

February 2004

### From the Small Business Commissioner

This **briefing** demonstrates the ACCC has remained active during the December/January 'silly season'.

The ACCC is working with other competition and consumer agencies throughout the world in a major effort to combat spam on the internet—a problem small businesses constantly struggle with.

We welcome recent court decisions that have clarified situations in which so called licensing arrangements are effectively franchise agreements and subject to the Franchising Code of Conduct. We also draw attention to the issue of unsolicited mail order products being sent to consumers and the need for care in relation to comparative advertising that could mislead consumers about competitor's products.

Recently, the ACCC was disappointed that the High Court found Rural Press did not misuse its market power. However, positive outcomes from the decision were that it further clarified the meaning of aspects of the misuse of market power provisions and also found in favour of the ACCC in relation to arrangements or understandings between the parties which substantially lessened competition.

In mid-February, the ACCC conducted a roundtable discussion with stakeholders about the issues paper and core criteria on ACCC endorsement of voluntary codes of conduct. The discussion and many of the submissions suggested constructive ways that the proposal could be improved. A review of issues raised and implications for the proposal will be put to the Commission ahead of further consultation.

John Martin  
Small Business Commissioner

### Hotspot

Are you unsure about your rights and obligations when it comes to providing refunds? If a customer simply changes their mind, are you obliged to refund their money? These questions and more are answered in the quick and easy ACCC leaflet *Do businesses have to give refunds?* Copies are available on the ACCC website at [www.accc.gov.au](http://www.accc.gov.au) or by calling the ACCC Infocentre on 1300 302 502.

### UNCONSCIONABLE CONDUCT/FRANCHISING

#### Licence deeds found to be franchise agreements

Synergy in Business (in liquidation) consented to a Federal Court declaration that they sold franchise agreements, not licence deeds, when signing up consultants to promote and sell their small business training and development program the 'Best practice program'.

The ACCC alleged that Synergy specifically attempted to exclude the licence arrangement from being characterised as a franchise by including a clause in the contract and by telling prospective consultants that it wasn't a franchise.

The ACCC believed it was a franchise and by posing as a licensor, Synergy failed to provide franchisees with disclosure information or a reasonable opportunity to obtain independent advice about the licence deeds, as required by the Franchising Code. The court ordered Synergy's directors to carry out their obligations under the code such as providing franchisees with a 'cooling off' period. This outcome illustrates that the code is designed to guarantee procedural fairness in the promotion, sale and life of a franchise agreement.

**MR 002 (29.1.04)**

#### Taking advantage of intellectual disability

South Australia's largest retailer of electrical goods, Radio Rentals and Walker Stores (operating as 'In Rent' through Radio Rentals stores) have been taken to the Federal Court by the ACCC over allegations of unconscionable conduct in their dealings with an intellectually disabled man. Between November 1996 and October 2002, the man entered into 15 rental agreements, two loan agreements and 17 service agreements with Radio Rentals and three rental agreements with Walker Stores. On three occasions the man returned goods to Radio Rentals after substantial rental payments had been made towards them, when the goods could have been bought outright quite soon.

The ACCC alleges the companies entered into the agreements knowing the person had an intellectual disability and could not understand what he had entered into. The ACCC is seeking declarations, injunctions and findings of fact and will then seek compensation for the man.

**MR 266 (12.12.03)**

### Contact the ACCC



**Infocentre:** 1300 302 502



**Website:** [www.accc.gov.au](http://www.accc.gov.au)

Some items in *ACCC briefing* refer to media releases and their dates e.g. MR 12.02.03. These can be found on the ACCC website <[www.accc.gov.au](http://www.accc.gov.au)>. Other reports and documentation are also generally available on the website. Subscribe to *ACCC briefing* by emailing [small.business@accc.gov.au](mailto:small.business@accc.gov.au). For TPA information - ACCC infocentre 1300 302 502.

**Another licensing/franchising matter**

The ACCC received court enforceable undertakings after alleging a business enterprise, involving the application of sprayed polyurethane protective coatings known as 'Armour Linings', contravened the Franchising Code of Conduct. Commonly found in utilities, trucks and vans, Armour Linings were offered for sale by Lawson's Trading as licence and supply agreements. Lawson's claimed the agreements did not constitute a franchise operation.

