

A newsletter for consumers and the consumer movement

Want to make a complaint? Contact the ACCC Info Centre on **1300 302 502** (for the cost of a local call).
Want to forward suggestions for future articles? E-mail the Consumer Express team at express@acc.gov.au

What's news

GST—where to now?

On 1 July 2002 a number of changes will occur in the way the ACCC deals with the New Tax System. First, the ACCC's price monitoring role under s. 75AU expired on 30 June 2002. Second, price exploitation in relation to the New Tax System will not be a specific offence for conduct occurring after 1 July 2002.

The ACCC will still be able to pursue GST-related misrepresentations that occurred during the transition period retrospectively under price exploitation legislation. After 1 July 2002 pricing related misrepresentations fall more generally under the misleading and deceptive (s. 52), and false or misleading representation (s. 53(e)) provisions of the Trade Practices Act.

It is important to remember that consumers should **know** the selling price of a product **before** buying it.

As before 1 July 2002, consumers can still pursue their rights under ss. 52 and 53(e) of the Act in a small claims court. They must first send a letter of demand to the relevant business. If the business does not respond, a claim can then be lodged at the local small claims court.

The ACCC has had particular success enforcing the price exploitation provisions of the Act. Investigations into GST matters aimed to provide restitution for affected parties and to ensure that businesses did not continue to incorrectly display or charge GST. Since the GST was introduced, the ACCC has taken 10 matters to court and has accepted 53 court enforceable undertakings on GST related matters. This has resulted in \$17 million in refunds to consumers.

Most price exploitation matters arose because businesses either experienced technical errors with their GST implementation or misunderstood the effect of the GST on the supplies they made. Most businesses readily admitted their error and agreed to take corrective action.

Consumer and small business complaints to the ACCC now mainly concern confusion arising from price displays that are GST-exclusive and quotes for goods and services.

Problem areas for GST-exclusive pricing have included real estate advertisements and real estate agents' commissions; sales of goods and services over the Internet; menus for cafés, takeaway shops and restaurants; quotations by builders for new homes and renovations; quotations by tradespeople in all consumer areas but notably motor vehicle servicing and repairs.

Even though businesses should display or quote GST-inclusive prices, consumers should, before signing contracts or agreements or before accepting quotes, ensure they are quite clear about the final price.

More information: <http://www.acc.gov.au>

Capital Finance to give GST refunds

After an ACCC investigation Capital Finance Australia has agreed to refund 118 consumers more than \$70 000 for incorrectly applied GST on motor vehicle leases.

The ACCC agreed to an informal administrative settlement because Capital Finance cooperated with the investigation.

Capital Finance had sought a ruling on the matter from the Australian Taxation Office. The ruling confirmed that the lease used by Capital Finance did not allow for GST.

Other similar leasing contracts by other finance companies are still under investigation.

More information: [MR 146/02 11 June 2002](#)

ACCC protects business from overseas scam

The ACCC has instituted proceedings in the Federal Court against a Swiss-based company, IT&T AG. It had allegedly engaged in misleading and deceptive conduct in relation to an international fax directory operated by the company.

It is alleged that IT&T AG mailed unsolicited documents from Switzerland to Australian business consumers regarding the IT&T International Fax Directory. This directory is published on the Internet and available on CD-ROM from IT&T AG in Switzerland. The documents, which allegedly had the style and appearance of invoices, were typically for 'US\$995.00' and offered a '3% discount if payment made within 14 days'.

It is also alleged that given the general appearance of the documents including design, layout and text, IT&T AG falsely represented: the existence of a former business relationship with the Australian businesses, an existing right to payment, and that a payment to IT&T AG for listing the business in the directory was due and payable.

More information: [MR 148/02 12 June 2002](#)

Your rights—unsolicited goods and services

Following on from the IT&T AG matter above, it is a good idea to know what your rights are when it comes to unsolicited goods and services. What do you do when you

receive an unsolicited good or service? The law says that you are not obliged to pay for goods or services you have not agreed to acquire. However, there are some things you must do if this happens to you.

