

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ECONOMICS
REVIEW OF THE ACCC ANNUAL REPORT 2019

ACCC01QON:

CHAIR: ... What is the volume of complaints related to travel? No doubt it's significant. I sent about 30 on Flight Centre alone to you, as you know.

Mr Sims: Multiply that by all the MPs and you come up with a starting position!

Ms Court: I don't know if Mr Greiss has the figures.

Mr Greiss: We've had over 10,000 complaints in relation to travel providers alone and issues relating to cancelled travel.

CHAIR: Over 10,000?

Mr Sims: Yes. We can take it on notice and give you the details of those.

Mr Gregson: Chair, I would just emphasise that, as you point out, the contracts and the circumstances are often quite different, so there are complications there. Of course, we can't interfere with contracts. But the further point I'd just note is that there have been schemes previously—state based schemes—who have had jurisdiction for travel agents. They have changed over the last few years. Worth bearing in mind as well is looking at the deregulation that has occurred with some of those schemes in the past, and that would be a useful inquiry. They're state based.

CHAIR: Understood. Can I also get a breakdown of the number of domestic complaints in comparison to international, because, of course, a lot of the people who are making international bookings may not have been able to exercise consumer rights under Australian law, as I'm sure you're familiar with. I'm mindful of time. There are a lot of things that committee members want to ask, including me.

Answer:

The ACCC has received 23 651 complaints related to travel issues during the period 1 March 2020 to 23 October 2020. Due to the volume of complaints and the way the data is stored, separating the number of international travel complaints from the number of domestic travel complaints would cause an unreasonable diversion of the Australian Competition and Consumer Commission's resources.

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ACCC02QON:

Just going off COVID-19 for a moment—we can talk about your speech to the Press Club and everything else—if you had a bank, for instance, that was holding people's money and they were offering to allow people to use their money held in a bank for an internal product but wouldn't allow you to use your money for an external product, would that be considered a competition issue by the ACCC?

Mr Sims: I'm not completely sure.

Ms Court: Yes, I think so. We might need more information.

CHAIR: I'm raising this because I'm raising a comparable example, which is where we have super funds that allow you to buy their products in a competitive environment from your super but they won't allow you to buy other people's like products, so there's no choice. Would that be considered a competition issue?

Mr Sims: I will look to my left or my right.

Mr Gregson: Again we'd have to look at the circumstances, but it's possible that, if you're effectively leveraging off your position and power in one market to gain access in another, that could raise issues. But we would really need to look at the circumstances.

CHAIR: Okay. What I might do is just give you a copy. Are you following our committee's inquiry into major banks and other financial institutions?

Mr Sims: To be honest, only to some extent. I say that keeping in mind that we deal with every sector of the economy except the finance sector for consumer issues. We are involved in the finance sector for competition issues, but we deal with absolutely everything else.

CHAIR: I'm going to give you a sample of responses from super funds—most of them are industry, but some are retail as well—where they will allow consumers to buy products from themselves but when a comparable product is available from an external party, particularly in the area of financial advice, they deny access for the use of their super, including platforms.

Mr Wilson has provided the following responses from superannuation funds for this question:

- [UNI99QW](#)
- [AS106QW](#)
- [CBUS102QW](#)
- [EQ99QW](#)
- [MED99QW](#)
- [BT132QW](#)

Answer:

Under section 46 of the Competition and Consumer Act 2010 (CCA), a business with a substantial degree of power in a market is not allowed to engage in conduct that has the purpose, effect or likely effect of substantially lessening competition in a market. This behaviour is referred to as misuse of market power.

While the ACCC has not reached a concluded view in relation to whether any of the superannuation funds identified in the materials provided by the Committee has a substantial degree of market power, the ACCC notes that the Australian superannuation industry has low market concentration, with the top four superannuation funds accounting for less than 20% of industry assets. The ACCC considers market concentration as part of its overall assessment of whether a particular business has market power. Where there is a market with low concentration, it is unlikely that any one particular business has market power. Nonetheless, we acknowledge that a range of other factors affect the degree of market power held by superannuation funds, so have considered this question on the basis that one or more of the funds may have a substantial degree of market power.

The ACCC considers that, on the information available, even if a particular fund has a substantial degree of market power, a decision by that fund to limit a customer's ability to use their superannuation funds to pay for financial advice from a third party adviser is unlikely to substantially lessen competition in any market. The ACCC notes that any restriction imposed on customers' use of their superannuation funds would not prevent customers using alternative funds to pay for financial advice from other financial advice providers, and absent further information, accordingly a substantial lessening of competition is not apparent.

