

Senate Select Committee on Superannuation and Financial Services

Main Inquiry Reference (a) + (c)

Submission No. 92

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13 December 2000

Ms Sue Morton
Select Committee on Superannuation and Financial Services
Department of the Senate
Parliament House
CANBERRA

Dear Ms Morton,

Please find enclosed additional information from the Australian Competition and Consumer Commission (the Commission) as requested by the Senate Select Committee on Superannuation and Financial Services (the Committee).

We have also included two reports that have recently been released by the Commission that may be of interest to the Committee:

- *Report to the Australian Senate on anti-competitive and other practices by health funds and providers in relation to private health insurance; and*
- *Debit and credit card schemes in Australia: a study of interchange fees and access (in conjunction with the Reserve Bank of Australia).*

Copies of the Commission's submissions to the Financial System Inquiry (the Wallis inquiry) have been e-mailed to the Committee secretariat.

I hope these materials will be of assistance.

Yours sincerely

David Smith
A/g Chief Executive Officer



not attached with submission - see exhibits list

Addendum to Allan Asher's notes

Following the Commission's appearance before the Committee, the Commission has been involved in three additional matters that may be of interest.

American Express In November 2000 the Australian Competition and Consumer Commission required American Express to write to its affected customers clarifying its recent offer of fee free credit cards after a number of consumer complaints.

The complaints concerned a recent American Express offer to consumers of a 'no annual fee' Blue American Express credit card in which the conditions of the offer also included, in the 'fine print', the conditions that an annual fee could be charged in the first year or after the first year.

Medibank Private In October 2000 the Commission instituted proceedings against Medibank Private Limited in the Federal Court, Melbourne, alleging false, misleading and deceptive advertising of its health insurance products. The alleged conduct was in relation to two advertising campaigns. The first campaign was about the timing of rate increases and the second was in relation to the waiver of waiting periods for new members. In the second campaign, it is alleged that Medibank failed to disclose conditions and limitations to the offer.

National Australia Bank Ltd In November 2000 the Commission instituted proceedings in the Federal Court alleging unconscionable conduct by National Australia Bank Limited (NAB).

The Commission alleges that NAB contravened the unconscionable conduct provisions of the Act in relation to obtaining personal guarantees and indemnities for \$200,000 from a Tasmanian woman as security for a business loan to a company of which the woman's husband was a director. At the time the personal guarantees were executed, the woman's husband was seriously incapacitated. The wife had no involvement with the day to day running of the company.

Following the subsequent financial failure of the company, NAB on at least four occasions demanded that the woman and her husband re-pay NAB the monies owed to the bank by the failed company on the basis of the personal guarantees previously executed by the wife. The Commission alleges that in response to NAB's payment demands, the couple sold the family home, the entire proceeds of which were recovered by the bank. The ACCC further alleges that NAB is improperly withholding thousands of dollars from the sale of the home.

Additional information for the Senate Select Committee on Superannuation and Financial Services

These notes were prepared for Allan Asher (then Deputy Chair ACCC) to assist him in his oral evidence to the Senate Select Committee on Superannuation and Financial Services on Tuesday 17 October, 3.30pm. Allan Asher was asked by the Committee to provide a copy.

Background

On 22 September 1999, the Senate Select Committee on Financial Services and Superannuation (the Committee) was given a reference to inquire into various aspects of superannuation and financial services.

The Committee has broad terms of reference (at the front of this folder), but is only seeking the input from the Commission in relation to Term (2)(a):

‘prudential supervision and consumer protection for superannuation, banking and financial services;’

The Commission did not provide a submission, but has subsequently been asked to give oral evidence about its experiences in consumer protection in financial services due to issues raised in several of the submissions.

The Committee has provided some points for consideration by the Commission as follows:

1. Issues raised in evidence to the inquiry;

- regulatory gaps and overlaps that cause confusion;
- possible need for a ‘one stop shop’ or central inquiry point so aggrieved consumers can be referred to the correct agency;
- adequacy of resources for consumer protection;

2. Data requested on the ACCC’s performance in enforcing the provisions of the Trade Practices Act (TPA);

- data, by year in the last 5 years, on the number of cases initiated and completed, number of complaints, number of investors affected, amount of assets of members, result of the regulator’s actions where an individual:
 - complained about a superannuation, banking or financial services company failing to tell customers/ consumers/ policyholders/ members the correct information about their interest; or
 - alleges that a company breached the relevant consumer protection sections of the TPA in relation to superannuation, banking and financial services; and

3. Other issues;

- potential impact of choice of superannuation fund; and
- any issues the Commission may wish to raise with the Committee.

