# **➤** Allens: ACCC 2020 enforcement priorities

## **INDUSTRIES IN FOCUS**



The ACCC will focus on a number of key

- > 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**

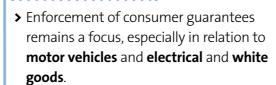


- > Cartel investigations remain an enforcement priority, with at least two further court cases expected this year.
- > The ACCC plans to **streamline** competition investigations, and has foreshadowed the use of injunctions to prevent anticompetitive behavior and consumer
- > The ACCC is using its new whistleblower hotline to detect cartel and anticompetitive 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?

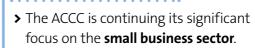
- Misuse of market power: first ACCC case under the amended misuse of market power provisions against TasPorts.
- Concerted practices: the ACCC accepted an undertaking from roofing contractors.
- Immunity policy: the ACCC's Cartel Immunity and Cooperation policy was revised.

### **CONSUMER ENFORCEMENT**



- > 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.

## **SMALL BUSINESS**



- > 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.

## **MARKET STUDIES** & ADVOCACY



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

- > Digital platform services and digital
- > 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?

- 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.

### 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.

### 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
- 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@allens.com.au



**Fiona Crosbie** Chairman T+61 2 9230 4383 M+61 404 042 879



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



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



**Partner** T+61 7 3334 3171 M+61421545794 John.Hedge@allens.com.au



**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+61411776662



**Richard Lilly Partner** T+61 8 9488 3805 M+61412242256 Rosannah.Healy@allens.com.au Richard.Lilly@allens.com.au



Felicity McMahon **Managing Associate** T+61 2 9230 5242 M+61 450 123 681



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