If you receive something in the mail, you have two options.

- Notify the company that sent the goods that you did not ask for them or wish to keep them. Advise the company of an address and suitable time where they can come and pick up the goods. If the goods have not been picked up within one month, they are legally yours—but you must notify them first.
- Do nothing. If the seller does not pick up the goods within three months they become your property.

Important: Do not throw the goods out—you are obliged to have them available for collection by the supplier if requested.

If you receive unsolicited services, you need to notify the providing company that you did not agree to these services. If you receive an invoice for the goods or services after they have been sent to you, you can:

- Send a letter back to the company invoicing you and, if appropriate, advise that the services are/were available for collection, and were unsolicited, therefore you are not obliged to pay for them.
- Send the company a letter explaining that you are not liable for the unsolicited services.
- If you threw the goods away on receipt (which is something you should not do), contact the company and advise them of the situation and try to resolve your dispute.

If you have no luck with any of these solutions, call the ACCC on 1300 302 502. The ACCC will advise you on what steps you should take.

From the Infocentre

Direct debit—who is in charge?

The ACCC regularly hears from consumers having trouble ending direct debit transactions. Many complaints involve disputed transactions after an agreement has ended, e.g. at the conclusion of a 1-year gym contract. Whatever account the direct debit is linked to, it is your money and your account. Sometimes confusion can arise on who may cancel a direct debit depending on whether the nominated account is an everyday account (including savings or cheque accounts) or a credit card. Often consumers are told that the only party that can cancel a direct debit transaction is the business receiving the money. What is the truth?

It is your right to stop a direct debit. The law says that to cancel a direct debit you may notify, in writing, either your bank, or the merchant, or both. Remember: it is important that you read your contract carefully before signing it. Technical difficulties may arise for your bank when cancelling direct debit arrangements on credit cards. If you are planning to halt a direct debit and are encountering some resistance from the business doing the debiting, or from your bank, you need to do the following:

- Write a letter to your bank saying that you no longer wish for the business involved to have access to your nominated account.
- Notify the business in writing that you would like a refund on the unauthorised transactions.
- Send a copy of this letter to the business you are dealing with.
- If the bank refuses to cancel the direct debit, contact the Australian Banking Industry Ombudsman on 1800 337 444, or www.abio.org.au or contact your local small claims court and lodge a claim for a refund.

The Australian Securities and Investments Commission website contains sample letters of how to cancel direct debits with both your merchant and your bank. For further information, see www.fido.asic.gov.au

To avoid problems with direct debit it is a good idea to keep an eye on your bank account statement and make sure that all debits are authorised and are for the correct amount.

About the ACCC—mergers

The Mergers and Assets Sales Branch of the ACCC is responsible for examining mergers which could substantially lessen competition in a market, as well as applications for authorisation of mergers. It is also responsible for litigating, or accepting appropriate undertakings for mergers that proceed without authorisation and that the ACCC considers to be in breach of s. 50 of the Act.

The ACCC is often perceived as anti-merger, especially by big businesses. The fact is, the ACCC only opposes those mergers that lead to a substantial lessening of competition. Very few mergers actually have this effect. In the financial year 2000–01, the ACCC considered 265 mergers, asset sales or joint ventures. Of these, the ACCC objected to 13. Following several applicants providing undertakings, 10 of these mergers proceeded, and three applications were withdrawn.

When assessing mergers, the ACCC analyses market structures to examine how competitive the markets will be if the proposed mergers proceed. The ACCC must define the market, then examine market factors, such as market concentration, imports, barriers to entry, countervailing power, ability to increase prices or profits, availability of substitutes, dynamic characteristics, vigorous and effective competition and vertical integration. The ACCC accepts submissions from the public and other interested parties when considering mergers.

Currently, the Commonwealth Government is conducting an independent review of the Trade Practices Act; the result may include discussion on the application of s. 50 of the Act.