1. Issues raised in evidence to the inquiry

Regulatory gaps and overlaps that cause confusion

Finance Sector Reforms post Wallis

Following the implementation of the new regime for consumer protection in financial services on 1 July 1998, the Commission has observed many gaps and overlaps and has had to manage often frustrated consumers to find the correct body to help them with their complaint.

The Financial System Inquiry (FSI) in 1997 recommended that the Commission should be retained as an economy wide regulator of financial services with the Australian Securities and Investments Commission being given mirrored responsibilities.

Unfortunately the Commission was not consulted on these changes. Despite the FSI recommendations, the Commission was removed from having any jurisdiction in consumer protection in relation to 'financial services'. As a consequence, there were some oversights that are in part, responsible for the current situation.

The Commission observed the following problems as a consequence of the *Financial Sector Reform (Consequential Amendments Act) 1998*:

- the definition of health insurance;
- pyramid selling in the ASIC Act only applied to securities (rather than all financial services); and
- 'investment advice' provided by real estate agents.

These have largely been overcome by a memorandum of understanding (MOU) that is held between the Commission and ASIC as well as regular interaction by staff of the two agencies.

In addition, ASIC has delegated its powers to the Commission with respect to health insurance and the GST as it relates to financial services.

The Commission's responsibilities in consumer protection in financial services could best be described as residual. They include:

- credit;
- foreign exchange contracts;
- health insurance;

- GST in relation to financial services; and
- unconscionable conduct in small business transactions and consumer lending.

Overlaps with state and territory consumer protection agencies

The Consumer protection provisions of the TPA are mirrored in state and territory fair trading legislation. The Commission has MoUs with state and territory consumer protection agencies and regularly works with these agencies through intergovernmental fora such as the Standing Committee of Consumer Affairs and the Fair Trading Offices Advisory Committee.

Strategic priorities and the constitutional limitations of the Commission largely determine the division of enforcement and compliance activity of each agency.

Possible need for a ‘one stop shop’ or central inquiry point so aggrieved consumers can be referred to the correct agency

In its submissions to the FSI, the Commission argued for such an approach under its proposed model regulatory structure. The proposal was for a co-regulatory structure based on a combination of framework and transaction based regulation (from codes to legislation).

At the time, the Commission submitted to the FSI that any government support should be conditional on schemes meeting minimum standards such as those developed by the former Federal Bureau of Consumer Affairs. **The Commission’s submissions to the FSI have been e-mailed to the Committee.**

We understand that ASIC undertook such an initiative on a trial basis, funded by the existing industry based dispute schemes in 1998. We understand that the central number for that service has now been referred to the ASIC Infoline.

Adequacy of resources for consumer protection

The Commission, like all Government agencies is currently undergoing a pricing review/ benchmarking process by the Department of Finance and Administration to determine resourcing needs in accordance with our responsibilities. The Commission looks forward to the completion of this process by early 2001 at the latest.

The Commission notes that many non-government consumer organisations experience resource limitations. The Commission, in its consultative activities depends on the input of community based organisations to provide information about the experiences of everyday consumers. In particular, consumer organisations have the presence in the community to communicate the experiences of low income and disadvantaged consumers to the Commission. This is important to our consumer protection activities, merger and adjudication matters.

It is common for most community sector submissions to refer to their resourcing constraints when providing comments to the Commission. They are often unable to provide the level of analysis to support their assertions to the same level as their industry counterparts.

The Commission notes the transfer of consumer protection policy and associated functions from the Federal Bureau of Consumer Affairs to the Consumer Affairs Division in the Treasury in this period of reform.

2. Data requested on the ACCC's performance in enforcing the provisions of the Trade Practices Act (TPA)

The Commission's enforcement priorities

The Commission is strategic in setting priorities and responses to systemic problems in the Australian economy. The Commission regularly revises its strategic plan. With respect to consumer protection issues, the Commission continues to give priority to matters of national significance that adversely affect large numbers of people (state and territory agencies concentrate on local issues). Other factors likely to be of relevance involve:

- apparent blatant disregard of the law;
- significant public detriment;
- the potential to have a worthwhile educative or deterrent effect;
- a significant new market issue, eg. one arising from economic or technological change such as either the introduction of competition into a previous monopoly market or the advent of trade on the Internet;
- problems arising from the advent of the global marketplace;
- whether effective compliance systems were in place; and
- an opportunity to test the reach of the Act in appropriate circumstances.

