

# ➤ ACCC 2019 Enforcement Priorities



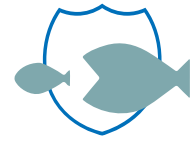
## INDUSTRIES IN FOCUS

The ACCC will focus on a number of key industries:

- Competition issues in the **financial services sector**, including its ongoing market inquiry in relation to foreign exchange services, as well as further market inquiries into the sector.
- Competition and consumer issues in relation to **essential services**, including the **energy** and **telecommunications** industries, particularly in relation to pricing transparency.
- Competition and fair trading issues in **agriculture**, with a focus on unfair contract terms in the viticulture sector.
- Competition issues and unfair business practices in the **commercial construction** sector.

### WHAT HAPPENED IN 2018?

- **Financial services:** Financial Services Competition Branch established. Criminal cartel proceedings launched.
- **Energy:** Retail Electricity Pricing Inquiry concluded.
- **Agriculture:** The Agriculture Unit continued to investigate competition and unfair trading issues.
- **Commercial construction:** The Commercial Construction Unit was established to investigate competition issues in the sector.



## COMPETITION ENFORCEMENT

- **Criminal cartel** investigations continue to be an enforcement priority, with further court action expected to commence this year.
- The ACCC is experimenting with **different investigative approaches**, including establishing project teams to investigate at an early stage whether there are potential competition issues in relation to certain conduct.
- The ACCC expects to launch its first cases in relation to conduct that may contravene the revised **misuse of market power** prohibition as well as the new **concerted practices prohibition**.

### WHAT HAPPENED IN 2018?

- **Record fine:** The Full Federal Court ordered Yazaki to pay \$46 million for cartel conduct – the highest penalty ever recorded in Australia for anti-competitive conduct.
- **Misuse of market power guidelines:** Following the changes to the misuse of market power prohibition in 2017, the ACCC released its final guidelines in 2018.
- **Concerted practices guidelines:** Following the introduction of the new concerted practices prohibition in 2017, the ACCC released its final guidelines in 2018.



## CONSUMER ENFORCEMENT

- The ACCC Chairman, Rod Sims, continues to advocate for **higher consumer law penalties** as a means of deterrence.
- Enforcement priorities include:
  - **customer loyalty schemes;**
  - **consumer guarantee rights**, especially in relation to high-value consumer goods (such as electrical and whitegoods);
  - **advertising practices** on social media platforms;
  - **pricing** in the energy and telecommunications sectors;
  - **franchising issues;**
  - business-to-business **unfair contract terms**; and
  - the **collection and use of consumer data** by digital platforms.
- The ACCC is also advancing work on the **Consumer Data Right** – an important new right to allow consumers to access data.

### WHAT HAPPENED IN 2018?

- **Increased consumer law penalties:** The maximum penalty for contravention of the Australian Consumer Law was increased in 2018 from \$1.1 million to be the greater of (i) \$10 million, or (ii) three times the benefit from the conduct, or (iii) where the benefit cannot be calculated, 10% of annual Australian sales turnover.
- **Higher penalties imposed for breach of consumer laws:** including for misrepresentation of consumer guarantees (\$10 million), billing misconduct (\$10 million) and misleading representations (\$18 million).

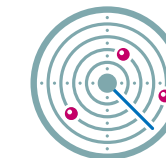


## PRODUCT SAFETY FOCUS

- The ACCC continues to seek law reform to introduce a **prohibition on the sale of unsafe goods**.
- The ACCC has two key product safety priorities, including:
  - ensuring the effectiveness of the **compulsory recall** of vehicles with **Takata airbags**; and
  - improving the **safety of quad bikes**.

### WHAT HAPPENED IN 2018?

- **Takata airbags recall:** A recall notice was issued for Takata airbags, following a safety investigation by the ACCC.
- **Thermomix:** Thermomix was fined more than \$4.6 million for false or misleading representations, including misleading the public in relation to the safety of its kitchen appliances.
- **Quad bikes:** The ACCC proposed changes to improve the safety of quad bikes.



## MARKET STUDIES

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

- **Northern Australia Insurance Inquiry** – insurance premiums;
- **Financial Services** – inquiry into foreign exchange services;
- **Agriculture** – wine grape production sector;
- **Retail Electricity Pricing Inquiry** – electricity affordability;
- **Gas** – price transparency and supply; and
- **Digital Platforms** – competition in media and advertising services markets, including the supply of news content.

### WHAT HAPPENED IN 2018?

- **Financial services:** The ACCC released its final report on its Residential Mortgage Price Inquiry.
- **Digital Platforms Inquiry:** The ACCC released its interim report, with a final report due mid 2019.
- **Agriculture:** The ACCC announced a Wine Grapes Market Study, released its final report on the Dairy Inquiry, and released an update on the Cattle and Beef Market Study.
- **Communications:** The ACCC released its final report on its Communications Sector Market Inquiry.



## ADVOCACY FOCUS

- The ACCC is advocating for:
  - reforms to **unfair contract laws**;
  - prohibitions on the sale of **unsafe goods**;
  - laws against **harsh and unfair conduct**;
  - the adoption of its **recommendations from past market studies**, including improving the codes for wheat ports and dairy farmers, and access to data for independent vehicle repairers;
  - **privatisation**;
  - **constraints on airports**, including proposals for the resolution of disputes;
  - **road reform**; and
  - a tougher stance on **mergers** in concentrated markets.

### WHAT HAPPENED IN 2018?

- **Consumer law reforms:** Significant reforms were made to the Australian Consumer Law, including:
  - increasing consumer law penalties to bring them in line with competition law penalties;
  - providing the ACCC with more powers to investigate unfair contract terms and issue disclosure notices to third parties in product safety cases; and
  - allowing admissions of fact to be relied upon in subsequent court proceedings.