

Australia: ACCC Compliance and Enforcement Priorities in 2023/24

The ACCC has announced the industry sectors and competition and consumer law issues in focus for 2023/24.

In brief

Yesterday, the Chair of the Australian Competition and Consumer Commission (**ACCC**), Gina Cass-Gottlieb, announced the ACCC's compliance and enforcement priorities for 2023/24 and the market studies and advocacy work that the ACCC would continue this year.

Ms. Cass-Gottlieb identified a range of industry sectors, as well as specific competition and consumer law issues that will be the focus of the ACCC's compliance and enforcement activities for 2023/24. Many of these areas continue from last year.

Contents

Key takeaways

The ACCC's enforcement priorities for 2023/24

The ACCC's enduring priorities

ACCC priorities for advocacy and reform

Key takeaways

- Key sectors the ACCC will be focusing on in 2023/24 include gas markets, the digital economy, essential services (particularly telecommunications and energy) and the financial services sector. The ACCC will also continue its ongoing focus on digital platforms.
- The ACCC will work to improve compliance with environmental and sustainability claims (addressing what is often referred to as 'greenwashing'), prevent scams, enforce new prohibitions on unfair contract terms, prevent anti-competitive exclusive arrangements and ensure consumer product safety (particularly for young children).
- The ACCC will continue to focus on its enduring priorities, with a renewed focus on cartel conduct, product safety and conduct impacting First Nations Australians.

The ACCC's enforcement priorities for 2023/24

On 7 March 2023, the Chair of the ACCC, Gina Cass-Gottlieb, announced the ACCC's compliance and enforcement priorities for 2023.¹ The key updates and announcements are summarised below.

Environmental claims & sustainability

In 2023/24, the ACCC will continue to prioritise consumer and fair trading issues regarding environmental claims and sustainability, and will expand its focus to also include competition and product safety issues. This announcement follows the ACCC's recent publication of its report on an internet sweep of 'greenwashing' claims, where the regulator found that 57% of the businesses it reviewed made concerning claims about their environmental credentials.²

¹ For more information regarding the ACCC's 2023/24 compliance and enforcement priorities, including a copy of Gina Cass-Gottlieb's speech, visit the Media Release [here](#).

² For more information regarding the ACCC's 'greenwashing' investigation and report, visit the Media Release [here](#).

Ms Cass-Gottlieb noted that investigations are already underway, including in respect of businesses making vague or insufficiently evidenced claims. The Chair also commented that an internal task force has been formed to look at potential breaches of both consumer and competition law, and that ACCC authorisation may be necessary for certain types of conduct in emerging green industries (for example, where competitors wish to collaborate to achieve industry outcomes).

Exclusive arrangements

The ACCC will continue to investigate exclusive arrangements by firms with market power that impact competition in 2023/24, which was also a priority in 2022/23. There is a particular concern surrounding any conduct that leads to increased barriers to entry, or anti-competitive foreclosure of rivals.

Scams

The ACCC will focus on scam detection and disruption and will leverage its existing skills and experience operating the ScamWatch service to support the establishment of the Federal Government's National Anti-Scams Centre. The Chair also noted that the ACCC is looking to work closely with multiple stakeholders, including other government regulators (such as the Australian Communications and Media Authority), telecommunications providers, digital platforms and banks to create a multi-level approach to identifying, prohibiting and eliminating scams.

Digital platforms & the digital economy

The ACCC will continue its long-term focus on digital platforms in 2023/24, and will “strongly support” reforms including its recommendation for the introduction of service-specific mandatory codes of conduct for certain designated digital platforms.³ The ACCC will also continue to advocate for new notice-and-action requirements in relation to scams, stronger verification rules for business users and reviews, and new minimum standards for dispute resolution processes.

Additionally, the ACCC will focus on compliance and enforcement with consumer and fair trading issues relating to manipulative or deceptive advertising and marketing practices in the digital economy. Ms Cass-Gottlieb said that a sweep has recently been completed of the extent of marketing and advertising disclosure on social media platforms. The ACCC will have an increased focus on the role of influencers within wider business models, and has started to use its own social media channels to receive “tip-offs” about potentially harmful conduct of influencers.

Unfair contract terms

The ACCC will be prioritising enforcement of the recently introduced prohibitions on unfair contract terms in standard form small business and consumer contracts, which will come into force from 10 November 2023.⁴ In anticipation of the new provisions, the ACCC is undertaking a proactive review of business terms and conditions across a number of different sectors, which will be used as the basis for future enforcement cases.

Essential services: energy & telecommunications

Citing the ongoing increases to the cost of living, the ACCC will continue to prioritise its enforcement of consumer and fair trading issues arising from the pricing and selling of essential services. The ACCC will continue to pay particular focus on the energy and telecommunications sector, which has now continued for multiple years. Ms Cass-Gottlieb noted that a number of matters (particularly those relating to misleading and deceptive conduct) remain under investigation, although “promises” more successful outcomes will be reported over the next 12 months.