The Committee has requested that the Commission provide data on its consumer protection activities over the last 5 years. Searches of the Matter and Administration Recording System (MARS) (Complaints) and Project Recording Information Management System (PRISM) (projects) were conducted.

The Commission changed its database management systems in 1996. Data for 1996 may not be readily comparable.

Projects and complaints are recorded based on the Australian and New Zealand Standard Industrial Classification used by the Australian Bureau of Statistics. The ANZIC code is a compulsory field in MARS. It is not compulsory in PRISM, so the number of projects is likely to be higher than stated in the table below.

The Commission is currently working with the US Fair Trading Commission to share complaints data.

Complaints in relation to Part V of the TPA

	1996 (pursued)	1997 (pursued)	1998 (pursued)	1999 (pursued)	2000 as at 5/10/00 (pursued)
Banks	27 (11)	24 (11)	18 (8)	15 (8)	34 (4)

Building societies	0	0	0	0	0
Credit Unions	5 (0)	5 (0)	1 (0)	7 (0)	3 (1)
Deposit taking financiers	3 (0)	3 (1)	8 (2)	26 (9)	14 (3)
Other financiers	7 (3)	18 (5)	79 * (73)	30 (5)	21 (2)
Life insurance	11 (1)	5 (2)	2 (0)	1 (0)	3 (0)
Superannuation	2 (1)	4 (3)	2 (0)	1 (1)	0
General insurance	29 (6)	19 (7)	15 (4)	22 (4)	25 (3)
Part V Total Complaints	3194	3126	2871	5432	4240
Total complaints for all conducts	8353	10989	11812	21819	121563

* HRJ Financial Services (a class action involving many consumers)

Note: *Pursued* - includes all matters where:

- additional information was sought to established whether a possible contravention of the Trade Practices Act was involved and/or whether action by the ACCC was appropriate; or
- price monitoring occurs.

Pursued includes matters which conclude after initial enquiries and those which are investigated in depth.

For *pursued* matters there should be some documentary evidence of further investigation. That might be a file note, copies of advertisements sighted, notes of an interview, documents that someone has sent in on request, and record of the decision made about the matter.

Projects concluded in relation to Part V of the TPA

	1996	1997	1998	1999	2000
Banks	Not available	20 1 Litigation 2 post threshold 17 pre threshold	6 6 pre threshold	6 1 post threshold 5 pre threshold	13 1 post threshold 12 pre threshold
Building societies	Not available	1 1 pre threshold	1 1 pre threshold	0	0
Credit Unions	Not available	4 1 post threshold 3 pre threshold	0	0	1 1 with commission
Deposit taking financiers	Not available	1 1 pre threshold	1 1 pre threshold	3 2 post threshold 1 pre threshold	3 3 pre threshold
Other financiers	Not available	4 1 post threshold 3 pre threshold	7 1 monitoring 1 with commission 5 pre threshold	4 1 post threshold 3 pre threshold	2 1 post threshold 1 pre threshold
Life insurance	Not available	2 1 post threshold 1 pre threshold	0	0	1 1 pre threshold
Superannuation	Not available	5 1 monitoring 4 pre threshold	0	0	0
General insurance	Not available	12 12 pre threshold	8 1 post threshold 7 pre threshold	7 1 post threshold 6 pre threshold	5 5 pre threshold

Status definitions for enforcement projects

Pre Threshold - Applies mainly to enforcement matters. *Pre Threshold* matters are those which have arisen during the course of the current calendar month and more investigation is required to assess whether the matter passes threshold or whether no further action is required. A new matter should change its status after one month.

Post Threshold - Applies mainly to enforcement matters. Post threshold relates to a matter which has had or will have significant resources spent on it (usually more than two day's work). In the instance of an enforcement matter it must meet current case selection criteria.

With Commission - All projects which go to the Commission, the Enforcement Committee or the Mergers Panel for direction or decision during the current month.

With Lawyers - All projects for which legal advice is pending and essential to the progress of the project.

Litigation - All projects where legal proceedings have been instituted.