The CCA prohibits anti-competitive contracts, arrangements, understandings or concerted practices that have the purpose, effect or likely effect of substantially lessening competition in a market, as well as cartel conduct between competitors. However, the issue presented relates to individual decisions of respective superannuation funds and does not suggest any form of anti-competitive contract, arrangement, understanding or concerted practice between them.

The ACCC has not received any consumer complaints in relation to the issue presented.

As part of the ACCC's broader remit, the ACCC assesses allegations of anti-competitive conduct across the financial services sector and is also working on market studies relating to competition issues in the financial services sector at the direction of the Treasurer. The ACCC appreciates the opportunity to respond to the question raised and will continue to consider potential competition issues in the superannuation industry.

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ACCC03QON:

Ms MURPHY: ... Commissioner Court, you talked about the increase in scams at the start. As my notes indicate—and I'm not trying to verbal you—the biggest issue is scams related to the early release of super scheme, and that it has been a very significant increase. I was wondering, by 'very significant' what are the numbers or percentages, and are you able to say the sort of money that has been involved, the types of those scams and how we are looking at trying to shut them down if that's possible?

Ms Court: You may not be verballing me, but I might have been slightly loose with my language. I wouldn't necessarily say that the super scams are the biggest increase. I was talking about the increase in COVID related scams...

If you would like the actual figures, I'd probably have to pass to Mr Grimwade—

Mr Grimwade: I'll probably take that on notice.

Ms Court: who will take it on notice, in the interest of time.

Ms MURPHY: I'm happy for you to take it on notice.

Answer:

Overall scams

- Between 1 January 2019 and 31 December 2019, Scamwatch received 167 795 reports with \$142 895 772 in losses.
- Year to date, as of 29 October 2020, the number of reports received by Scamwatch has exceeded that for the entirety of 2019, with 172 464 reports. This projects to an approximate figure of 208 000 reports by the end of 2020 (an approximate 24% increase compared with 2019).
- Total reported losses year to date to 29 October 2020 are \$132 148 660, projecting to an approximate figure of \$159m by the end of the year (representing an approximate 12% increase compared with 2019).

COVID-19 scams

- Year to date as of 26 October 2020, Scamwatch has received 4863 Scamwatch reports mentioning COVID-19 or the coronavirus, with a total of \$5 827 288 in reported losses.
- There were a large variety of scams mentioning COVID-19. Prominent examples include:
 - a variety of campaigns impersonating the government requesting personal details to receive various grants and subsidies,
 - malicious text messages purporting to provide coronavirus guidance but linking to websites hosting malware, and

- impersonations of private companies, allegedly offering discounts or relief but in reality phishing for personal or financial details, including credit card information.
- COVID-19 has also affected the relative prevalence of various scam types that do not explicitly mention COVID-19. For example:
 - Online shopping scams have increased; particularly with regard to the sale of pets ('puppy scams') and, earlier in the year, 'personal protective equipment' such as masks and gloves.
 - Accommodation or rental scams also increased, relying on potential renters' inability to view the property.

Types of superannuation scam and statistics

- In 2019, Scamwatch received 275 reports mentioning the words 'superannuation', 'super annuation', 'super-annuation', 'super fund', 'superfund' or 'SMSF', with more than \$6.3m in losses.
- In 2020, to 29 October 2020, Scamwatch received 1181 reports (an increase of more than 323% compared with 2019) mentioning the same words described above. However, reported losses in 2020 to 29 October 2020 total \$2.059m (a reduction of 67% compared with 2019).
- Loss figures in relation to superannuation scams are not necessarily instructive; \$2.8million of the 2019 losses were from a single romance scam in which the scammer convinced the victim to establish a self-managed super fund (SMSF), using this as a mechanism to transfer the victim's funds into their own investments. With the exception of dating and romance or investment scams, most superannuation scams are aimed at stealing information or stealthily accessing people's superannuation without their knowledge.
- Scams involving superannuation in 2020 are not necessarily related to the early release scheme, and we have received a variety of different reports. The main types of superannuation related scam reports we have received in 2020 are:
 - Fake Coles/Woolworths vouchers purporting to provide up to \$300 of groceries for free to support people during COVID, if victims provide personal details, including their superannuation.
 - Cold calls, in some cases implying the caller is from the government, asking for people's superannuation details for a number of reasons including ensuring that they were not 'locked out from their super under the new rules' .
 - Text messages stating that the recipient's request for early access superannuation release had been granted, or that a withdrawal had been made. All of these reports appear to have been legitimate communications from super funds in relation to fraudulent attempts to access people's superannuation. The recipient of the text was not necessarily the person who owned the super funds which the scammer was trying to access, as a part of the fraud in some cases included the changing of the victim's mobile phone notification number.
 - Romance scam and investment scams involving the scammer convincing the victim to transfer their superannuation, sometimes via a self-managed super fund.