The ACCC believed the agreements were franchise agreements and that Lawson's had contravened the code in several ways. Lawson's agreed to resolve the matter by ceasing similar conduct in the future, providing appropriate disclosure documents, implementing a trade practices compliance program and providing refunds to some franchisees while helping others resell their franchises.

**MR 005 (4.2.04)**

## CONSUMER AND SMALL BUSINESS PROTECTION

**International spam campaign**

The US Federal Trade Commission (FTC) is leading the campaign to combat spam with 'operation secure your server'. The ACCC, along with 36 other agencies in 26 countries, is engaged in an international effort to reduce the flow of unsolicited commercial email by urging organisations to close 'open relays' and 'open proxies'. Open relays and open proxies are servers that allow any computer in the world to 'bounce' or route email through servers of other organisations, thereby disguising its real origin.

Letters will be sent urging tens of thousands of owner/operators of potentially open relay or open proxy servers to protect themselves from becoming unwitting sources of spam. Australia's anti-spam legislation, to be administered by the Australian Communications Authority (ACA), will come into force on 11 April 2004. The *Spam Act 2003* prohibits sending, or causing to be sent, unsolicited commercial electronic messages that have an Australian link. Courts can impose fines of up to A\$1.1 million per day. The FTC-run campaign demonstrates that international cooperation is going to play an important role in combating spam.

**MR 003 (30.1.04)**

**Patients receive refund over misleading health claims**

The Advanced Medical Institute (AMI) agreed to provide full refunds to more than 160 patients treated for impotency after the Federal Court declared that AMI and its managing director, Mr Vaisman, engaged in misleading or deceptive conduct. The ACCC took action against AMI and Mr Vaisman alleging they had made misleading representations in newspaper advertisements and promotional materials. AMI claimed its impotency treatment would provide guaranteed results, would not require needles, was suitable for men of all ages and had no side effects.

AMI was ordered by the court to publish corrective notices in various newspapers for six weeks and implement a trade practices compliance program. This case reinforces the ACCC's commitment to protecting vulnerable consumers from companies which make unsupportable claims about the services they offer.

**MR 253 (3.12.03)**

**Real estate auction**

Legal proceedings have commenced against Gary Peer & Associates who advertised a property with a price guide of \$600 000 (and later \$650 000). The ACCC alleges that these prices falsely represented the market value of the property, and the price at which the vendors were prepared to sell and had instructed Gary Peer & Associates to sell at. The ACCC further alleges that Gary Peer & Associates did not have reasonable grounds for making the price representations about future matters that it did in these advertisements, and that the conduct was misleading and deceptive. The property was passed in at auction for \$781 000.

The ACCC is seeking declarations and the implementation of a specific trade practices compliance program. A directions hearing is set for 15 March 2004.

**MR 257 (5.12.03)**

**Website promotions**

Companies are reminded to ensure information on their websites is correct after the ACCC detected errors on Toyota Motor Corporation Australia's website. From December 2001 to October 2002, Toyota promoted the Levin Wagon on its website and in brochures as having front and rear power windows as a standard feature when only front power windows were standard.

Toyota detected the error in February 2002, but due to an oversight only corrected part of the website. A consumer alerted Toyota of this oversight in September 2002 and the brochures were amended but the website was not fully amended until the ACCC contacted Toyota. Toyota cooperated with the ACCC during the investigation and as part of a settlement, Toyota will undertake two annual audits of its website and its processes to ensure compliance with the TPA and provide a report to the ACCC.

**MR 008 (4.2.04)**

**Bank to correct fine print advertising**

The Federal Court has ordered the Commonwealth Bank of Australia to publish corrective advertising for its cricket home loan campaign, after finding the advertisements were misleading and deceptive. The original advertisements claimed in bold headlines that there was 'no establishment fee' payable for a home loan, when in fact customers had to either already hold or obtain two or three other bank products to take advantage of the offer.

The Commonwealth Bank will publish corrective advertisements on in-branch posters and television. The orders illustrate that misleading advertising can be costly. An advertiser may have to correct an advertisement at significant cost so it pays to get the message right the first time.

