

# ➤ Allens: ACCC 2021 enforcement priorities

## IMPACT OF COVID-19



The ACCC will continue to monitor for competition and consumer law issues relating to the **COVID-19 pandemic**, eg:

- the COVID-19 Enforcement Taskforce will actively monitor promotion and **sales practices**, including by travel and entertainment businesses (in particular, the ACCC has flagged that uncertainty around travel and entertainment restrictions may increase the risk of businesses making **misleading misrepresentations**); and
- the ACCC will continue to monitor prices, costs and profits within the **domestic aviation sector** and will be monitoring the domestic aviation sector more closely for anti-competitive behaviour.

### WHAT HAPPENED IN 2020?

- Authorisations:** The ACCC granted a number of authorisations across a range of industries to enable limited industry coordination in response to the COVID-19 pandemic.
- Enforcement in the aviation sector:** Refunds offered to consumers in relation to cancelled flights.
- Lorna Jane:** The ACCC instituted proceedings for alleged false or misleading claims about Lorna Jane's 'Anti-virus Activewear'.

## INDUSTRIES IN FOCUS



The ACCC will focus on a number of key industries:

- Pricing and selling of **essential services**, particularly in **energy** and **telecommunications**. Retail electricity prices remain a key focus.
- Competition and consumer issues in the **funeral services sector**.
- Competition and consumer issues relating to **digital platforms**, including ongoing studies into 'adtech' and 'apps' markets.
- Consumer issues in the **financial services sector**, particularly **home loans** and **debt collection** practices.
- Competition and consumer law issues in the **commercial construction sector**, especially large public and private projects and conduct affecting small business.

### WHAT HAPPENED IN 2020?

- Financial services:** The ACCC finalised its home loan price inquiry, with recommendations aimed at improving pricing transparency and promoting switching.
- Digital platforms:** The Federal Government introduced a mandatory code of conduct to address bargaining power imbalances between Australian news media businesses and Google and Facebook.

## COMPETITION ENFORCEMENT



- Cartel investigations** remain an enforcement priority with two to three new civil or criminal cases expected in 2021.
- The ACCC is awaiting the release of a number of **important judgments**, including the first case under the reformed **misuse of market power prohibition** (against Tasmanian Ports Corporation).
- The ACCC foreshadowed ongoing scrutiny of **mergers**, and is advocating for reforms to improve how anti-competitive effects are assessed. The ACCC is concerned the current regime is skewed towards clearance and wants a greater emphasis on the risks to competition.

### WHAT HAPPENED IN 2020?

- Cartel conduct:** The ACCC secured its third and final conviction in relation to the 'Roll on, Roll off' international shipping cartel, bringing total penalties to \$83.5 million.
- Pacific National & Aurizon:** The Full Federal Court dismissed the ACCC's appeal in proceedings against Pacific National regarding its acquisition of Aurizon's intermodal terminal. The High Court also dismissed the ACCC's application for special leave to appeal.

## CONSUMERS AND SMALL BUSINESS



- Enforcement in consumer guarantees remains a focus, especially in relation to **high-value goods** such as **motor vehicles** and **caravans**.
- The ACCC will continue its focus on **small business (especially franchising)** to ensure those businesses are receiving the protections guaranteed by competition and fair trading laws.
- The ACCC will continue to enforce the **Dairy Code of Conduct** and the **Horticulture Code of Conduct**.
- The ACCC's key product safety priorities will be **button batteries** and **quad bikes**.
- The ACCC will continue to enforce the **'Big Stick' legislation**, which requires energy retailers to pass on savings to consumers. This legislation came into effect last year.

### WHAT HAPPENED IN 2020?

- Consumer Data Right:** The CDR was launched in the banking sector, allowing consumers to consent to the transfer of their banking data to trusted parties.
- Penalties:** Telstra agreed to pay \$50m for unconscionable conduct in its dealings with vulnerable consumers.
- Consumer enforcement:** The Franchising Code was amended to strengthen protections for franchisees in the automotive sector.

## MARKET STUDIES & ADVOCACY



The ACCC is continuing to conduct market studies across a range of industries, including:

- digital platform services;**
- digital advertising services;**
- retail electricity;**
- wholesale gas;** and
- Murray-Darling Basin water markets.**

The ACCC is advocating for:

- making breach of the **consumer guarantees** illegal;
- improvements to the **regulatory regime for monopoly infrastructure;**
- an **unfair trading practices prohibition;**
- a **national safety provision;** and
- rebalancing the merger regime.**

### WHAT HAPPENED IN 2020?

- Perishable Agricultural Goods Inquiry:** The ACCC finalised its inquiry into perceived power imbalances in the supply chains for perishable agricultural products.
- Home Loans Price Inquiry:** The final report recommended reforms to increase price transparency and customer switching, to be progressed in 2021.
- Northern Australia Insurance Inquiry:** The ACCC finalised its inquiry into home, contents and strata insurance in Northern Australia.

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