COST OF LIVING, SUSTAINABILITY AND THE DIGITAL ECONOMY: ACCC RELEASES ITS 2024-25 COMPLIANCE AND ENFORCEMENT PRIORITIES

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IN BRIEF

The Australian Competition and Consumer Commission (ACCC) has released its compliance and enforcement priorities for 2024-25, with ACCC Chair Gina Cass-Gottlieb expanding on the Commission's key areas of focus in her address to the Committee for Economic Development.

We have produced a one-page summary that outlines the ACCC's enforcement priorities and the key takeaways for businesses (click here), and have summarised some more general insights below.

The priorities have a very strong consumer law and consumer welfare focus, particularly:

- Misleading sustainability claims;
- Fair trading issues associated with the digital economy;
- Representations regarding essential services, as part of the ACCC's cost of living focus;
- Unfair contract terms; and
- Manufacturers and suppliers not adhering to their consumer guarantee obligations.

See the full list of the ACCC's 2024-25 compliance and enforcement priorities here and Ms Cass-Gottlieb's speech here.

KEY AREAS OF FOCUS

Many of the priorities remain the same as the previous year. However, the ACCC has introduced some new areas of focus for 2024-25, including competition and consumer issues in the supermarket and aviation sectors and improving NDIS providers' compliance with the consumer law.

The ACCC's principal focuses include the following:

Sustainability

Sustainability and environmental claims will remain under the spotlight for the ACCC. Ms Cass-Gottlieb highlighted examples of the ACCC's work here, such as its market inquiries in relation to the Northern Australian

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cyclone reinsurance pool.

She stated that the ACCC has "a number of in-depth greenwashing investigations including in the energy and consumer products sectors".

Cost of Living Pressures

Whilst this is not a standalone priority, cost of living pressures have informed the ACCC's more specific concerns (e.g. competition and consumer law issues in essential services and supermarkets).

In this regard, Ms Cass-Gottlieb noted that the rising cost of living increases the vulnerability of consumers to anti-competitive conduct which reduces competition and choice in the supply of essential goods and services, restricts entry or growth of competitors, or contributes to price escalation.

Essential Services

More specifically on essential services, Ms Cass-Gottlieb stated that competition and consumer protection issues in the telecommunications, electricity, gas and financial services sectors will be a priority of the ACCC.

Whilst protection of consumers in this sector was one of last year's priorities, competition issues within essential services represent a new focus, with Ms Cass-Gottlieb stating that "vigorous competition in these essential services is critical to the efficient functioning of the economy as a whole".

Digital Economy

The ACCC's focus on consumer and fair trading issues in the digital economy will be continued, with last year's Australian Consumer Law survey finding that "55% of problematic transactions involved online commerce".

This means that digital marketing practices will remain under the magnifying glass, highlighting the need for ongoing compliance with consumer law in this area. Video games (particularly in-app purchases) will now be a specific area of focus in this sector.

ENDURING PRIORITIES

The ACCC reiterated its ongoing focus on its enduring priorities including cartel and anti-competitive conduct, as well as conduct impacting First Nations Australians or people experiencing disadvantage or vulnerability.

In addition, scam detection and disruption, and protection of small businesses from unfair trading and anti-competitive conduct, have been added to its list of enduring priorities.

Other Points of Note

- Ms Cass-Gottlieb:
  - Highlighted that in this financial year, over *AU$100 million* worth of penalties were awarded in the ACCC's competition law cases - the highest total ever reached during a financial year; and
  - Stated that this "should send a strong message that the actions we are taking are achieving specific and general deterrence"

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highlighting that businesses should ensure they are closely monitoring potential competition law risks.

- More specifically in respect of **cartel conduct**, Ms Cass-Gottlieb highlighted the ACCC's recent enforcement action against waste companies Bingo Industries and Aussie Skips, repeating Justice Wigney's statement in sentencing that:

  "The fines imposed for such offences must be sufficiently high that they could not be regarded to be an acceptable cost of doing business. They must also be sufficiently high that others who may be tempted to offend will come to appreciate that the risk of having a substantial penalty imposed well outweighs the likely benefits from the anti-competitive conduct".

- Consumer guarantees are "the most complained about issue raised with the ACCC and with each state and territory consumer agency". Ms Cass-Gottlieb stated that this reinforced the ACCC's view that breaches of the consumer guarantee law should amount to a contravention of the ACL and attract pecuniary penalties.

  Ms Cass-Gottlieb also noted that the ACCC would continue to advocate for law reform in other areas, including "unfair trading practices and supplying unsafe goods, as well as merger reform".

Overall, Ms Cass-Gottlieb noted that the ACCC's priorities have been shaped by principal challenges facing society, being "the existential importance of the net zero transition, the opportunities and disruptions of digital transformation, and the significant impact of cost of living pressures across our community". It is highly likely that the Commission will continue to look closely into potential issues relating to these challenges.

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