of the review. On two other matters, the Tribunal determined that the particular legal provisions in question did not allow the approach we took and referred the matters back to us.

The AER subsequently submitted a proposed rule change to the AEMC to address problems with the current wording of the National Gas Rules, as highlighted by the Tribunal's decision.

One of the Victorian gas distribution businesses, Multinet, sought a review of the AER's decision to use the Essential Services Commission's capital expenditure benchmark for 2012 to calculate the opening capital base. In July 2013, the parties applied to the Tribunal to make a determination by consent that the matter be remitted to the AER to remake its decision. We issued a remade access arrangement decision for Multinet's Victorian gas distribution network in October 2013, following directions from the Tribunal to increase the opening capital base by around \$30 million.

Victorian smart meter prices

On 1 August 2013, the Tribunal dismissed a legal challenge by SP AusNet regarding Victorian smart meter prices for the 2012–15 period, affirming our earlier decision. Following the Tribunal's decision, SP AusNet appealed to the Full Federal Court. A hearing of the appeal is expected in early 2015.

Technical advisor appointments

On 29 November 2013, we announced the appointment of four in-house technical advisors to increase our industry expertise, particularly in power system engineering. The advisors are helping to:

- implement new regulatory approaches developed under the Better Regulation program
- improve our use of external consultants
- enhance our engagement with network businesses and other stakeholders.

3.2 Guidelines and incentive schemes

2013–14 Strategy: *Develop and implement guidelines and incentive schemes in accordance with the new framework for network regulation to enhance our regulation of monopoly infrastructure.*

Measure:

- Successful implementation of new guidelines and schemes under new network regulatory framework within set timeframes.

Better Regulation program

One of our key functions is to regulate energy networks transporting energy to consumers by electricity poles and wires and gas pipelines in accordance with the National Electricity and Gas Rules.

In late 2012, the AEMC announced important changes to the rules concerning our role in regulating energy network businesses, with further reforms announced soon after by the Council of Australian Governments. In response, we developed the Better Regulation program, which will deliver improved regulation focused on the long-term interests of consumers.

We finalised the program in around 12 months and, over November and December 2013, released six guidelines on how we will operate and how network operators can comply with specific requirements.

Better Regulation Guidelines

The guidelines are as follows:

- *Expenditure forecast assessment*—describing our process, techniques and associated data requirements for setting efficient expenditure allowances for network businesses
- *Expenditure incentives*—creating the right incentives to encourage efficient spending by businesses and share the benefits of efficiencies with consumers
- *Rate of return*—setting out how the AER determines the return that electricity and gas network businesses can earn on their investments
- *Consumer engagement*—establishing a framework for electricity and gas service providers to better engage with consumers
- *Shared asset*—outlining how consumers will benefit from the other services electricity network businesses may provide using the assets consumers pay for
- *Confidentiality*—explaining how energy network businesses must make confidentiality claims over information they submit to us.

Existing incentive schemes

Electricity distribution incentives

Under the demand management incentive scheme, distribution network service providers must report their demand management innovation allowance (DMIA) expenditure to the AER at the end of each regulatory year. We then assess provider expenditure to ensure compliance with the DMIA criteria and their entitlement to recover expenditure.

On 9 July 2013, the AER published a final decision following review of DMIA expenditures in 2012 for Citipower, Jemena, Powercor, SP AusNet and United Energy. The distribution network service providers sought approval of total expenditures of \$564 515 for six projects. The AER reviewed the expenditure claimed.

The AER Service Target Performance Incentive Scheme (the Scheme) encourages distribution network businesses to maintain and improve service performance for the long-term benefit of end users. The Scheme is also designed to ensure that efficiency improvements are not made at the expense of service performance for customers.

The following s-factor outcomes were approved for service performance over the previous regulatory year:

- Aurora Energy (+4.10 per cent)
- CitiPower (-1.24 per cent)
- Energex (+3.98 per cent)
- Ergon Energy (+2 per cent)
- Jemena (+0.52 per cent)
- Powercor (+1.16 per cent)
- SA Power Networks (-0.74 per cent)
- SP AusNet (+3.66 per cent)
- United Energy (-5.01 per cent).