**MR 261 (10.12.03)**

**Egg 'tick' logo withdrawn**

A logo similar to that used by the National Heart Foundation has been withdrawn from use by egg producer, GO Drew, after ACCC concerns it may have misled consumers. GO Drew agreed to stop distribution of Essential Foods Sports Plus+ and Essential Foods Nurture Plus+ eggs with the logo in July 2003 after the ACCC advised that it was similar to the Foundation's tick logo. The company acted promptly to address the issue and will adopt measures to promote better compliance with the Trade Practices Act in future.

**MR 007 (4.2.04)**

**Comparative advertising**

Heatshield Ductair, an Adelaide-based air conditioning ducting manufacturer, is taking corrective action after making misleading comparisons with its competitors' products. Heatshield employed a university-based research group to test the insulation aspects of its flexible ducting against its competitor's products. Research findings were used for print and radio campaigns promoting Heatshield's superior products over its competitors. The ACCC believed these representations were false and misleading.

Heatshield has cooperated with the ACCC to resolve the matter by ceasing the conduct, notifying customers and competitors of the situation and implementing a trade practices compliance program. This case should alert traders that when they make comparison claims against competitors they should ensure that they have a proper basis for such claims and their evaluations are not distorted.

**MR 265 (12.12.03)**

**Direct marketing**

One of Australia's biggest direct marketing companies and the publishers of a popular monthly magazine, *Reader's Digest*, admitted that it demanded payment for unsolicited mail order products from consumers. This follows a lengthy ACCC investigation into many serious complaints about its marketing practices. Consumers complained that Reader's Digest sent unsolicited books, audio and video tapes in the mail then demanded payment. In some cases, consumers paid for goods they did not order under the belief they were required to do so. Some consumers also received unsolicited copies of the monthly magazine, followed by invoices for subscriptions and in some cases demands for payment. In all instances complainants told the ACCC that they neither took out a subscription nor had one been given to them.

After discussions with the ACCC, Reader's Digest promised to implement specific changes and recommendations so they no longer breach the Trade Practices Act. This matter is a warning to all direct marketing companies that the ACCC views demanding payment for unsolicited goods very seriously and will take strong action when confronted with such conduct in the future.

**MR 285 (22.12.03)**

**Gold Coast investment property**

The Federal Court found that Oceana Commercial and Markfair (trading as Investlend) engaged in misleading conduct when they represented that residential units at the Gold Coast would increase in value. However, the conduct of the Commonwealth Bank was not considered unconscionable and the conduct of the lawyers involved in the conveyancing found not to have breached the Trade Practices Act.

The ACCC acted on a complaint received from a couple who bought a unit on the Gold Coast after attending an investment seminar conducted by National Asset Planning Corporation. The ACCC alleged the marketing scheme was 'two-tier' and the parties involved engaged in misleading conduct. ACCC chairman, Graeme Samuel, expressed disappointment at the findings for the bank and the lawyers, but welcomed the court's findings regarding the representations made to potential buyers. The ACCC is still considering the judgment and the reasons for the courts findings.

**MR 278 (18.12.03)**

**Freight business to receive compensation**

Parker Freight Express, a failed Townsville freight business, will receive \$80 000 compensation after the ACCC settled its action against Multigroup Distribution Services. The Federal Court declared that Multigroup, through its former Townsville manager Mr O'Neile, made misleading representations to a prospective line-haul subcontractor.

Mr O'Neile promised Parker Freight work if they started a line-haul business, when in fact Multigroup had no intention of changing its current line-haulers or providing any line-haul contracts to Parker Freight. This result is a reminder to companies to be vigilant in their business dealings to ensure they act in accordance with the Trade Practices Act.

**MR 001 (15.1.04)**

**PRODUCT SAFETY****Children's cosmetics**

The ACCC found 31 children's cosmetics products did not meet mandatory labelling requirements following the latest round of surveys. These products were incorrectly labelled and risked exposing children with allergies to potentially harmful products. Surveys were conducted in various metropolitan and regional centres examining products such as make-up sets, body crayons, face paints and temporary tattoos. Suppliers of products that did not meet the labelling requirements subsequently withdrew and relabelled their products.