Monitoring - All projects which resulted in a monitoring role for the Commission; eg s87B undertakings, Access undertakings, conditional Authorisations, and some court orders.

Projects include the range of the Commission's consumer protection activities from enforcement to compliance, research and education.

Special areas of the Commission's activity in financial services

The following are examples of the sort of enforcement, compliance, education and research activity in which the Commission has been involved in financial services.

Credit

Undue harassment project In June 1998 the Commission commenced a project to look at the undue harassment provisions of the TPA. The project came about, in response to concerns expressed by consumer organisations about undue harassment of consumers, particularly in relation to the collection of debts. It was also an area of the Act in which there is little guidance about its application. The project aimed to:

- review compliance with s. 60 of the TPA;
- provide guidance to business for compliance with s. 60 in the debt collection context; and
- ensure that the provision was effective in protecting consumers.

The Commission:

- prepared a report on the debt collection industry and problems that arise;
- a guideline on acceptable conduct (in consultation with stakeholders);
- a compliance guide for the industry;
- a brochure for consumers; and
- a kit for community workers to assist consumers in debt.

HRJ Financial Services Pty Ltd HRJ allegedly advertised personal loans aimed at pensioners, bankrupts and people with bad credit. Callers could only contact HRJ through expensive 1900 number. It was alleged that applications were deliberately prolonged and callers were required to obtain CRAA report despite advert stating 'no credit checks'. Callers were misled into believing loans could be obtained but all that was offered was advice on how to obtain a loan. One caller was told to falsify a credit card application. Proceedings were instituted against HRJ and its directors Rowland William Thomas and Helen Elizabeth Lewis in July 1998. The court issued restraining orders against HRJ and its directors and ordering a freeze on funds. The matter is ongoing

Foreign exchange contracts

Chats House Investments were found to have breached s. 51AA, s. 52 and 53(d) of the TPA in December 1996. Chats House and its director, Albert Chan were found to have misrepresented its affiliation with Bankers' Trust Australia, and enticed unsophisticated investors into investing monies in Chats House. The court had previously frozen the Chats House' assets. These were latter distributed between the 26 clients that the Commission was representing. This was the first decision by the courts in respect of s. 51AA and the general principle that the Commission could bring class actions.

Health insurance

The Commission has had a long interest in aspects of health and health insurance. These include competition, adjudication and consumer protection concerns. The Commission recognises that the introduction of the Government's 30% rebate and lifetime community rating for health insurance is going to lead to a substantial uptake of health insurance in Australia. Changes in the regulatory regime will inevitably result in uncertainties during the transition period.

Senate report Most recently the Senate made a reference to the Commission to report on 'any anti-competitive or other practices by health funds or providers which reduce the cover for consumers and increase their out-of-pocket medical and other expenses.' every 6 months. This reference was made during consideration of the Health Legislation Amendment Bill (No. 2) 1999. **A copy of the report is enclosed.**

National Mutual Health Insurance Pty Ltd In June 2000 National Mutual Health Insurance Pty Ltd (NMHI) provided a court enforceable undertaking to the Commission regarding a series of advertisements that misrepresented the need for private health insurance in Victoria. This was due to the existence of Transport Accident Commission's (TAC) Scheme that provides comprehensive benefits. The Commission was concerned that the use of an accident scenario, without mentioning the scheme, may mislead consumers about most traffic accidents.

NMHI acted quickly to remove the commercials from broadcast and address the Commission's concerns.

As part of enforceable undertakings, NMHI undertook to provide more information about the TAC scheme through revised television commercials, the NMHI newsletter and a leaflet for the public. It also agreed to provide refunds to consumers that were misled by the commercials.

Guide to the Trade Practices Act for the promotion of private health insurance 1998 The Commission in Conjunction with the Private Health Insurance Complaints Commissioner produced a guide in response to complaints that had been received. The guide provides some commentary on potentially ambiguous activities such as:

- level of cover (ie. '100% cover');
- exclusions and limitations;
- discretions (ie. not paying full benefits, as advertised');
- purchaser - provider agreements (where a fund has an agreement with some providers and not others);

- immediate cover (waiting periods and pre-existing ailments);
- changes to entitlements;
- excesses;
- ambulance cover;
- ancillary benefits;
- tax benefits;
- unexpected exclusions; and
- confusion about differential cover for the 'contributor' and 'dependents'.