The Scheme was applied to Aurora Energy for the first time in 2012-13. Aurora Energy elected to delay the application of its +4.10 per cent s-factor for one regulatory year.

Victorian fire reduction incentives

The Victorian Government established the F-factor scheme in June 2010 to give Victorian distribution businesses incentives to reduce the risk of fire starts and loss or damage caused by fire starts from electricity infrastructure. Businesses can only receive a reward for sustained and continuous improvement. The benchmark fire start targets will be tightened in future years.

On 6 September 2013, the AER published F-factor final amount determinations. Under this determination, all Victorian distribution businesses will receive a reward as their actual number of fire starts for 2012 were below their respective fire start targets.

On 10 June 2014, the AER called for submissions on its draft decision on F-factor incentive payments for 2013. The annual allowable revenues for 2015 will be adjusted by the relevant pass through amounts. If the amounts are confirmed in the final determinations, the adjustments will range from a \$2.4 million penalty for Powercor to a \$2.0 million reward for SP AusNet. As a result, there will be a small change in network tariffs for Victoria network businesses for 2015.

Electricity transmission incentives

The AER's Service Target Performance Incentive Scheme for electricity transmission, encourages transmission network businesses to maintain or improve service reliability in a way that customers value. The Scheme also encourages transmission network owners to develop their networks to facilitate efficient wholesale electricity prices.

On 4 December 2013, we published a final position paper on the early application of version four of the Scheme for transmission. It also sets out our preliminary position on the application of the Scheme to transmission businesses TransGrid and Transend during their transitional year.

On 14 May 2014, the AER published its review of Powerlink, Transend, ElectraNet, Directlink, Murraylink and TransGrid's performance against their transmission service target performance incentive schemes for the 2013 calendar year. SP AusNet's performance results were published on 21 March 2014. The results of this review are published on the AER website.

On 28 May 2014, the AER proposed a limited amendment to the Scheme for Directlink, which had partly been out of service due to a fire at its Mullumbimby site in August 2012. Its current maintenance and construction activities are therefore not 'business as usual' but rather address fire damage.

Regulatory investment test for distribution

In August 2013, the AER released guidelines on applying the regulatory investment test for distribution, which establishes clear and efficient processes for distribution network investment in the NEM.

3.3 Analysis and metrics for better decisions and engagement

2013–14 Strategy:

Improve data analysis techniques and metrics to inform regulatory decisions and disseminate relevant information to stakeholders to allow them to better engage in the regulatory process.

Measures:

- Implementation of new analytical techniques, information requirements and data systems to better inform decision-making.
- Network service provider performance and benchmark reports that facilitate comparisons between businesses.

Collecting and publishing energy data

AER's work in regulating network businesses necessitates the regular collection of information from regulated businesses. We publish non-confidential information received on the website to support effective and transparent regulation and ensure that stakeholders can access information on issues affecting their interests.

Modelling and benchmarking network business expenditure

Following changes to the National Electricity and National Gas Rules, the AER developed guidelines under the Better Regulation program on how it assesses forecast expenditure by transmission and distribution network businesses. The *Expenditure Forecast Assessment Guidelines*, published in November 2013, describe our techniques and associated data requirements in determining efficient capital and operating expenditure allowances.

The AER will use benchmarking and other techniques to assess the need for, and efficiency of, spending proposals. We have also introduced reforms to encourage network businesses to seek more efficient ways of providing services, including through measures that will allow customers to share the benefits of networks spending less than forecast.

On 2 May 2014, the AER released an expert report on equity beta estimation as part of its work on the rate of return. The report focused on the calculation of empirical estimates of the equity beta for regulated gas and electricity networks.

Improving data systems

During 2013–14, the AER reviewed how the management of network data could be improved. We found that the best solution was to develop a database to collect, store and report the increasing volume of information received from network businesses. Development work was completed by the end of June 2014, with testing and implementation to go ahead in the second half of the year.