Under the Trade Practices Act, it is mandatory for suppliers of cosmetic and toiletry products to correctly list all ingredients or face possible court action by the ACCC. The ACCC conducts random surveys of retail outlets throughout Australia to detect banned or non-compliant products. The withdrawn products are listed in the ACCC media release.

**MR 272 (17.12.03)**

**Rubber giant to settle**

The ACCC accepted court enforceable assurances from Ansell (formerly Pacific Dunlop Limited) that it will not supply household-use natural latex gloves in Australia unless the packaging clearly displays a warning regarding the risk of latex allergy. Ansell also agreed to implement a trade practices compliance program.

Initial proceedings against Ansell by the ACCC sought compensation for a consumer who allegedly developed an allergy to the latex gloves. These proceedings were settled in 2002 between Ansell and the consumer. Proceedings for misleading or deceptive conduct were settled in February 2004. From the time proceedings were instituted, Ansell has shown a commitment to compliance, further satisfying the ACCC's concerns. Other manufacturers of household rubber latex gloves have since followed suit and are labelling their gloves with warnings about latex allergy.

**MR 006 (4.2.04)**

**Hotspot**

Looking for information about product safety? Then check out the November 2003 issue of the *ACCC update* publication, which is solely dedicated to product safety. This one-stop guide is full of helpful tips about compliance with mandatory standards, new developments in product safety standards such as sunglasses, toys and car jacks, banned products, recalls and what happens if you break the law. To order a free copy contact the ACCC Infocentre on 1300 302 502 or download it from the ACCC website at [www.accc.gov.au](http://www.accc.gov.au)

**Loy Yang/AGL**

The ACCC will not contest the Federal Court decision to grant AGL a declaration that allows them to buy a minority interest in Loy Yang power station. The ACCC sought to establish in court that the proposed acquisition could possibly result in a substantial lessening of competition. While the court granted the declaration, it recognised that the ACCC had established that there were real issues for consideration in the matter. In deciding whether to appeal the decision the ACCC took into account the terms of the undertaking imposed by the court as a condition of the grant.

**MR 283 (19.12.03) & 004 (2.2.04)**

**Tasmanian newspaper**

The ACCC will not oppose Rural Press when acquiring Harris and Company, owner of the *Burnie Advocate*. Rural Press and Harris each has an interest in the *Launceston Examiner*. The ACCC believed the proposal would not amount to a substantial lessening of competition in any relevant market. The nature of the market was considered, which indicated there was limited overlap in the geographical areas serviced by the two publications. Rural Press publicly stated their intention to retain both mastheads and separate staff at each publication.

**MR 273 (17.12.03)**

**Perkins allays concerns over Gulf acquisition**

The ACCC accepted assurances from Perkins Shipping regarding access to port facilities at Gove, NT and the maintenance levels of customer service, following the acquisition of Gulf Freight Services. After the ACCC conducted market inquiries, concerns arose about any new entrants to the market, which may potentially compete with Perkins, could be stopped from accessing and using the present wharf facilities and any new wharf facility in the Port of Gove. Market inquiries also revealed some concern of remote communities that services may decline with one operator providing coastal cargo services in the region.

Perkins assurances include steps to publicise its service charter and to establish a dispute resolution procedure involving independent referees and experts where necessary.

**MR 288 (23.12.03)**

**Tabcorp and TAB / UNiTAB and Tab**

The ACCC will not oppose the proposed merger of TABCORP Holdings and TAB Limited and the proposed merger of UNiTAB Limited and TAB Limited. In consideration of the proposed mergers, the ACCC believed that there would be no substantial lessening of competition in the relevant markets.

**MR 275 (18.12.03)**

**Express freight market**

The ACCC believes the proposed acquisition of Star Track Express by Qantas and Australia Post is unlikely to result in a substantial lessening of competition. The ACCC will not oppose the proposed acquisition as the presence of other strong competitors is likely to operate as an effective competitive constraint on the merged entity. In fact, the result is likely to intensify competition in the market.

Qantas and Australia Post are joint owners of Australian Air Express. Australian Air Express and Star Track Express are both involved in the express freight industry.