GST in relation to financial services

Part VB of the *Trade Practices Act 1974* (TPA) creates the offence of price exploitation in relation to the New Tax System changes and confers a number of statutory responsibilities on the Commission.

The Commission established a national consumer consultative group on GST issues early this year, having publicly asked for expressions of interest from consumer representatives to participate in this group. A membership list is at **Attachment 1**. They represent a broad range of consumer interests from around the country. In this special case, the Commission has been able to fund the travel costs of interstate members, to allow them to attend meetings. In the past, the Commission has not had the resources to fund the travel costs of interstate attendees for forums, but has conducted meetings by video hook-up where possible.

The GST Consumer Consultative Group met in April, June and October to discuss GST consumer issues, report on Commission activities, and get input from members regarding a range of proposed strategies. Members have provided input on communications activities, and highlighted any other issues they felt needed to be covered. At the October meeting in particular, the Commission highlighted the results of its discussions with the major banks on fees and the flow-through of NTS cost savings.

Feedback at each meeting has been that representatives have found this to be a very useful and open forum, and they have applauded the extent of work that the Commission has done for consumers in its GST role, and the extent to which suggestions from group members have been acted upon and implemented. Ongoing liaison has taken place between meetings. Consultation with this group will continue.

The Commission's broad observations in relation to the New Tax System changes and financial services are as follows:

- the likely effect of changes to bank fees and charges would be less than 10%;
- interchange fees for credit card services are likely to decrease;
- the cost of supplying superannuation services is likely to increase;
- the greater part of increases on life insurance products are likely to arise from the Review of Business Taxation rather than the New Tax System changes; and

- the Commission has been working with financial services providers about their responsibilities in relation to the changes.

The Commission considers that well informed, competitive markets operating in a climate of low inflation and good corporate citizenship generally will ensure that the vast majority of businesses will act fairly. However, it will not hesitate to use its enforcement powers if there is price exploitation in breach of the Act.

Unconscionable conduct in small business transactions and consumer lending

The Commission is investigating a number of complaints in relation to unconscionability in financial services. Complaints include claims of:

- unfair terms such as setting payments too low for services provided under insurance (health, automotive repairs);
- guarantees; and
- interest rates.

The Commission can experience difficulties in proving these claims. The evidentiary burden is quite high for example where the claims involve oral representations. Similarly, if there is a difference in the relative strengths of the parties, witnesses can be reluctant to become involved in actions for fear of the ramifications in continuing to operate in the same industry.

E-commerce

Due to the rapidly expanding reach of the Internet, the Commission has made consumer protection in this domain a priority. The Internet is primarily a communication medium and is subject to telecommunications specific legislation under Parts XIB and XIC of the Act. It enables a range of activities that have enormous impact on the way consumers and businesses interact. It is, among other things, a retail facility that crosses national borders. It poses new issues for consumers and requires a unique approach with respect to regulation of fair trading conduct.

The Commission is looking to form a special team to look at the range of consumer protection and competition issues including the interconnection of networks. An e-commerce forensic capability will be developed. This will give the Commission the capacity to detect, identify, locate and gather witnesses and evidence of Internet related breaches of the Act.

Internet sweep days The Commission has been involved in the International Internet Sweep Days for the past 3 years.

In 1997 the Commission concentrated on 'get rich quick' schemes and in 1998 the focus was on websites promoting 'miracle cures' and other potentially misleading health claims.

Once suspicious sites were identified, the operators of those sites were sent an educational email message, outlining the fact that the activities they appeared to offer may be regulated in some countries, and referring them to the regulatory body in their country to obtain information on how to comply with the appropriate legislation.

The results received indicated that over 1100 suspicious websites were identified in the 1997 sweep and 1400 in 1998. In both years the follow-up sweep gave a good indication of the success of the educational messages on website operators, with approximately 25% of those sites revisited, having been removed or altered.

Summaries of results and media releases of the 1999 sweep are at **Attachment 2**.

Consumer Education The ACCC Internet provides useful information and links to other sites to help consumers including:

- tips to recognise scams;
- Internet shopping fact sheets;
- Internet auctions; and
- an Internet shopping checklist.

The Commission is currently revising its online complaints mechanism.

Adjudication

The authorisation and notification procedures under the TPA can be used to provide immunity from prosecution for anti-competitive conduct except for s. 46 (misuse of market power). Such conduct must be demonstrably in the public interest.

