

# > ACCC 2018 Enforcement Priorities



## INDUSTRIES IN FOCUS

The ACCC will investigate conduct in a number of key areas and industries:

- > Competition issues in the **financial services** sector.
- > Competition and consumer issues in the **energy** sector, focusing on issues with the provision of energy as an essential service (including issues identified in the ACCC's electricity and wholesale gas inquiries) and electricity affordability.
- > Competition issues in the **commercial construction** sector.
- > Competition and consumer issues in the **agriculture** sector, focusing on the dairy inquiry, enforcement of the recently revised Horticultural Code of Conduct and analysis of the viticulture industry.



## HARPER, CARTELS & SLC

- > The ACCC will seek to enforce conduct that may contravene the **new misuse of market power** provisions of the Act.
- > The ACCC will also seek to enforce conduct that could contravene the **new concerted practices** provisions.
- > Enforcement action, particularly **criminal cartels**, will remain an enduring priority for the ACCC.
- > Conduct that **substantially lessens competition**, including anti-competitive agreements, will also remain a focus in 2018.



## ONLINE ECONOMY

- > The ACCC will continue to focus on consumer issues in the provision of **broadband services**. This will include actions to address misleading speed claims.
- > With the rise of the 'net economy', the ACCC has stated that 2018 will see it examine issues concerning the use of **digital platforms, algorithms and consumer data**.
- > In particular, there will be a focus on emerging markets and matters identified by the ACCC's **digital platforms** inquiry.



## CONSUMER RIGHTS

- > Following the 2017 New Car Retailing Industry Report, the ACCC will take action on consumer issues in **new car retailing**, particularly responses by retailers and manufacturers to consumer guarantee claims.
- > Large or national traders will be the centre of ACCC action on **consumer guarantees**. The ACCC believes there are systemic issues involving avoidance or misrepresentation.
- > The ACCC will continue to act to ensure better **product safety** outcomes, focusing in 2018 on the online marketplace.



## SMALL BUSINESS

- > The ACCC has stated that it will seek to ensure 'small business receives the protections of industry codes and the **unfair contract terms** law'.
- > There are several unfair contract term investigations underway in the agriculture and commercial construction sectors that may result in enforcement action in 2018.
- > The practices of **large or national franchisors** regulated by the Franchising Code of Conduct will be examined in 2018.

### What happened in 2017?

- **Financial services:** The ACCC set up a dedicated Financial Services Unit and commenced an inquiry into residential mortgage products.
- **Agriculture:** The ACCC finalised a market study into the cattle and beef industry and released the draft report for the dairy inquiry.
- **Energy:** The ACCC focused on energy affordability through the Retail Electricity Pricing Inquiry and the Gas Inquiry 2017-2020 Interim Report.
- **Commercial construction:** The ACCC established a Commercial Construction Unit.

### What happened in 2017?

- **Substantial lessening of competition:** The ACCC established an SLC Unit to focus on investigations arising under the new law.
- **Cartels & anti-competitive agreements:** The ACCC's first criminal cartel action resulted in a \$25 million penalty. Cartel proceedings were recently commenced against Country Care and individuals.
- **Misuse of market power & concerted practices:** Following introduction of the new misuse of market power and concerted practices provisions, the ACCC released interim guidelines on these provisions.

### What happened in 2017?

- **Digital platforms:** In December, the Federal Government directed the ACCC to commence an inquiry into digital platforms.
- **Broadband speeds:** 2017 saw a suite of ACCC action in this area, including: the release of a report into the communications market, an inquiry into NBN wholesale service standards, and the launch of a program to measure and compare broadband speeds. Broadband retailers Telstra, TPG and Optus provided court-enforceable undertakings to the ACCC offering to compensate consumers for slow NBN speeds.

### What happened in 2017?

- **New car retailing:** In December, the ACCC released the final report from its 18-month market study into Australia's new car retailing industry. The report recommended several reforms which would require industry-led change and possibly additional regulation.
- **Product safety & consumer guarantees:** Proceedings were instituted against Thermomix for misleading consumers about their consumer guarantee rights in relation to a recall. ACCC action resulted in penalties and fines for several contravening retailers.

### What happened in 2017?

- **Franchising:** A number of national franchisors were fined or paid penalties in 2017, including Pastacup, Ultra Tune and Domino's.
- **Unfair Contract Terms:** In November 2017, the ACCC noted in a media release that it is 'continuing to educate business and take enforcement action' under the unfair contract terms regime to protect small businesses. The ACCC succeeded in court action against JJ Richards & Sons and instituted proceedings against Servcorp. A report released in December put airlines on notice about the potential for some terms to amount to unfair contract terms.