**MR 279 (19.12.03)**

**Adventure paragliding**

The ACCC alleges that in July 2003 High Adventure, a supplier of Sky Paragliders and accessories in Australia, made it known to Walkerjet, a retailer, that it would not supply Sky Paragliders and/or accessories unless it agreed not to sell or advertise Sky equipment below a specified price. Sky Paragliders is a Czech Republic-based manufacturer and supplies paragliders and paragliding accessories.

A directions' hearing is set for 19 April 2004 in the Federal Court, Melbourne.

**MR 289 (23.12.03)**

**High Court Rural Press decision**

The High Court addressed three key matters when handing down its decision in the Rural Press case:

- unanimously overturned the Full Federal Court decision and found that an arrangement or understanding between Rural Press, Bridge Printing and Waikerie Printing House had the intention to prevent, restrict or limit the supply of newspaper services by Waikerie
- affirmed Full Court decision that the arrangement or understanding had the purpose or effect of substantially lessening competition in the Murray Bridge market
- found that Rural Press and Bridge Printing did not breach the misuse of market power provisions of the TPA, also affirming the Full Court decision.

The ACCC is disappointed that the High Court found that Rural Press did not misuse its market power but is pleased with the decision about arrangements or understandings which substantially lessen competition.

**MR 264 (11.12.03)**

**Fire protection industry—price fixing**

On 12 December 2003 the Federal Court declared by consent a number of companies and individuals had engaged in price fixing, market sharing and/or misleading conduct in making various 'cover price' arrangements with competitors in the fire protection industry. A cover price arrangement is where a competitor agrees to submit a tender price they know is higher than that to be submitted by the company who wants the particular fire protection job.

The ACCC investigation began as a result of the Tyco Group voluntarily approaching the ACCC with information. This matter highlights the importance and effectiveness of the ACCC's leniency policy for companies and individuals who help the ACCC uncover and prosecute this type of collusive cartel conduct. The ACCC has stepped up its activities against cartels and has strongly backed the introduction of criminal sanctions for executives who engage in cartel behaviour.

**MR 281 (19.12.03)**

**Contact the ACCC**



**Infocentre:** 1300 302 502



**Website:** [www.accc.gov.au](http://www.accc.gov.au)

**No genetic testing for life insurance applicants**

The ACCC has granted a two-year extension of Investment & Financial Services Association's (IFSA's) genetic testing policy allowing agreement between life insurers that applicants for life insurance will not be required to undergo genetic testing. IFSA sought re-authorisation of part of its genetic testing policy, which life insurers have been operating under since the ACCC granted authorisation in November 2000.

The ACCC continues to accept that there is a public benefit in life insurers not coercing individuals to undergo genetic testing but considers the agreement is likely to result in some anti-competitive detriment as it prevents life insurers from offering differentiated premiums to consumers. While the ACCC is concerned that the arrangement may have a detrimental effect on competition, it has concluded that the arrangement is likely to result in a net public benefit.

**MR 260 (8.12.03)**

**Towing scheme**

The ACCC will not overturn immunity for the preferred accident towing operator (PATO) scheme. Under the scheme, IAG insurance policyholders receive additional services on condition that they use a preferred towing operator following a motor vehicle accident. The ACCC considers the PATO scheme is likely to result in improvements in service, safety and presentation standards, especially in states and territories where the towing industry is not regulated. Also, there is the potential to reduce costs for IAG insurers, which may lead to lower insurance premiums for consumers.

The ACCC will review the notifications in 12 months and seek further submissions from interested parties.

**MR 276 (18.12.03)**

**Wholesale fees for EFTPOS transactions**

With access reform to the EFTPOS network likely to go ahead, the ACCC authorised a proposal by banks and others to fix the wholesale fees for EFTPOS transactions at zero. In August 2003 the ACCC said it would refuse to authorise the EFTPOS fee. The level of competition between EFTPOS providers was insufficient to ensure the sustained pass-through of cost savings to cardholders; it was unlikely to result in competitive merchant service fees and may disadvantage small businesses.