In making a determination the Commission consults with interested stakeholders.

The Commission has published the *Guide to authorisations and notifications November 1995* to assist both the application and interested stakeholders to access this process.

The Commission has received several applications that relate to consumer protection in the financial services sector. These generally cover self-regulatory arrangements that may limit the behaviour of an industry, or substantial parts of an industry. The Commission is currently considering applications from:

- **The Investment and Financial Services Association** – IFSA policy on genetic testing (Commission proposes to deny);
- **Australian Payments Clearing Association Ltd** - Consumer Electronic Clearing System Regulations and Procedures

In 1999 the Commission authorised the **Australian Direct Marketing Association Code of Conduct**. This Code drew a great deal of attention from consumer and privacy advocates. The draft determination suggested amendments to strengthen the public benefits of the code. It was not the role of the Commission approve the code as meeting certain standards. The Commission's role was to determine whether the anti-competitive elements outweighed the public benefits.

RBA/ ACCC joint study of interchange fees The Commission is currently undertaking a joint study of interchange fees for credit cards, ATMs and EFTPOS with the Reserve Bank of Australia. This report is due to be released any day now. It is very likely that it will have been released by the time the Commission appears before the Committee.

The objectives of the study are to:

- obtain information on interchange fees paid by financial institutions;
- clarify the basis on which interchange fees are currently set, looking particularly at the role of costs;
- assess whether current interchange fees are encouraging efficient provision of debit and credit card services; and
- obtain information on current restrictions on credit card scheme membership.

The study has involved an extensive process of gathering information, including detailed cost and revenue data, from financial institutions and the three credit card schemes. The RBA used its powers under the *Payments Systems (Regulation) Act 1998* to require four banks (three majors and one regional bank) to provide information. **A copy of the report is enclosed.**

Court action on interchange fees In September 2000 the Commission instituted proceedings in the Federal Court against the National Australia Bank Limited (NAB) for alleged price fixing in relation to interchange fees in credit card schemes. A directions hearing is set for 11 October.

Review of interchange systems Following this action, the Commonwealth Bank, ANZ, Westpac, BankWest, the Bank of Queensland and St George have come forward with a proposal to review the process and methodology of setting interchange fees and the restrictions on entry to credit card schemes imposed by existing membership rules. This review is expected to be completed by mid-November. The Commission has agreed not to commence court proceedings until this review has been completed. The Commission is concerned that aspects of the system will require authorisation.

Mergers

Mergers can have a positive role in the efficient functioning of the economy by achieving economies of scale and rationalisation of underperforming entities. The TPA recognises that mergers can create markets where the potential for anti-competitive conduct is increased. The TPA prohibits mergers and acquisitions that would have the effect, or be likely effect of substantially lessening competition.

The Commission and the Australian Competition Tribunal can, on review, exempt mergers from the application of the TPA if they would result, or be likely to result in a benefit to the public. Such benefit can be delivered through the undertakings process.

Only the Commission can apply to the Federal Court for an injunction. Other parties can apply for divestiture or penalties.

Guideline The Commission updated its guidelines for mergers in 1999. These provide an overview of the Commission's enforcement and administrative policy. They describe:

- the relevant provisions of the TPA;
- acquisitions that are subject to the TPA;
- notification and consideration of proposed mergers;

- assessing the competitive effects of a merger;
- authorisation; and
- enforceable undertakings.

Bank mergers The Commission has recently considered two Bank mergers of note, Colonial/ CBA in 2000 and Wespac/ Bank of Melbourne in 1997. In both of these cases the Commission concluded that the proposed acquisitions would substantially lessen competition in various lending and deposit markets. Similarly, in both cases the Commission accepted a combination of quasi-structural and behavioural undertakings to facilitate new entrants and maintain an acceptable level of amenity to the public.

Most undertakings are available on the ACCC public register at www.accc.gov.au.

Other issues

Potential impact of choice of superannuation fund

Whilst the Commission does not have a role in relation to the introduction of choice of fund in superannuation, the Commission recognises potential benefits to consumers that greater choice could have in terms of driving greater efficiencies within funds and delivering the benefits to consumers. This must be balanced with consumer sophistication in choosing appropriate products and the moral risk that can accompany new markets.