The database, which will support our new analytical techniques, should produce significant efficiencies in the collection, storage and reporting of network information.

3.4 Develop the energy regulatory regime

2013–14 Strategy: *Participate in the further development of the regulatory regime to provide efficient incentives for demand side participation by energy suppliers and customers and develop appropriate schemes and guidelines for this purpose.*

Measure:

- Successful implementation of new guidelines and schemes under new network regulatory framework within set timeframes.

The AEMC's Power of Choice review examined how the NEM can better support efficient demand side participation, recommending various changes to the way the NEM operates. Changes will include encouraging a more balanced consideration of network and non-network options, and improving network price signals for consumers and the efficient provision of smart technologies such as metering. The recommendations have been reflected in a number of rule changes proposed by the Standing Council on Energy and Resources (renamed the Council of Australian Governments Energy Council). The AEMC is currently considering these rule changes.

The AER made submissions to the AEMC rule change proposals on distribution network pricing arrangements, competition in metering and the framework for open access and communication as detailed below.

Pricing arrangements rule change

On 18 September 2013, the Standing Council on Energy and Resources (the Council) requested a rule change to improve the arrangements in the National Electricity Rules under which distribution network prices are set and structured. Their request is in response to recommendations made to the Council in the Power of Choice review.

On 18 December 2013, the AER made a submission to the AEMC's consultation paper on the rule change proposal. The AEMC is considering a significant package of reforms to the distribution pricing arrangements that address issues around the rationale and management of a transition to more cost-reflective distribution pricing. The AER's submission supported the direction of the proposed rule changes and considered options for achieving timelier price reviews.

Open access and communication

On 14 February 2014, the AER made a submission on the AEMC's draft report regarding a framework for open access to the smart meter communication network and common smart meter communication standards. The AER generally supported the direction of the AEMC review, welcoming assurances that it will align with direct metering contestability.

We will continue to contribute to these ongoing reviews as an interested stakeholder with a role in implementing and enforcing the rules made by the AEMC.

3.5 Encourage business-consumer engagement

2013–14 Strategy: *Encourage businesses to implement consumer engagement strategies that are effective for all customers.*

Measure:

- Network service provider performance and benchmark reports that facilitate comparisons between businesses.

Consumer engagement is about working openly and collaboratively with consumers, giving them opportunities for their views to be heard, and influencing service provider decisions. Effective engagement requires commitment from both service providers and consumers. Stronger consumer engagement can help the AER test service providers' expenditure proposals, and can raise alternative views on matters such as service priorities, capital expenditure proposals and price structures.

Underpinning our regulatory approach are the Better Regulation reforms creating a stronger consumer engagement framework, specifically those requiring:

- consideration by the AER of how a business engaged with consumers in preparing its proposed expenditure
- input from the Consumer Challenge Panel on consumer perspectives as part of the determination process
- protection of confidential information from businesses while enabling stakeholders to access sufficient information on issues affecting their interests.

The consumer engagement guideline, published on 6 November 2013, sets out how the AER expects energy network businesses to engage with their consumers. Businesses should demonstrate a commitment to ongoing and genuine consumer engagement so that they can better align services with consumers' long-term interests.

The guideline has a high level framework to help businesses integrate consumer engagement in their business-as-usual operations. Its principles and components are shown in figure 3.9.

The onus is on businesses to develop and implement consumer engagement strategies as they are in the best position to understand their consumer base and its issues. Each business's approach should address the best practice principles that underpin the consumer engagement guideline. There are also four components in the guideline that set out a process for businesses to develop and implement new or improved consumer engagement activities to meet the principles.

Implementing the consumer engagement guideline will help a business develop its next spending proposal and demonstrate how the proposal advances the legislative objective of efficient investment in, and operation and use of, energy services for the long-term interests of energy consumers. When assessing a business's proposed expenditure we will consider how the business engaged with consumers in preparing its proposal.