The Australian Payments Clearing Association (APCA) provided assurances that it is developing an access regime as a priority. In addition, the Reserve Bank of Australia (RBA) made a submission stating they 'would seriously consider, in the interests of promoting efficiency and competition in the Australian payments system, designating the EFTPOS system'. In light of this submission, the ACCC was satisfied that the EFTPOS fee reform is likely to result in a range of benefits to consumers, including lower cardholder transaction fees and improvements in banking services. While the reform is also likely to increase merchant fees, competition will be improved by allowing access for new entrants to the EFTPOS network. This ACCC decision has subsequently been appealed to the Australian Competition Tribunal by the Australian Retailers Association.

**MR 262 (11.12.03)**

**Shopper docket fuel discounts**

After conducting an extensive review of Coles and Woolworths' shopper docket schemes, the ACCC found that competition is encouraged in the fuel market and consumers benefit from lower prices. The ACCC heard claims that these schemes would reduce the number of independents operating in the market but concluded that several factors contributed to this, such as new fuel standards, the trend to larger sites and an anticipated shortfall of petrol in the Asia-Pacific region.

The review also looked at supermarket acquisitions by Coles. Coles has acquired a number of independent supermarkets but the ACCC does not believe a substantial lessening of competition has occurred. However, the ACCC will continue to assess these acquisitions. A report has been issued outlining the ACCC's reasons for the decisions and examines the evolution of the competitiveness of the grocery and petrol sectors. A copy of the report can be viewed via the ACCC website at

[www.accc.gov.au](http://www.accc.gov.au)

**MR 009 (6.2.04)**

**Concession business discounts**

David Jones can now include concession businesses (stores such as David Lawrence and Esprit) in its promotions. Authorisation has been granted to allow concession businesses to participate in promotions such as storewide or department-wide discounts. This allows consumers to take advantage of a wider range of discounts offered by concession businesses located within David Jones stores. Individual concession businesses may still choose not to participate but they will be immune from legal action under the Trade Practices Act if they do.

**MR 277 (18.12.03)**

**Sideshow alley arrangements**

A code of conduct for sideshow operators has been authorised for five years by the ACCC, subject to conditions that advance competition between showmen and will bring benefits to consumers. The Showmen's Guild of Australasia, a trade association for showmen operating in the ACT, NSW, the NT and Queensland, sought authorisation for its code, membership rules and for it to collectively negotiate on behalf of its members with show societies.

The ACCC had concerns with the anti-competitive effects of the code, rules and collective negotiation agreements so a number of conditions were imposed that require the guild to make amendments. The ACCC believes these conditions will increase the potential for genuine competition between showmen and expand the choices for show societies and consumers. The authorisation does not allow the guild to engage in any other type of anti-competitive conduct. Provided these conditions are met, the operation of the guild's code, rules and the ability for it to negotiate collectively is likely to produce some benefits to the public. The code is authorised for five years.

**MR 286 (22.12.03)**

**Contact the ACCC**

**Infocentre:** 1300 302 502



**Website:** [www.accc.gov.au](http://www.accc.gov.au)

**Telstra's proposed line sharing service**

The ACCC has issued a discussion paper calling for submissions on Telstra's proposed access undertaking for its line sharing service. The line sharing service enables two carriers to provide separate services over a single line. For instance, it allows Telstra to supply basic telephone services to a customer while enabling its competitors to provide high-speed data services on the same line.

The undertaking specifies the terms and conditions under which Telstra will provide access to the line sharing service until 31 December 2004. Specifically, it proposes a monthly rental charge of \$15 per service in operation. The ACCC seeks submissions by no later than five weeks from the date on which Telstra makes relevant confidential information reasonably available for industry assessment.

**MR 256 (4.12.03)**

**Pay TV access undertakings**

The ACCC is calling for submissions on Telstra and Foxtel's revised access undertakings for analogue pay TV services by 24 February 2004. The release of a paper outlining the ACCC's preliminary views states that the ACCC's original concerns have been addressed by Telstra and Foxtel. In mid-December 2003, the ACCC requested the undertakings be re-submitted with suggested amendments.

If accepted by the ACCC, the undertakings will determine the terms and conditions on which other service providers can obtain access to Telstra's hybrid-fibre coaxial cable (HFC) network and to Foxtel's analogue set top units (STUs) in the absence of commercial agreement between the parties. This will enable service providers to provide their own analogue pay TV services in competition to Foxtel and Optus.