There are similarities in the superannuation and health insurance markets, given that health insurance is becoming more or less compulsory and is already subject to full competition. As discussed above, the Commission has done a great deal of work on health insurance and has come to the view that consumers need full information in order to make appropriate choices. The consumer protection provisions of the TPA do not extend to positive disclosures.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

NATIONAL GST CONSUMER CONSULTATIVE GROUP

Members:

- **Chris Field** Consumer Law Centre Victoria
- **Gerard Thomas** Australian Consumers Association (NSW)
- **Eleri Morgan-Thomas** ACOSS (NSW)
- **Lis de Vries** TASCOS (Tasmania)
- **Catherine Craigie** NSW Indigenous Arts Reference Group - ATSI expertise
- **Phil Maynard** Local Government Association of NT
- **Glenda Lewis** Consumers' Association of WA
- **Dan Fiora** Consumers' Association of SA
- **Fiona Guthrie** Queensland Consumers' Association
- **Thang Ngo** NESB expertise (Fairfield City Councillor - NSW)

E-Commerce Fails the Test: International Sweep Day Results Show Most Sites Don't Provide Basic Consumer Information

Results from the International Internet Sweep Day held on 23 September have shown that most e-commerce sites are failing to provide even basic consumer information.

The Internet Sweep Day involved consumer protection agencies from around the world examining almost 700 e-commerce sites (including 250 Australian sites) and examining them against ten key consumer protection principles. Sites were assessed on the basis of what information that was easily accessible before entering into a transaction.

"If consumers are to have confidence when shopping 'online' they must have clear and accurate information about the business they are dealing with, the terms and conditions involved, procedures for redress if something goes wrong and how the trader will deal with their personal information," Australian Competition and Consumer Commission Acting Chairman, Mr Allan Asher, said today.

"Regrettably most sites are not providing this basic information. In fact 62 per cent of sites did not provide any information regarding refund or exchange policies and 75 per cent had no privacy policy or statement of how they would handle consumers' personal details. The average score out of ten for all sites was 4.8.

"The bad news is that Australian sites scored even lower with an average score of 4.4. [Details of the Sweep Day results are attached.]

"E-commerce has a huge potential for businesses to reduce costs and reach a wider market but they must lift their game. This is not rocket science. All of the information sought in the Sweep day can, and should, be easily provided".

A recent in depth study of 151 e-commerce sites by Consumers International revealed similar deficiencies in many e-commerce sites. The study took place over a number of months and involved the actual purchase and return of items. In some cases the goods never arrived and in two cases, customers were still waiting for their money back more than five months after returning their goods. (The ACCC website contains a link to the Consumers International study.)

A recent expert seminar on e-commerce identified the need for consumer redress mechanisms and international standards as two of the main factors needed to promote consumer confidence. The seminar was part of the 'Online Australia' agenda series; an initiative of the National Office of the Information Economy.

"E-commerce provides incredible potential and promise for business and consumers, however it's crucial that people don't forget some of the basics when stampeding towards cyberspace. The cost to business of providing this basic information is virtually negligible, the benefit of doing so is enormous".

The Sweep Day results will also be tabled at a global conference on e-commerce that is currently taking place at OECD headquarters in Paris. The need for measures to increase consumer confidence has already emerged as a central theme at the conference.

"The ACCC is also working with like-minded agencies to develop international protocols to protect consumers and promote business on the Internet," Mr Asher said. "Such guidelines are being developed and the sweep day results should provide further impetus for their acceptance".

Further information

Mr Allan Asher, Acting Chairman, (02) 6243 1138

Ms Lin Enright, Director, Public Relations, (02) 6243 1108 or (0414) 613 520

MR 197/99

13 October 1999

1999 Internet Sweep Day – Results

Method

On 23 September staff from various consumer protection agencies around the world took part in the 1999 Internet Sweep Day. Participants were asked to examine various categories of e-commerce websites and complete a checklist of 10 **Yes/No** questions regarding what sort of information could be easily accessed before entering into a transaction.

Each site that was examined as part of the Sweep was sent an email explaining that the Sweep had taken place and gave details for obtaining further information. The email did not make any allegations about the 'quality' of the website. The results were then forwarded to the Australian Competition and Consumer Commission for compilation and analysis.

The following table gives an overview of the results for all sites that were examined.

