

## Article Information

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# Competition and Consumer Alert - Business beware: ACCC releases 2015 priorities

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*The ACCC has just released its Compliance and Enforcement Policy for 2015. The Policy contains priorities and areas of activity which the ACCC will emphasise when undertaking compliance and enforcement. It is clear from past experience that the ACCC 'walks the talk' when it comes to its areas of focus.*

### Enduring priorities

There are certain specific areas that are considered "enduring priorities" for the ACCC. That is, these areas are integral to the enforcement functions of the ACCC.

#### *Cartel Conduct*

The ACCC currently has about 12 in depth cartel investigations underway, and has established a new group dedicated to investigating serious cartel conduct, working closely with the Commonwealth DPP. This year, the ACCC will focus on cartel activity in government procurement.

#### *Anti-competitive agreements*

During the course of 2014, a number of anti-competitive matters received attention. There were proceedings concerning Cement Australia as well as those relating to Flight Centre. Penalties are due to be imposed in the former and an appeal decision expected in the latter. There will also be a hearing of the case against the CFMEU in relation to alleged secondary boycott activity.

The ACCC has approximately 30 in depth investigations underway in relation to anti-competitive behaviour. We can expect further proceedings issued this year.

#### *Misuse of market power*

The ACCC acknowledges that misuse of market power cases are difficult, given the resources they require to litigate and because the businesses involved are very well-resourced. However, it remains an area of intense focus. There are approximately 10 in depth investigations underway into alleged misuse of market power.

#### *Product Safety*

The ACCC has indicated that product safety is a long-term priority. It has warned businesses which source finished goods from countries with lower production costs to ensure they are confident about the quality of the goods, otherwise they face possibly huge recall and other costs, including damages claims.

### 2015 Priorities

#### *Medical and Health*

A new priority area is the medical and health sector. In the area of competition, focus will be on complaints about attempts

to limit access to products, patients, procedures or facilities. The ACCC has recently commenced proceedings in this regard against the Little Company of Mary, in which it is alleged the company imposed anti-competitive conditions on medical practitioners working in the company's Wagga Wagga hospital. A range of consumer issues including unconscionable and misleading or deceptive conduct are also being investigated in this sector.

### *Truth in Advertising*

There will be ongoing scrutiny of advertising claims. This is likely to include credence claims, an area of significant activity for the ACCC in 2014. ACCC Chairman, Rod Sims, has emphasised the need to ensure that big business is not misleading consumers in its advertising, particularly in ways where the consumer is unaware of the falsity of claims made.

### *Online*

The online market remains a focus for 2015. It could be expected that there will be ongoing focus on drip pricing and false testimonials, which were of interest in 2014.

### *Industry Codes*

Given the recent changes to the Franchising Code of Conduct, which provide the ACCC with the power to:

- issue infringement notices where the ACCC has reason to believe there has been a contravention of the Code
- seek penalties of up to \$51,000 from the Court for serious breaches of the Code

franchisors should expect a lot of activity in this area.

There will also be a focus on the introduction of the Grocery Sector Code of Conduct.

### *Highly Concentrated Sectors*

In 2015, as in previous years, the ACCC will be seeking compliance and enforcing competition and consumer issues in highly concentrated sectors. That means that those in the supermarkets and fuel sectors can expect to receive ongoing attention from the Commission.

### *Scams*

The ACCC has indicated its ongoing collaboration with other regulators to disrupt scams. It is committed to disrupting dating and romance relationship scams.

### *Vulnerable consumers*

The ACCC has flagged that it will continue to be vigilant with respect to vulnerable consumers. They include indigenous consumers, older consumers and those newly arrived in Australia.

### *Carbon Tax*

Given the repeal of the carbon tax, the ACCC will continue to monitor pricing and any cost consequences to consumers. It is due to report in April and July on this area.

## **Regulation**

With respect to regulatory issues, the ACCC will continue its roles relating to the various infrastructure sectors. Of particular focus is the communications industry and the ACCC will scrutinise the roll-out of the NBN for any competition issues.

The ACCC has been asked to review water charge rules, which regulate charges for water infrastructure, planning and management. It intends to carry out extensive public consultation in so reviewing.

## **Summary**

The ACCC's Compliance and Enforcement Policy for 2015 provides some valuable insight for businesses. Whilst the ACCC will continue to evaluate specific types of anticompetitive conduct and misleading conduct, the Policy informs businesses as to areas of activity for compliance and enforcement. Whilst some priorities are industry specific, there are a number of areas that businesses should be vigilant in ensuring compliance.

We know from past experience that the ACCC takes its yearly priorities into serious consideration when determining what

enforcement action it will take. Businesses should take heed, be proactive and take steps to ensure they aren't on the receiving end of the ACCC's attention.

For more information on the ACCC's priorities for 2015, contact [Partner, Anne Freeman](#) or another member of our [Competition and Consumer team](#).