**MR 267 (12.12.03) & MR 011 (10.2.04)**

**Changes to transmission capacity service declaration**

The ACCC released its draft decision removing regulation of certain aspects of the existing transmission capacity service declaration. The transmission capacity service is a wholesale high bandwidth service (greater than 2Mbps) used for the transmission of voice, data or other communications between points located throughout Australia.

The existing transmission capacity service declaration expires on 31 March 2004 and under the Trade Practices Act the ACCC must complete its review of the declaration before this date. The ACCC expects to release its final report in March 2004.

**MR 287 (23.12.03)**

**Accounting separation provides transparency for Telstra**

The ACCC issued its first round of reports about the accounting separation of Telstra. To provide greater transparency of Telstra's operations, the ACCC is required to report on accounting separation to ensure that Telstra does not unfairly discriminate between access seekers using its network services and its own retail operations. The reports include current costs, imputation testing, and KPIs for non-price terms and conditions. The reports are available in a single document on the ACCC website. In the interests of transparency, the ACCC has also required Telstra to publish the reports on its website.

**MR 284 (22.12.03)**

**Revised access charges for core telco services**

The ACCC released a discussion paper calling for submissions on Telstra's revised access undertakings for core telecommunications services. The undertakings specify the price and some non-price terms and conditions proposed by Telstra for access to the PSTN originating and terminating services, the local carriage service (LCS) and the unconditional local loop service (ULLS) over the next three years.

These services enable Telstra's competitors to provide local, long-distance, international, fixed-to-mobile and mobile-to-fixed calls, as well as certain broadband services. In submitting revised undertakings, Telstra has responded positively to the ACCC's indicative prices for these services, which were announced in October 2003. The charges proposed by Telstra in the revised undertakings appear consistent with the ACCC's position. This means the undertakings are substantially different from those lodged in January. The ACCC seeks submissions by no later than five weeks from the date upon which Telstra makes certain relevant information reasonably available for the assessment of interested parties.

**MR 268 (15.12.03)**

**Stevedoring monitoring report**

According to the ACCC's fifth container stevedoring monitoring report, there has been major change in the Australian stevedoring industry since 1998. The ACCC monitors stevedoring revenues, costs and margins to provide the Australian Government and the community with information on the progress of waterfront reforms at Australia's major container terminals. The ACCC was directed to monitor stevedoring charges when a levy was imposed on stevedores to fund redundancy payments.

The latest report confirms there have been significant productivity improvements since monitoring began, with last year's productivity levels being the highest ever achieved. In the past five years the cost of using stevedoring services has declined in real terms by 18 per cent. A copy of the report can be obtained from the ACCC's Melbourne office on (03) 9290 1800 or Canberra office on (02) 6243 1143.

**MR 258 (5.12.03)**

**Moomba to Sydney pipeline**

Final approval has been issued for the access arrangement proposed by East Australian Pipeline (EAPL) for the Moomba to Sydney Pipeline (MSP). In response to the ACCC's final decision, EAPL submitted a revised access arrangement on 23 October 2003. The revised submission did not fully comply with the amendments required in the decision. As a consequence the ACCC has drafted and approved its own access arrangement, as required under the Gas Code, which came into effect 1 January 2004.

The Federal Minister for Industry, Tourism and Resources decided to revoke coverage between Moomba and Marsden from December 2003 but the MSP mainline between Marsden and Wilton and the regional laterals are to stand. The ACCC considers that the access arrangement (including reference to tariffs) accommodates this partial revocation of coverage. Both the ACCC decision and the minister's coverage decision in relation to MSP, have been appealed to the Australian Competition Tribunal.

**MR 259 (8.12.03)**

**Moomba to Adelaide pipeline**

The Australian Competition Tribunal handed down its decision on its review of the ACCC's tariff determination for gas transportation services on Epic Energy's Moomba to Adelaide Pipeline System (MAPS). The decision will allow Epic benchmark revenues averaging approximately \$54 million per year over five years and a benchmark tariff per gigajoule of \$0.4436 for the first year.