More information: http://www.accc.gov.au/merger/fr_mergers.html

In the consumers' interest

Basic Bank Account application

On behalf of several Australian banks the Australian Bankers' Association (ABA) has applied for authorisation under the Trade Practices Act to offer a Basic Bank Account. If authorisation is granted member banks will be able to collectively agree on the minimum features of a Basic Bank Account without breaching the price fixing provisions under the Act.

The Basic Bank Account will contain at least the following minimum features: no account keeping fees, no minimum monthly or opening balances, an unlimited number of deposits each month, and up to six non-deposit transactions provided free of charge each month (including up to three over the counter withdrawals).

This account would be available to holders of Commonwealth Government health concession cards, but each bank is otherwise free to determine the eligibility criteria of their individual account.

To grant authorisation, the ACCC must be satisfied that the benefit to the public from the arrangements will be greater than any anti-competitive detriment. The ACCC is seeking submissions on the application for authorisation.

Submissions can be forwarded to:

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Submissions close on 17 July 2002. For more information on the adjudication process, visit the adjudication page of the ACCC website, at <http://www.accc.gov.au/adjudication/fs-adjudicate.htm>.

IMSN

ACCC joins enforcement agencies to target scams

Several consumer protection bodies in Australia have joined forces to warn consumers about scams. Participants include ASIC, ATO and the West Australian Department of Consumer and Employment Protection.

These bodies will be on the lookout for such scams as pyramid selling, illegal investment seminars, dodgy lotteries, get-rich-quick schemes and several work-from-home schemes.

People promoting these schemes are often based overseas or are fly-by-night operators. However, because of the ACCC's involvement with the International Marketing Supervision Network, consumer protection agencies in the relevant country can be notified of the scam.

For more information on scams, call your local fair trading office or the ACCC's Infocentre on 1300 302 502.

More information: [MR147/02 11 June 2002](#)

Recent investigations

Free2aiR action

The ACCC has instituted proceedings in the Federal Court against Internet TV Australia Pty Ltd trading as Free2aiR and its director, Mr James Young.

Free2aiR allegedly told consumers that their Internet access was free after a one-off payment. There was no mention of ongoing fees and charges payable apart from an excess download charge. The ACCC alleges that this is not true, and that the Free2aiR service had a number of terms and conditions that applied to subscribers including an administration fee. The subject terms and conditions were not brought to the attention of potential customers before customers subscribed to Free2aiR's services.

One of the terms and conditions allegedly allowed Free2aiR to charge customers a quarterly administration fee as well as a set-up fee. It is alleged that some customers received 'quarterly administration' invoices demanding further payment for their Internet services, and threatening to disconnect them if they did not pay.

The ACCC is seeking court orders including:

- declarations that Free2aiR breached the Trade Practices Act
- injunctions, including an injunction restraining Free2aiR from collecting further administration fees
- refunds of quarterly administration fees paid
- a trade practices compliance program
- costs and other orders.

More information: [MR 140/02 5 June 2002](#)

Security company provides refunds

Custom Security Services in Canberra has provided court enforceable undertakings offering refunds and full disclosure to some of its customers after an ACCC investigation.

Numerous complaints were made to the ACCC and the ACT Office of Fair Trading by CSS customers who were charged for security system upgrades undertaken without prior consultation in early 2001. In most cases customers only became aware of the upgrade after receiving an invoice for \$99.

Although CSS subsequently sent letters to its customers explaining the upgrade, the letters failed to disclose the full cost. The modifications to security systems, which started in March 2001, provided an arming and disarming reporting capacity that necessitated daily testing and resulted in significant increases to telephone charges. CSS's attempts to explain the upgrade to its customers also contained representations that were misleading.

As part of the court enforceable undertakings, CSS has agreed to:

- write to customers (whose security system did not previously have facilities for opening and closing reports) affected by the conduct
- offer refunds
- implement a trade practices compliance program.

More information: [MR 153/02 19 June 2002](#)

Airlines all inclusive pricing—update

In the May edition of *Consumer Express* we reported that Qantas and Virgin Blue had agreed to ensure that all advertising for airfares was inclusive of taxes, levies and charges.

