



Overview ■

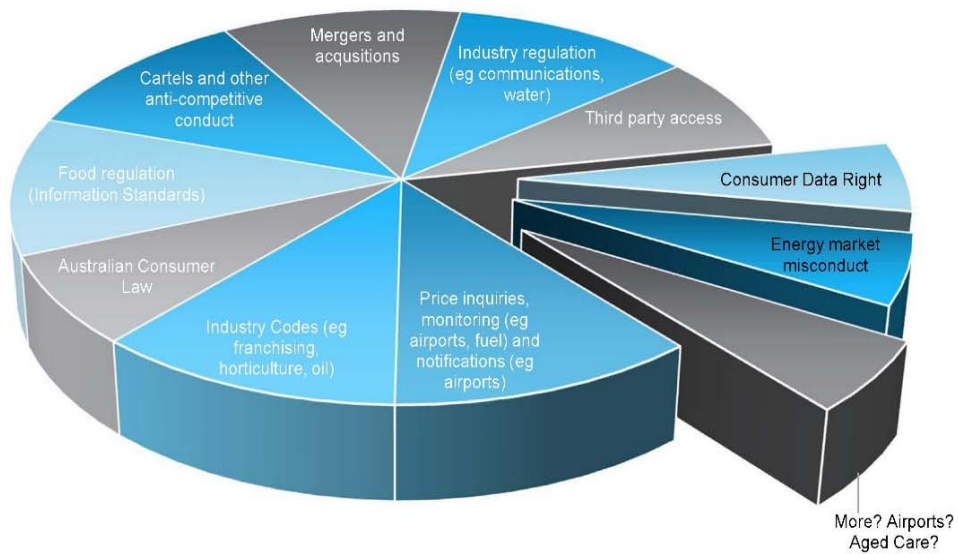
The ACCC is arguably our most influential and important economic regulator

- Overview of the ACCC's regulatory reach
- The ACCC's evolving role - enforcement
- The ACCC's evolving role - new economic regulatory powers

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Overview of the ACCC's regulatory reach

Regulatory reach of the ACCC





Criminal cartel enforcement

NYK convicted of criminal cartel conduct and fined \$25 million

Second shipping company pleads guilty to criminal cartel conduct

Criminal cartel charges laid against ANZ, Citigroup and Deutsche Bank

ACCC probes big four over cartel conduct
Source: Australian Financial Review (13 February 2019)

Criminal cartel proceedings commenced against Country Care and its managers

Criminal cartel charges laid against CFMMEU and its ACT branch secretary

Source: ACCC Media Releases

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Criminal cartel prosecutions on the rise...

1 Nippon Yusen Kabushiki Kaisha (NYK)

- Cartel conduct in shipping cars, trucks and buses
- Single charge of giving effect to a cartel provision
- Action against company
- **\$25M fine** for that charge, including a 50% discount for an early guilty plea & co-operation

2 Kawasaki Kisen Kaisha (K-Line)

- Cartel conduct in shipping cars, trucks and buses
- Action against company
- Plead guilty in April 2018
- Awaiting sentencing judgment

3 Country Care

- Action against company, its Managing Director and a former employee
- Alleged cartel conduct involving products used in rehabilitation and aged care, such as beds, mattresses, wheelchairs and walking frames

4 ANZ / Citigroup/ Deutsche Bank

- Action against ANZ, Citigroup and Deutsche Bank
- Action against six individual current or former executives of ANZ, Citigroup & DB
- Alleged cartel conduct relating to trading in ANZ shares following an ANZ institutional share placement

Criminal cartel prosecutions on the rise...

5 CFMMEU

- Action against CFMMEU and an individual (ACT Divisional Branch Secretary)
- Charged with attempting to induce suppliers of steelfixing and scaffolding services to reach a cartel in relation to services provided to builders in the ACT



Mergers

A matter of process...

- The ACCC is 'in control' – undertaking informal clearance and merger authorisation (following the Harper reforms)
- FIRB is referring all matters to the ACCC
- The ACCC is enhancing complex merger scrutiny:
 - compelling production of information / documents
 - requiring oral evidence under oath

2017-18 the ACCC issued significantly more s155 notices (89) compared with the previous year (44)

A new enforcement front...

- The ACCC has started taking action against conduct that occurs as part of the M&A process (rather than just reviewing the substantive effect of an acquisition)
- \$1.05m penalty for 'gun jumping' cartel – Cryosite/Cell Care proposed acquisition
- Alleged collateral conduct substantially lessening competition – Pacific National/Aurizon proposed acquisition

Update on key Harper reform offences


- Misuse of market power

A corporation with a **substantial** degree of **power** in a market must not engage in conduct that has the purpose, effect or likely effect of **substantially lessening competition** in that market, or any market in which the firm (or related body corporate) supplies or acquires goods or services

- Concerted practice

A corporation must not engage with one or more persons in a **concerted practice** that has the purpose, effect or likely effect of **substantially lessening competition**


The ACCC has a dedicated SLC Unit



Financial services

- First task – Residential Mortgage Price Inquiry (Final report, December 2018)
- The ACCC has established a Financial Services Competition Branch, which includes a permanent competition investigation team

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Higher monetary penalties

“The ACCC wants to ensure that penalties for breaches of competition laws are not seen as an acceptable cost of doing business. To achieve deterrence, we need penalties that are large enough to be noticed by senior management, company boards, and also shareholders.”