How the Australian government is trying to shut down scams

- Throughout COVID-19, several taskforces and working groups have been working on investigating and preventing fraud against the Commonwealth. The ACCC has published a [media release](#) on Superannuation scams and developed and distributed a [superannuation early-access scams fact sheet](#) after consultation with the Australian Taxation Office, Services Australia, Australian Securities and Investments Commission, Australian Prudential Regulation Agency and several banks.
- The Australian Taxation Office and Australian Federal Police are also investigating instances of fraud affecting Early Access Super Scheme.

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ACCC04QON:

Ms MURPHY: You can take any of this on notice: with the early release of super scheme, are you seeing the scams are coming predominantly from overseas, as you were talking about, or are you seeing scams in relation to that scheme coming from domestic scammers? The more we say 'scammer', the less it makes sense!

Ms Court: Of course, it's quite often hard to know where a scam originates from. It's very hard to know whether the scammer is sitting in the Adelaide suburbs or sitting in the Bulgarian suburbs. What we know is that a consumer reports through to us: 'I have lost X amount of money,' or, 'My super has been taken out without my knowledge; who's going to fix it?' or, 'What is someone going to do about that?' Again, perhaps we could take that on notice if we have that information, but I'm not sure that we do.

Answer:

The reports made to Scamwatch do not allow the ACCC to identify whether the scammers targeting the early release superannuation scheme are based domestically or overseas.

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ACCC05QON:

Ms MURPHY: This is more like eBay or other websites—

Mr Sims: There could be a range of sites.

Ms MURPHY: saying, 'We'll pay you for your identity.' So I was wondering whether, in terms of the scams that you've been alerted to, that was one of the components. I'd be interested in that, and, again, you can back to me on that.

Ms Court: Again, perhaps we can that on notice. I'm not aware of that. But certainly eBay, for example, is one of the platforms we have worked with very closely in relation to trying to make sure that they have the triggers and the responsibilities to remove those kinds of advertisements, for example, where we think it might be warranted because of the scam activity on them.

Answer:

The ACCC has not received any Scamwatch reports relating to instances of individuals selling their own identities. While Scamwatch occasionally receives reports of stolen or hacked identity documents, including some belonging to Australians, being available for purchase on Darknet marketplaces, we are not aware of offers to pay individuals for identity information.

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ACCC06QON:

Dr MULINO: ... I want to ask you a couple of questions about the final report of the ACCC digital platforms inquiry, firstly, which was provided to the government in June 2019 and published in July 2019. Did staff of the then Department of Communications and the Arts seek a briefing from the ACCC around the time that report was finalised and published?

Mr Sims: I'm certain that we gave briefings to the department of communications and we gave briefings to the Department of Treasury and the Attorney-General's Department when the report was out. As soon as we were able to, because obviously we have to have the thing released by the Treasurer. Yes.

Dr MULINO: Great. Can you take on notice the timing of any briefings you provided to the Department of Communications and the Arts and other departments.

Mr Sims: Happy to take that on notice.

Answer:

The final report of the ACCC's Digital Platforms Inquiry was released on 26 July 2019.

ACCC Chair and/or staff from the ACCC attended meetings with the following departments between 1 May 2019 and 31 July 2019:

- Department of Communications and the Arts
 - Thursday 16 May 2019
 - Monday 20 May 2019
 - Thursday 23 May 2019
 - Tuesday 28 May 2019
 - Monday 3 July 2019

- Australian Communications and Media Authority
 - Friday 3 May 2019
 - Thursday 9 May 2019
 - Monday 20 May 2019
 - Monday 27 May 2019

- Department of the Treasury
 - Wednesday 8 May 2019
 - Thursday 16 May 2019

- Thursday 23 May 2019 (Department of Prime Minister and Cabinet also attending)
- Thursday 30 May 2019
- Monday 17 June 2019

- Department of the Prime Minister and Cabinet
 - Thursday 23 May 2019 (Department of Treasury also attending)
 - Tuesday 28 May 2019
 - Monday 3 July 2020
 - Wednesday 19 July 2020

- Attorney-General's Department
 - Thursday 30 April 2019
 - Tuesday 28 May 2019

- Office of the Australian Information Commissioner
 - Friday 24 May 2019

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ACCC07QON:

Dr MULINO: At the inquiry into lessons to be learned in relation to the Australian bushfire season 2019-20 on 12 August, Senator Ayres referred to a finding of the final report of the ACCC in that digital platforms inquiry that newspaper closures had left 21 local government areas without coverage from a single newspaper. The department was asked to provide on notice a list of local government areas that don't have any local news capability, which they did take on notice. In their written response, they didn't provide a list. What they provided in answer to that question was that the ACCC has not published a list of these local government areas. This issue was taken up again this week in estimates. Have staff from the department, which obviously has a different name now, the Department of Infrastructure, Transport, Regional Development and Communications, contacted the ACCC this week to obtain that list?