These requirements will now apply to the entire travel industry. From 30 June 2002 the ACCC requires that airlines and travel agencies quote all-inclusive prices, with regards to airfares, for the range of their products, including domestic and overseas travel packages.

If you come across a business in the travel industry quoting prices exclusive of taxes and levies, let the ACCC know on 1300 302 502.

More information: [MR 149/02 13 June 2002](#)

News from afar

Nigerian scam arrests

South African police have made arrests over an alleged Nigerian scam run by six people. Nigerian scams, which have been around in some form or another since the 1840s, now take the form of emails asking for bank account details to store money. Often the money is claimed to belong to a deceased official and has to be hidden from authorities. These letters and emails are sent to unsuspecting consumers, who quite often find that they lose a lot of money in the process.

People all over the world have fallen prey to these scams. The arrests mark a breakthrough in combating Nigerian scams. The arrests follow other arrests in Toronto last year. Three people were operating a 'boiler room' situation, taking incoming calls and posing as a bank in which the 'hidden funds' were deposited.

If you receive a letter or email that asks you to hide large amounts of money for a large fee, be cautious. Remember if it sounds too good to be true, it most likely is.

Need more information? Want to subscribe?

The ACCC's media releases and other useful information can be found on our website at <http://www.accc.gov.au>. Or call the ACCC Infocentre on 1300 302 502. You can receive *ACCC consumer express* for free or contribute an article or your views by sending an email to express@acc.gov.au. Put 'subscribe' in the subject line and we'll do the rest.

ACCC consumer express is published by the Australian Competition and Consumer Commission for the general information of consumers and consumer organisations. It may be freely reproduced subject to acknowledgment of the source. Editorial enquires to melanie.sherrin@acc.gov.au.

June media releases

- 28 June 2002 [Compressor Supplier Held Liable for Price Fixing and Collusion](#)
- 28 June 2002 [Federal Court Orders Payment of Compensation to Student Victims of Unconscionable Conduct](#)
- 26 June 2002 [ACCC Protects Consumers' Health Interests](#)
- 25 June 2002 [Regulatory Flexibility Demonstrated in ACCC Draft Greenfields Guideline](#)
- 21 June 2002 [Foxtel/Optus Proposal 'Likely To Breach Trade Practices Act': ACCC](#)
- 20 June 2002 [ACCC Issues Broadband Services Figures](#)
- 20 June 2002 [ACCC Draft Decision Gives Certainty to General Practitioners on Fee Arrangements](#)
- 20 June 2002 [ACCC Issues View on Airservices Australia's Price Rises](#)
- 19 June 2002 [ACCC Accepts Court Enforceable Undertakings From Custom Security Services](#)
- 18 June 2002 [ACCC Enforcement and Leniency Policy to be Discussed](#)
- 13 June 2002 ['No Need' for Apology: ACCC](#)
- 13 June 2002 [ACCC Accepts All-Inclusive Price Advertising Undertakings from QANTAS and Virgin Blue](#)
- 12 June 2002 [ACCC Moves to Protect Australian Businesses from Overseas Publisher](#)
- 11 June 2002 [ACCC Joins Enforcement Agencies to Target Scams](#)
- 11 June 2002 [Capital Finance Refunds Over \\$70,000 After GST Error](#)
- 11 June 2002 [ACCC Ends Investigation of Proposed Retrospective Point Value Changes to the NAB Rewards Program](#)
- 7 June 2002 [ACCC Allows Sydney Councils to Collectively Bargain on Recycling Facilities](#)
- 7 June 2002 [ACCC Asks Whistleblower to Call In](#)
- 7 June 2002 [ACCC Issues Final Decision On Information Requirements Guidelines](#)
- 6 June 2002 [ACCC to Consult Australian Public About Postage Stamp Price Rise](#)
- 5 June 2002 [ACCC Takes Action Against Free2aiR](#)
- 4 June 2002 [ACCC Issues Final Approval for South West Queensland Pipeline](#)