

> Allens: ACCC 2020 enforcement priorities

INDUSTRIES IN FOCUS



The ACCC will focus on a number of key industries:

- > Competition and consumer issues relating to **digital platforms**, including concerns about data collection and use.
- > Pricing and selling of **essential services**, especially in **energy** and **telecommunications**. The ACCC will also monitor compliance with the new energy misconduct laws.
- > Competition issues and potential unfair business practices in the **commercial construction** sector.
- > Competition and consumer issues in the **funeral services** sector, including bundling and pricing.

WHAT HAPPENED IN 2019?

- **Financial services:** ongoing analysis of financial services industry, including two market inquiries.
- **Energy:** default offer introduced.
- **Telecommunications:** scrutiny of speed claims and NBN disconnection representations.

COMPETITION ENFORCEMENT



- > **Cartel investigations** remain an enforcement priority, with at least two further court cases expected this year.
- > The ACCC plans to **streamline** competition investigations, and has foreshadowed the use of injunctions to prevent anti-competitive behavior and consumer detriment.
- > The ACCC is using its new **whistleblower hotline** to detect cartel and anti-competitive conduct.
- > The ACCC is concerned about collusive behavior in **public procurement** and is enhancing its detection capabilities.
- > The ACCC has foreshadowed ongoing scrutiny of **mergers**, and improving how it assesses competition effects.

WHAT HAPPENED IN 2019?

- **Misuse of market power:** first ACCC case under the amended misuse of market power provisions against TasPorts.
- **Concerted practices:** the ACCC accepted an undertaking from roofing contractors.
- **Immunity policy:** the ACCC's Cartel Immunity and Cooperation policy was revised.

CONSUMER ENFORCEMENT



- > Enforcement of consumer guarantees remains a focus, especially in relation to **motor vehicles** and **electrical** and **white goods**.
- > Misleading conduct in relation to the sale and promotion of **food products** is a new priority, including health and nutritional claims, credence claims and country of origin.
- > The ACCC will investigate misleading or deceptive selling practices in **essential services**.
- > The ACCC is continuing to advance the **Consumer Data Right**, to be implemented in banking from July 2020.

WHAT HAPPENED IN 2019?

- **Record penalties:** Volkswagen was fined \$125m for misleading representations. Education provider Empower Institute fined \$26.5m for unconscionable conduct.
- **Continued action:** consumer law enforcement activity by the ACCC included Novartis, Jetstar, Mazda, Bupa, Pandora and ZeniMax.

SMALL BUSINESS



- > The ACCC is continuing its significant focus on the **small business sector**.
- > The ACCC will work closely with the Government's **Franchising Taskforce** to address concerns about power imbalances in the franchising sector.
- > The ACCC is advocating for **reforms** to the unfair contract terms regime, including broadening the scope of the unfair contract terms laws for small business and introducing penalties for breaches.
- > The ACCC will enforce the new **Dairy Code of Conduct** which seeks to address perceived power imbalances between farmers and processors.

WHAT HAPPENED IN 2019?

- **Ultratune:** Ultratune was fined \$2.6m for misleading representations to prospective franchisees (eg about the franchise price) and for Franchising Code of Conduct breaches.
- **Unfair contract terms:** numerous businesses changed small business contracts following ACCC intervention.
- **Geowash:** Geowash (and its directors) were fined regarding their sale and marketing of franchises.

MARKET STUDIES & ADVOCACY



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

- > **Digital platform services** and **digital advertising**;
- > **Northern Australia Insurance Inquiry**;
- > **Murray-Darling Basin water markets**;
- > **Retail Electricity Monitoring** and **wholesale gas**; and
- > **Home loan pricing**.

The ACCC is advocating for:

- > an **unfair trading prohibition**;
- > **merger law** reform; and
- > a **national safety provision**.

WHAT HAPPENED IN 2019?

- **Digital platforms:** the final report and Government response were released with significant and wide-ranging implications across competition, consumer protection, copyright and privacy issues.
- **Concluded inquiries:** the ACCC finalised six inquiries, including the Dairy, Foreign Exchange and Residential Mortgages inquiries.
- **Market studies:** the Wine Grapes study and Customer Loyalty review were finalised.

Allens contacts



Jacqueline Downes
Practice Group Leader
T +61 2 9230 4850
M +61 411 498 505
Jacqueline.Downes@allens.com.au



Fiona Crosbie
Chairman
T +61 2 9230 4383
M +61 404 042 879
Fiona.Crosbie@allens.com.au



Carolyn Oddie
Partner
T +61 2 9230 4203
M +61 404 074 203
Carolyn.Oddie@allens.com.au



Ted Hill
Partner
T +61 3 9613 8588
M +61 411 646 761
Ted.Hill@allens.com.au



John Hedge
Partner
T +61 7 3334 3171
M +61 421 545 794
John.Hedge@allens.com.au



Robert Walker
Partner
T +61 3 9613 8879
M +61 478 527 188
Robert.Walker@allens.com.au



Rosannah Healy
Partner
T +61 3 9613 8421
M +61 411 776 662
Rosannah.Healy@allens.com.au



Richard Lilly
Partner
T +61 8 9488 3805
M +61 412 242 256
Richard.Lilly@allens.com.au



Felicity McMahon
Managing Associate
T +61 2 9230 5242
M +61 450 123 681
Felicity.McMahon@allens.com.au



Anita Thompson
Managing Associate
T +61 2 9230 5981
M +61 439 421 0975
Anita.Thompson@allens.com.au