Rod Sims, ACCC Chairman, ACCC Media Release, 4 April 2018

“We are into punishment.”

Rod Sims, ACCC Chairman, Australian, 27 February 2019

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Higher penalties – legislative maximums

Maximum penalties for anti-competitive conduct



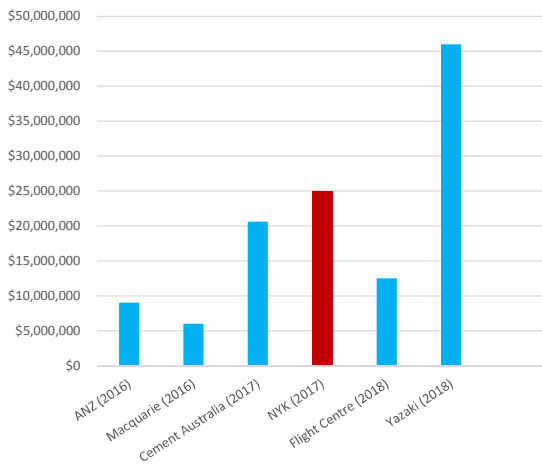
Maximum penalties under the ACL



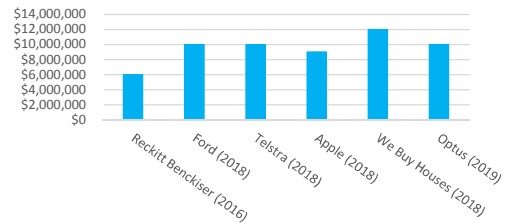
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Higher penalties – on the rise

Anti-competitive conduct



ACL



New penalty frontiers

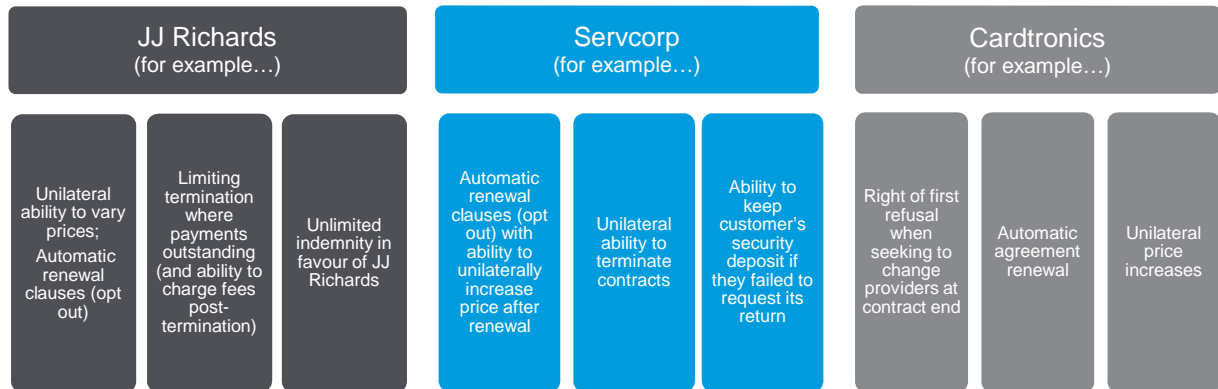
- Industry Codes
 - first financial penalty imposed for alleged breach of the Horticulture Code
 - ACCC advocating for higher penalties for breach of Franchising Code and Oil Code
- Unfair contract terms
 - ACCC advocating for unfair contract terms to be illegal and subject to pecuniary penalties and infringement notices

Expect the ACCC to continue seeking higher penalties for breach of competition and consumer laws

Unfair contract terms regime

- Continued ACCC focus, particularly small business standard contracts; sectors include:
 - franchising
 - agriculture
- The ACCC has a new compulsory information gathering power to investigate unfair contract terms
- Extension to insurance contracts still progressing
- First review of the regime for small businesses

Types of clauses the ACCC is targeting in small business contracts...



2019 enforcement priorities

“2019 will be an important and exciting year for the agency, with the ACCC focusing on its purpose of ensuring markets work for the long terms interests of consumers”

ACCC Media Release, 26 February 2019

2019 ACCC compliance and enforcement priorities

Industry Spotlight

- Commercial construction
- Financial services
- Agriculture
- Franchising

Consumer Focus

- Customer loyalty schemes
- Large retailers and manufacturers of high value consumer goods
- Advertising and subscription services on social media platforms
- Opaque and complex pricing of essential services
- Collection and use of consumer data by digital platforms

ACL Focus

- Consumer guarantees (supply of high value electrical and whitegoods by large retailers and manufacturers)
- Unfair contract terms (agriculture and franchising)