³ For more information about the ACCC's work on digital platforms, including the proposed code of conduct reforms, see the fifth interim report for the Digital Platform Services inquiry published [here](#).

⁴ For more information regarding the changes to the unfair contract terms regime, visit our Client Alerts published in October 2022 ([here](#)) and November 2022 ([here](#)).

Gas markets

Due to global disruptions to gas supply, the government introduced a price cap on wholesale gas producers in 2022. The ACCC has been tasked to enforce the price cap, which has become a compliance and enforcement priority for 2023/24. Ms Cass-Gottlieb said the ACCC has released preliminary guidelines in consultation with industry, with a view to creating a Code of Conduct for the gas industry. This priority is a continuation of the ACCC's 2022/23 compliance and enforcement policy. The ACCC's current Gas Markets inquiry has also been extended to 2030.

Consumer guarantees

The ACCC will continue to empower consumers and improve industry compliance with consumer guarantees, particularly in relation to high-value goods such as motor vehicles and caravans. The ACCC is also expected to announce its recommendations for reforms to make non-compliance with businesses' consumer guarantees obligations illegal, including failure to provide an appropriate remedy of repair, replacement, refund or having the service performed again when they are legally obliged to. Given the number one consumer complaint to the ACCC is how people can enforce their rights when a product or service is faulty, the ACCC believes there is a strong case for law reform on this issue.

Global and domestic supply chains

The ACCC will focus on both competition and consumer issues arising from global and domestic supply chains, particularly the transport and logistics industries.

Financial services & payment services

The ACCC noted that the current cost of living pressures means that rising interest rates present additional challenges to consumers. There are multiple aspects of this priority, with the ACCC conducting market studies in addition to compliance and enforcement action. The ACCC has also been tasked by the Federal Government to conduct an inquiry into Retail Deposit Markets and will contribute to the Government's new strategic plan surrounding payment systems and services.

Small businesses, agriculture and franchising

The ACCC will continue to work to ensure that small businesses receive the protections of competition and consumer laws, including in agriculture and franchising. It will actively play a role in protecting small businesses with limited bargaining power, monitoring any relevant industry codes and enforcing them where necessary.

The ACCC's enduring priorities

Each year, the ACCC remains focused on its enduring priorities, which include cartel conduct, anti-competitive conduct, product safety, consumers experiencing vulnerability or disadvantage and conduct impacting First Nations Australians.

In 2023, the ACCC has provided updates in relation to three of its enduring priorities:

- **Cartel conduct.** Ms Cass-Gottlieb said that the ACCC continues to screen industries and markets for cartel risks, and has begun engaging with industry in relation to cartel risks in procurement. The ACCC has also sought to improve its processes surrounding its immunity policy, whistleblowing and referral for litigation.
- **Product safety.** The ACCC will have a renewed focus this year on product safety, and is planning to introduce a focused suite of compliance and enforcement priorities in June 2023. Ms Cass-Gottlieb said that it was important for the ACCC to prioritise products aimed for young children, including button batteries, toys, household hazards, and products designed to be used whilst a baby is sleeping.
- **Conduct impacting First Nations Australians.** The ACCC will broaden its current educational work in relation to First Nations Australians, by expanding the program to metropolitan areas for the first time this year (where previously it was only focused on regional areas) and with a particular focus on monitoring misleading and deceptive conduct and scams.

ACCC priorities for advocacy and reform

Chair Cass-Gottlieb also provided updates on the ACCC's current priorities for advocacy and reform, which include:

- **Potential mandatory merger filing regime.** When questioned on whether there is support for a mandatory merger filing regime, Ms Cass-Gottlieb indicated that the Commissioners were considering these questions and the basic principles of such a regime, and a case for law reform has been taken to the Government. The Chair did not indicate her views on whether Australia's merger filing rules should be mandatory (rather than voluntary).
- **"Unfair trade practices" reform.** Ms Cass-Gottlieb was questioned on the ACCC's recommendation for the introduction of a general law prohibition against 'unfair trade practices'. If introduced, the prohibition would be intended to capture particular practices and processes that otherwise fall between the 'gaps' of current consumer protection laws, for example, online 'dark patterns' that exploit behavioural biases and distort consumer choice, subscription traps and practices designed to get consumers to agree to unfair or unfavourable contract terms. The Chair dismissed concerns regarding how such a prohibition might be defined, noting that other terms such as 'unfair contract terms' or the 'substantial lessening of competition' have developed a meaning over time that is understood and guides behaviour. She also noted that together with a general principle prohibition, the ACCC would provide specific guidance.
- **Anti-competitive conduct relating to employment relationships.** An ongoing Government concern, Ms Cass-Gottlieb stated that the ACCC is constrained as to restrictions of trade contained in employment contracts, due to an exemption that exists within the *Competition and Consumer Act 2010* (Cth). However, the ACCC has been asked by the Minister to review restraints of trade that may exist between corporations, which may potentially constitute anti-competitive conduct.

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