

Allens: ACCC 2023/24 enforcement priorities

INDUSTRIES IN FOCUS



The ACCC will focus on a number of key industries:

- competition and consumer issues relating to the pricing and supply of essential services, including **telecommunications** and **energy**, particularly in light of rising costs of living;
- competition and pricing issues in **gas markets**, including compliance with the Federal Government's price caps; and
- anti-competitive conduct in **financial services** in the context of inflation and rising interest rates, with a focus on **payment services**.

WHAT HAPPENED IN 2022/23?

- **Launch of inquiry into retail deposit markets:** The ACCC commenced an inquiry into retail deposit markets, focusing on how banks set their interest rates for deposit products.
- **Penalties for NBN advertising:** The Federal Court ordered that telcos pay penalties totalling \$33.5m for making false or misleading representations when promoting NBN speeds.
- **Outcome in telecommunications infrastructure:** The ACCC accepted a court-enforceable undertaking from Telstra following concerns that its registration of radiocommunications sites in low band spectrum would hinder Optus' rollout of its national 5G network.
- **Action against alleged misuse of market power:** The ACCC commenced proceedings against Mastercard.

COMPETITION ENFORCEMENT



- The ACCC will continue to focus on cartel conduct, which remains an enduring priority. In particular, the ACCC will continue to proactively monitor key sectors, including by engaging with industry and the public sector to target cartel risk in procurement.
- There are three civil cartel matters currently before the court, and two criminal cartel matters in which the parties are awaiting sentencing.
- Beyond cartels, the ACCC will also continue to focus on exclusive arrangements by firms with market power which are anti-competitive.

WHAT HAPPENED IN 2022/23?

- **Individuals were sentenced for criminal cartel offences for the first time** in *Vina Money* and *Alkaloids of Australia*.
- **Guilty pleas were entered** in *Bingo* and *Aussie Skips*. The parties are now awaiting sentencing.
- **Outcomes in a number of civil cases were handed down** including *First Class Slate Roofing* and *NQCranes*.
- **Three civil matters were commenced in court**, *ARM Architecture*, *Qteq* and *Swift Networks*.

CONSUMERS & SMALL BUSINESS



The ACCC will focus on:

- manipulative or deceptive advertising practices in connection with **digital services**, including the use of data to exploit consumers, manipulation of online reviews and social media influencers failing to disclose paid promotions;
- detecting and disrupting **scams** and supporting the establishment of the Government's National Anti-Scams Centre;
- investigating high-risk product safety issues for **young children**;
- ensuring industry compliance with **consumer guarantees**, particularly for high-value goods;
- upholding **small business protections** under industry codes of conduct and competition and consumers laws;
- protecting consumers and small businesses against **unfair contract terms**, with penalties to be introduced from 10 November 2023. In anticipation of this, the ACCC is undertaking a review of business terms and conditions across a number of sectors to guide its future approach to enforcement; and
- broadening its **First Nations** engagement work, with a focus on the disproportionate harm that consumer law breaches have on First Nations communities.

WHAT HAPPENED IN 2022/23?

- **Action against online advertising:** Employsure was penalised \$3m for making false and misleading representations to small business customers in its online ads.
- **Social media influencer 'sweep':** The ACCC released findings from its 'sweep' to identify misleading testimonials and endorsements by social media influencers.
- **Unfair contract terms declaration:** The Federal Court declared terms in contracts entered into by Fuji with thousands of small businesses were unfair.
- **Protecting young children:** There were 43 recalls of unsafe children's products, affecting 177,000 items.

REFORMS & ADVOCACY



The ACCC is advocating for:

- legislative reform to introduce codes of conduct to address concerns about the dominance of certain digital platforms;
- an unfair trading practices prohibition;
- making breaches of consumer guarantee obligations illegal; and
- reforms to the merger control regime.

The ACCC is also working with the Federal Government on a range of reforms and policy issues, including developing an ACCC-enforced mandatory code of conduct for gas producers, developing the Government's strategic plan for the payments system, and considering whether non-compete provisions in employment contracts are appropriate.

WHAT HAPPENED IN 2022/23?

- **Penalties introduced for unfair contract terms:** The unfair contract terms regime was amended to prohibit unfair contract terms, introduce penalties and expand the scope of the regime.
- **Increased penalties:** Maximum civil penalties under the CCA and ACL were increased to the greater of \$50 million, three times the value of the benefit obtained or 30% of adjusted turnover.
- **DPSI Report:** The ACCC released its latest report as part of the Digital Platform Services Inquiry, recommending a range of new measures to address harms from digital platforms.

ENVIRONMENT & SUSTAINABILITY



The ACCC has established a new internal taskforce focused on competition, consumer and product safety issues relating to environmental and sustainability claims, which is a broader focus compared to last year. This taskforce will focus on:

- misleading environmental or sustainability claims such as 'environmentally friendly', 'green' or 'sustainable' in relation to consumer goods and services;
- misleading certification claims in relation to consumer goods and services; and
- anti-competitive conduct as part of the transformation to a green economy.

WHAT HAPPENED IN 2022/23?

- **Greenwashing 'sweep':** The ACCC released its findings from its internet 'sweep' of green claims, identifying that 57% of businesses reviewed made concerning claims about environmental credentials.
- **Active investigations into environment-related claims:** The ACCC has several active investigations underway, with more to come following its 'sweep'.
- **Authorisations:** The ACCC is considering a number of authorisations for industry coordination on environmental initiatives.

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