Figure 3.9: Better Regulation consumer engagement guideline

CONSUMER ENGAGEMENT GUIDELINE OBJECTIVE			
Aligning network services with the long-term interests of consumers			
BEST PRACTICE PRINCIPLES			
Clear accurate and timely communication Business should provide information to consumers that is clear, accurate, relevant and timely, recognising the different communication needs and wants of consumers.	Accessible and inclusive Businesses should recognise, understand and involve consumers early and throughout the business activity or expenditure process.	Transparent Businesses should clearly identify and explain the role of consumers in the engagement process, and to consult with consumers on information and feedback processes.	Measurable Businesses should measure the success, or otherwise, of their engagement activities.
COMPONENTS			
Priorities Identify consumer cohorts, and the current views of those cohorts and their service provider, outline their engagement objectives, and discuss the processes to best achieve those objectives.	Delivery Address the identified priorities via robust and thorough consumer engagement.	Results Articulate the outcomes of their consumer engagement processes and how they measure the success of those processes reporting back to us, their business and consumers.	Evaluation and review Periodically evaluate and review the effectiveness of their consumer engagement processes.

Goal 4: Strengthening stakeholder engagement in energy markets and regulatory processes

Significant outcomes 2013-14

- Released a Stakeholder Engagement Framework.
- Established a Consumer Reference Group to assist with the preparation of Better Regulation Guidelines.
- Established a Consumer Challenge Panel to ensure consumer input is incorporated into network pricing decisions.
- Conducted three meetings of the Consumer Consultative Group.

4.1 Develop improved consultation and engagement mechanisms

2013–14 Strategy:

Further develop ways of engaging with energy consumers and their representatives, particularly through appropriate consumer consultative forums such as the Consumer Consultative Group and the Better Regulation Program Consumer Reference Group.

Measures:

- Active consumer participation, either directly or through representative bodies, in regulatory processes.
- Regulatory processes that clearly set out how consumer views are taken into account.

Strong consumer engagement assists the AER to test service providers' expenditure proposals, and can raise alternative views on matters such as service priorities, capital expenditure proposals and price structures.

Businesses must describe how they have engaged with consumers and how they have addressed any issues concerns identified as a result, presenting this information in an overview report to their regulatory or revenue proposals.

The AER published a framework for stakeholder engagement and a service charter to outline its approach to engagement as outlined previously on page 172.

Consumer Consultative Group

The Consumer Consultative Group (CCG) enables consumer and small business input into the AER's energy functions and regulatory activities. The group was formed in 2009 to advise the AER on matters affecting energy customers as part of the new National Energy Retail Law and Rules. Members have the opportunity to tell the AER about energy issues that impact on the groups that they represent. The CCG meets three times a year and shares information out of session. In 2013–14, the CCG met in August and November 2013 and in March 2014 and discussed:

- the AER's strategic priorities and work program for 2013–14
- the approach to the AER's first affordability report
- lessons learned from the Consumer Reference Group consultation under the Better Regulation program
- the potential development of priorities for compliance and enforcement activities under the Retail Law
- key consumer issues arising from current distribution regulatory determinations.

With the term of the current CCG expiring in early 2014, we sought applications for a new CCG membership. We received 23 applications and ultimately appointed 12 members on 29 April 2014. The new members, all appointed for a minimum two-year term, represent charities, advocacy organisations, and small business groups.

Better Regulation Program Consumer Reference Group

The AER's Better Regulation Program Consumer Reference Group (CRG) met regularly throughout the duration of the program and helped us to shape the final Better Regulation Guidelines to balance stakeholder interests. Further information on the CRG appears under section 2.3.

Consumer Challenge Panel

Regulatory determinations are often so technical and complex that it is difficult for ordinary consumers to participate. To address this, the AER established the Consumer Challenge Panel of 13 expert members under the Better Regulation program to provide input from consumer perspectives on:

- whether the network businesses' proposals are justified in terms of the services to be delivered to consumers; whether those services are acceptable to, and valued by, consumers; and whether the proposals are in the long-term interests of consumers
- the effectiveness of network businesses' engagement with consumers and how it has informed the development of their proposals.

The panel is described in more detail below in section 4.3 on page 190.

