

Allens: ACCC 2022/23 enforcement priorities

INDUSTRY IN FOCUS



The ACCC will focus on a number of key industries:

- Competition issues in **financial services**, with a focus on **payment** services.
- Competition and consumer issues in **digital platform** markets, such as payments, search, apps and adtech.
- Pricing and selling of **essential services**, particularly in **energy** and **telecommunications**.

The ACCC will also be monitoring the **government reinsurance pool** to ensure it is working effectively and as intended.

COMPETITION ENFORCEMENT



- The ACCC will focus on **exclusive arrangements** (including MFNs) by firms with market power, especially those that restrict access to goods or services or hamper new entry.
- **Disruptions to global and domestic supply chains** caused by the COVID-19 pandemic will be in focus. The ACCC will work with international counterparts to detect conduct such as price fixing and market sharing.
- **Cartel conduct** remains a priority, with a number of investigations on foot and six cartel matters currently before the Court.

CONSUMERS AND SMALL BUSINESS



- The ACCC will focus on misleading **environmental** claims, especially 'green credentials' in relation to consumer goods and 'carbon neutral' claims in relation to production processes.
- Marketing practices in the **digital economy** will be under scrutiny, eg false scarcity reminders and manipulation of online reviews and search results.
- Enforcement in **consumer guarantees** remains a priority (particularly in relation to **motor vehicles** and **caravans**).
- The ACCC's key product safety focus will be **button batteries** and **children's products**.
- The ACCC will continue to focus on **small business** (especially **agriculture** and **franchising**), including through enforcement of industry codes.

REFORMS & ADVOCACY



The ACCC is advocating for:

- an **unfair trading practices** prohibition;
- making breaches of the **consumer guarantees** illegal;
- a **national safety provision**;
- reforms to the **merger control** regime; and
- legislative reform to address concerns about the dominance of **digital platforms**.

IMPACT OF COVID-19



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

- seek to address any issues being faced by consumers seeking to **redeem vouchers** for cancelled services;
- continue to **work with industry** to ensure a return in consumer confidence, especially in **hard-hit industries** such as travel; and
- continue to monitor the domestic aviation sector to identify any behaviour in the industry that may be **damaging competition**.

WHAT HAPPENED IN 2021/22?

- **Digital platforms:** The ACCC published interim reports in its Digital Platform Services Inquiry, focusing on app marketplaces, browsers and search services and choice screens.
- **Payment services:** The ACCC accepted an undertaking from Visa following concerns that Visa was limiting competition in relation to debit card acceptance through its dealings with large merchants.
- **Energy:** Enforcement action taken against energy retailers for false representations regarding energy plans and breaches of the Electricity Retail Code.

WHAT HAPPENED IN 2021/22?

- **Criminal cartels:** CDPP has dropped its prosecutions against CFMMEU and Citibank, Deutsche Bank and ANZ. Country Care was acquitted by a jury in first defended case.
- **Substantial lessening of competition:** TasPorts admitted to misusing market power. The ACCC has appealed the Federal Court's decision to dismiss its case against NSW Ports.
- **Mergers:** ACCC is investigating Qube's completed acquisition of Newcastle Agri Terminal for potential breaches of merger control laws.

WHAT HAPPENED IN 2021/22?

- **Penalties:** Telstra and AIPE ordered to pay penalties (\$50m and \$153m respectively) for systemic unconscionable conduct.
- **Digital practices:** Proceedings commenced against Google and Facebook for misleading consumers about use of their data.
- **Small business:** Megasave and Jump Swim ordered to pay penalties for making false or misleading representations to franchisees.
- **Consumer guarantees:** The Federal Court found that Mazda misled nine consumers about their consumer rights.

WHAT HAPPENED IN 2021/22?

- **Unfair contract terms:** Proposed amendments to the unfair contract terms regime, including to make unfair terms illegal, are currently before Parliament.
- **Franchising Code:** Amendments to the Franchising Code to strengthen protections for franchisees came into effect.
- **Product safety enforcement:** The ACCC commenced proceedings against Decathlon Australia and Mercedes-Benz Australia for failing to comply with product safety obligations.

WHAT HAPPENED IN 2021/22?

- **Authorisations:** The ACCC granted a number of authorisations in a range of industries to enable limited industry coordination in response to the pandemic.
- **Refunds:** ACCC engaged with industry seeking refunds for consumers for cancelled travel and other events.
- **Health-related claims:** Lorna Jane was ordered to pay \$5m in relation to false or misleading claims about its 'Anti-Virus Activewear.' Mosaic Brands also paid penalties for false or misleading claims regarding its pandemic-related 'Health Essential Products'.

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