Epic proposed a tariff of \$0.4958 whereas the ACCC determined a tariff of \$0.4052. Epic applied to the Tribunal for review of the ACCC's determination, contending that it should have approved Epic's revised access arrangement of January 2002 rather than drafting and approving its own access arrangement. The initial capital base for the MAPS has been determined at \$369.9 million, compared with the \$360.4 million determined by the ACCC and \$423 million proposed by Epic.

**MR 263 (11.12.03)**

**GasNet appeal for Tribunal review**

The Australian Competition Tribunal handed down its decision on its review of the ACCC's tariff determination for transportation services on GasNet's Victorian natural gas transmission system. The tribunal's judgement will allow GasNet benchmark revenues of approximately \$79 million a year. This compares with benchmark revenues proposed by GasNet averaging \$95 million and the ACCC's determination of \$77 million.

GasNet contended that the ACCC should have approved its revised access arrangement rather than drafting and approving its own. They also contended that the ACCC made errors in the way it determined five aspects of GasNet's capital and non-capital costs.

The ACCC welcomes the clarification provided by the tribunal of the requirements under the gas code and the gas access law. This legislation is still relatively new and there has been little legal precedent available.

**MR 290 (23.12.03)**

**Tasmanian electricity decision**

The ACCC issued a decision on a revenue cap for Tasmania's electricity transmission services, owned and operated by Transend Networks. The decision accommodates a large increase in investment in the transmission network and provides for investment worth about \$56 million on average each year. The decision will increase transmission charges by an average of 9 per cent per annum from 1 January 2004. However, this is less than the 11 per cent sought by Transend.

Three factors drive the price increases:

- higher investment
- revaluing the asset base by the Tasmanian government
- transfer of functions from the system controller to Transend in 2005.

In making its decision the ACCC considered submissions from industry, relevant Tasmanian authorities and other interested parties. The Tasmanian Transmission Network Revenue Cap 2004–2008/09 is available on the ACCC website at [www.accc.gov.au](http://www.accc.gov.au)

**MR 274 (17.12.03)**

**TAS**

The ACCC will be participating in the 2004 Agfest Expo being held on 6, 7 and 8 May 2004. Agfest 2003 was attended by 78 500 patrons with over 760 exhibits. Last year alleged breaches of the Trade Practices Act were brought to our attention and by meeting many patrons we had the opportunity to clarify the ACCC's role and discuss the problems facing smaller markets and communities. This year we will be sharing a site with the Tasmanian Office of Consumer Affairs and Fair Trading.

**QLD**

The ACCC's Brisbane office has prepared presentations on warranties and refunds, advertising, selling and the Trade Practices Act and refusal to deal to assist small businesses obtain a greater understanding on their rights and obligations under the Act. These presentations will be shown to business organisations in various locations throughout Queensland.

**NSW**

In recent weeks, the NSW Small Business Manager has had several complaints from small business owners about manufacturers or distributors who refuse to supply them with goods or services, or would only deal with them subject to certain conditions. In general, businesses may decide for themselves with whom they wish to deal. The Trade Practices Act does not give everybody an absolute right to be supplied, whatever the circumstances. There is no automatic right to be supplied and there is no obligation on a supplier to justify its decision. There are circumstances, however, where refusal to deal may be illegal. If you wish to know your rights regarding this issue, contact the Small Business Manager on (02) 9230 9108.

**SA****Competing Fairly Forum flow on**

The latest Competing Fairly Forum (CFF) is a video presentation entitled *Growing good business relationships*, developed specifically for businesses operating in the horticultural industry.

In December 2003 the Limestone Coast Food Group hosted the CFF roll out in the South East region of South Australia. Following this presentation, representatives from the ACCC were invited to address a January meeting of South Australia's 11 Food Groups. The Food Groups are regionally based business entities, partly funded by the state government to promote regional branding. ACCC representatives addressed the Food Groups' concerns regarding their constitutions and possible trade practices implications. The message is likely to filter down to at least 600 businesses that stand to benefit from the education initiative.

**Regional Consultative Committee**

A Regional Consultative Committee has been formed to review the outreach and education program's activities. The committee will recommend strategies that have the capacity to enhance the program's ability to reach a wider audience and increase the business community's awareness of the law.

The initiative will provide the ACCC with the ability to draw upon the knowledge and experience of the committee's diverse composition and to adapt its communication strategy to meet the needs of the business community.