Participation in stakeholder events

Over 2013–14, AER staff conducted a number of engagement activities to promote better understanding of the energy framework:

- attending a launch for the National Energy Retail Law and the Energy Made Easy website in New South Wales
- presenting to financial counsellors at the National Home Energy Savers Scheme conference
- delivering a training package for financial counsellors and other consumer intermediaries to increase their knowledge of the Retail Law and consumer rights
- publishing targeted information for small businesses
- reviewing energy retailers' customer hardship policies and practices.
- AER chair presentations:
 - South Australia Council of Social Service—Hardship and affordability Conference
 - Energy Networks Association regulation seminar
 - National Consumer Roundtable on Energy
 - Annual Energy Users Association of Australia Conference 2013.

4.2 Clear and valuable consumer communication

2013–14 Strategy: *Prepare written communications that are clear and provide consumers with information they value and help them engage more effectively in regulatory processes. For example, through publication of issues papers to guide consumers on considering material issues.*

Measures:

- Active consumer participation, either directly or through representative bodies, in regulatory processes.
- Regulatory processes that clearly set out how consumer views are taken into account.

The AER engaged extensively with consumers in a number of forums in 2013–14, including the Better Regulation Program Consumer Reference Group, Consumer Challenge Panel and Consumer Consultative Committee as described in other sections of this report.

When determining revenue or access arrangements for energy network businesses (as described previously), the AER used a range of strategies to ensure consumer input was sought and incorporated in decision-making. Our strategies included:

- holding public forums where consumer representatives made oral presentations
- facilitating more effective stakeholder submissions by publishing issues papers and draft decision documents and guidelines
- publishing easy-to-read factsheets, along with draft and final decision documents, to summarise key aspects of decisions for a range of audiences including consumers.

Informing the public about the Better Regulation program

The AER committed to keeping stakeholders well informed and providing opportunities for input on the Better Regulation program through such activities as:

- an Australia-wide video conference at the start of the program for all stakeholders
- direct consultation through around 140 workshops, forums, and bilateral meetings over the course of the program
- monthly newsletters about the progress of the development of the new guidelines that gave stakeholders:
 - an overview of the Better Regulation program
 - updates of the progress of the reform package
 - details of the draft guidelines for which the AER was seeking comment
 - key dates for public consultation
- factsheets explaining the critical elements of each guideline
- a regularly updated calendar of events the AER website
- published issues papers and draft guidelines for input
- published the final guidelines in November and December 2013.

Once the program was finalised, we produced an *Overview of the Better Regulation reform package* to summarise key outcomes, outline how the reforms work together as a package of measures to promote the long-term interests of consumers and how they interact with each other and other parts of the regulatory landscape.

4.3 Establish a consumer challenge panel

2013–14 Strategy:

Establish a Consumer Challenge Panel to provide expert advice on issues of significance to consumers within the regulatory process.

Measure:

- Establishment and effective utilisation of the Consumer Challenge Panel.

Consumer Challenge Panel

On 1 July 2013, the AER announced the establishment of the Consumer Challenge Panel. The panel will help ensure that decisions on network costs properly reflect consumer interests. Its creation was part of the AER's Better Regulation reform program (discussed in detail under section 3.2) and a key component of the Council of Australian Governments' 2012 energy reform agenda. The panel sits within the AER and offers expert advice which the AER Board considers in assessing energy network business spending and in developing regulatory proposals and guidelines.

The panel's 13 members have significant local and international expertise in such fields as economic regulation, energy networks and consumer representation. They were appointed for an initial three-year term—from 1 July 2013 to 30 June 2016.³

For each regulatory determination, the AER will draw together a number of panel members for advice. Members will use their expertise to offer consumer perspectives that challenge network businesses' proposals as well as the AER's approach to specific issues. This will assist the AER to focus on matters that are important to consumers.

The panel's inaugural meeting was held in Melbourne on 9 September 2013. In January 2014, the AER received the first written advice from the panel. It emphasised their desire to see network service providers develop proposals that reflect consumers' preferences and how they value supply and service quality versus lower or stable prices.

³ One member subsequently resigned from the panel in June 2014.