Mr Sims: I don't know the answer to that.

Mr Gregson: I can assist you again, Dr Mulino. We're familiar with those inquiries and questions made in other forums. Yes, we have had contact with the department on those. The position that we have on that is very much the one I mentioned before. That material was obtained under compulsory notices. We're not in a position to share that, given that we didn't reference that material in our public report. Unfortunately that's a situation that we're not able to assist with. It's actually a criminal offence to provide that material.

Dr MULINO: So you're not in a position to release information in relation to the 21 local government areas?

Mr Gregson: No. But what I would note if it helps is that that has moved in terms of the facts as well. We do note that there is information on the public record elsewhere through various sources that might assist. It's not as if there isn't material out there giving similar insights.

Dr MULINO: Could you draw this committee's attention to that information?

Mr Gregson: There are various sources and it involves putting them together. There are a couple of commercial sites that do provide some of that information. Perhaps we can assist offline and give you that direction. Of course, we don't promote or endorse particular sites, but we might be able to assist in giving insights about how you can get that same information.

Dr MULINO: I fully understand that, when information is provided to the ACCC on a certain basis, that will often mean that it can't be provided publicly but obviously this is a matter of some public policy importance.

Mr Gregson: I very much understand.

Dr MULINO: There would be a range of committees of the parliament where it would be very useful to follow up with the ACCC to understand how much we might be able to gain a better appreciation of this based upon whatever information it might be that you can disclose publicly or whatever information other sources have disclosed publicly.

Mr Gregson: Understood.

Answer:

The ACCC Digital Platforms Inquiry Final Report, released in July 2019, included some research tracking the closure of local and regional print and print/online newspapers from 2007-2008 to 2017-2018. This research estimated that closures of publications during this period left 21 local government areas without coverage by such a publication, including 16 local government areas in regional Australia.

The data underlying this research was collected through the issue of notices to commercial news publishers under section 95ZK of the *Competition and Consumer Act 2010*. Due to the strict confidentiality requirements applying to information collected through section 95ZK notices, we did not include information in the report identifying the specific local government areas affected. These strict confidentiality requirements have also prevented the ACCC from sharing this information with external parties who have requested it.

We note that there have been many more local and regional newspaper closures in the two years since the end of the period covered in this DPI research, as well as a small number of new local newspapers opening. A number of newspapers and the Public Interest Journalism Institute have reported on this at various times.

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ACCC08QON:

Mr SIMMONDS: Can you give us a preview of what things you might tackle in the future. What are the key product safety issues you are getting complaints about from parents and families?

Mr Sims: My guess is the main ones we want to pick up will be following up on the priorities in that document.

Ms Court: I don't have the current trends in complaints. One of the big challenges in product safety—and you've already alluded to it, Mr Sims—is that so many of these products are coming in from overseas. In a similar way to what I outlined earlier, we are doing a lot of work on scams. We are working with the platforms in relation to having them promptly identify products that are being sold on the platform that may have a safety concern and getting those things removed immediately.

Mr SIMMONDS: Beyond current safety priorities, what are the other products that are attracting complaints? Would you take it on notice.

Ms Court: Yes.

Answer:

The ACCC Infocentre receives thousands of reports each year from members of the public raising safety concerns about a broad variety of product types, categories, and potential hazards. In 2020, the product categories receiving the most reports include motor vehicles, household appliances, toys and children's equipment, and cosmetics. We apply risk-based assessment processes to all safety reports and intelligence received, which enable us to take proportionate action when a consumer product presents a safety risk to consumers.

We work closely with specialist regulators, in particular of vehicles and electrical goods, to share data about emerging issues that may fall within the scope of other jurisdictions. The high number of reports received about motor vehicles reflects the growing awareness by the public about the Takata airbag recalls.

We apply a risk-based approach to the surveillance of toys, children's equipment, and cosmetics to ensure businesses are not selling consumer products that are banned or fail to meet relevant mandatory standards. We ensure non-compliant and unsafe consumer products are removed from the Australian marketplace.