Information disclosed by e-commerce websites	%
Q1 – Physical address of the business	75%
Q2 – Email or phone number for the business	95%
Q3 – Itemisation of costs for a potential purchase	66%
Q4 – Information regarding the security of online payment mechanism	44%
Q5 – Applicable currency for a purchase	75%
Q6 – Restrictions that may apply (ie geographical, parental approval);	27%

Q7 – Information about refund & exchange policies	38%
Q8 – Information about how to lodge a complaint	22%
Q9 – Statement of applicable law for the transaction	10%
Q10 – Privacy policy	25%

Note:

1. If participants in the Sweep Day could not find the requested information within a few minutes they were asked to answer 'No' to that question. This is based on the premise that if consumers can't find the information easily then they are unlikely to access it.
2. The questions regarding refunds, complaints and privacy policies (7,8 & 10) did not attempt to assess the content or quality of these policies, but simply whether the website provided any information on these issues.
3. In a number of cases websites did not have an online payment mechanism. For these sites sweep participants may have answered 'No' to question 4. This has probably led to a slightly lower figure than is actually the case.

The following table gives a summary of results for each category on each question, and an overall result for each question.

	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9	Q10
1 - Books	78%	97%	66%	49%	80%	19%	31%	22%	6%	30%
2 – CD's / Software	73%	95%	69%	46%	82%	21%	31%	21%	11%	28%
3 – Travel	85%	95%	57%	22%	66%	42%	35%	32%	18%	13%
4 - Clothing	71%	94%	61%	42%	69%	17%	46%	23%	5%	19%
5 - Other	73%	96%	71%	53%	76%	36%	43%	18%	10%	30%
Overall Average %	75%	95%	66%	44%	75%	27%	38%	22%	10%	25%

The following table gives the average score out of 10 for each category and the overall score for all categories.

Category						
	1	2	3	4	5	All categories
	Books	CD's Software	Travel	Clothing	Other	
Average out of 10	4.8	4.8	4.6	4.5	5	4.8

The following table gives results for each question in regard to Australian sites, and the rest of the world.

	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9	Q10
Australia	77%	94%	60%	47%	62%	20%	32%	20%	8%	27%
Rest of the World	75%	96%	69%	42%	84%	31%	41%	24%	11%	24%

Testing the Net: International Sweep Day Benchmarks E-Commerce Service

Today's International Internet Sweep Day will test just how well business is being done on the Internet.

"In Australia e-commerce was estimated to have generated \$139 million in sales in the past 12 months. And world-wide, it is predicted to grow from \$US70 billion this year to \$US 1.4 trillion in four years," Australian Competition and Consumer Commission Chairman, Professor Allan Fels, said today. "And a recent survey by a US consulting group showed that privacy was considered to be of large importance to 42 per cent of consumers and that such concerns led 27 per cent to give false information in 'Net questionnaires.

"So the time is now ripe to scrutinise and encourage high standards of customer service and security," he said.

"In today's Internet Sweep Day consumer protection officers world-wide will visit the Internet and examine business sites over 24 hours.

"Ten questions will be used to assess the e-commerce sites. These relate to

- disclosure of physical address;
- telephone number or e-mail contact details;
- itemisation of costs;
- information about the security of the online payment mechanism;
- applicable currency for the purchase;
- possibility of any restriction on the purchase (geographical, parental approval);
- refund and exchange policies;
- information about how to lodge a complaint;
- applicable law; and
- privacy policy.

"This is the third annual sweep day organised by the ACCC. This year international agencies from Hong Kong, Taiwan, Germany, New Zealand, Portugal, Ireland, Poland, Austria, Canada, Norway, Finland, France, Denmark, Hungary and Jamaica will join the sweep.

"Australian agencies and non-government groups taking part include: the National Office of the Information Economy; consumer affairs/fair trading offices in the ACT, New South Wales, Western Australia, Victoria and the Northern Territory; the Communications Law Centre, the Internet Industry Association, the Public Interest Advocacy Centre and the Consumer Credit Legal Centre, WA.

"The ACCC is receiving increasing numbers of Internet-related complaints and has turned to new enforcement issues to deal with the challenge. These include improved international cooperation with counterpart agencies and proactive investigation.

"It is also re-vamping its 'Slam a Scam' page on its Internet site (www.accc.gov.au) to help consumer become Internet watchdogs.

"The ACCC is working with like-minded agencies to develop international protocols to protect consumers buying via the Internet," Professor Fels said. "Such guidelines are being developed and today's sweep will provide further impetus to their acceptance".

Further information

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