SLC Focus

- Misuse of market power
- Concerted practices

Product Safety

- Takata airbags
- Quad bike safety

Separate Product Safety Priorities to be released in March

Enduring Priorities

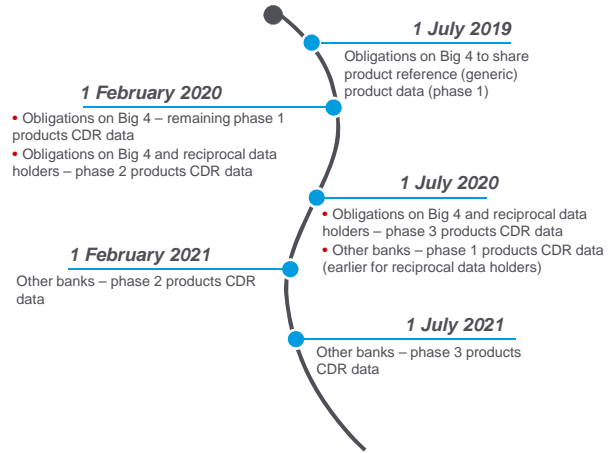
- Cartel conduct
- Anti-competitive conduct
- Product safety
- Vulnerable and disadvantaged consumers
- Conduct impacting Indigenous Australians

The ACCC's evolving role – new economic regulatory powers

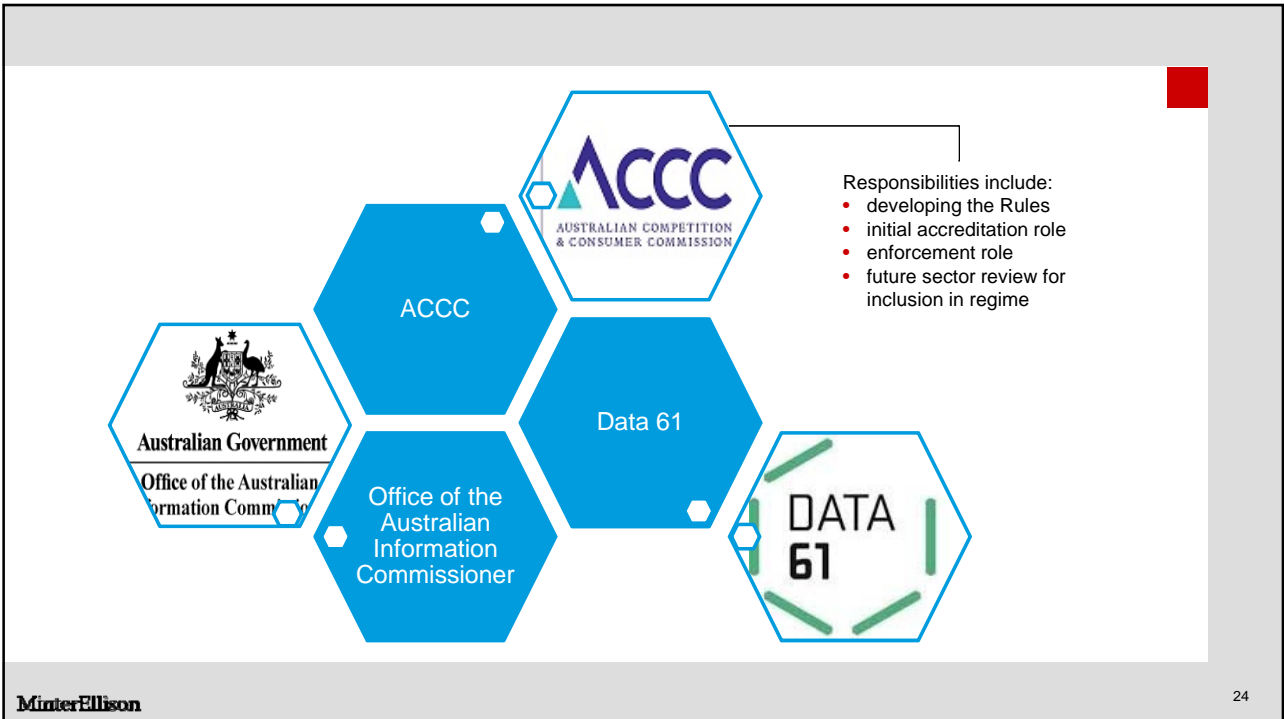


Consumer data right

Current 'Open Banking' implementation timing... ACCC can adjust timeframes



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Energy market misconduct

- Electricity sector specific prohibited conduct proposed under the *Competition and Consumer Act*, relating to:
 - electricity retail prices
 - the electricity financial contract market
 - the wholesale (spot) market
- Supporting the ACCC's electricity market monitoring inquiry (2018 – 2025)

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Energy market misconduct (cont...)

ACCC proposed enforcement role

- Issue public warning notices
- Issue infringement notices
- Accept court enforceable undertakings
- Apply for injunctions
- Apply for pecuniary penalties

ACCC proposed role as a precursor to Treasury powers, issuing:

- Prohibited conduct notices
- Prohibited conduct recommendations
- No Treasury action notices

Future regulatory powers?

- Financial services? (Productivity Commission Inquiry)
- Airport regulation? (current Productivity Commission Inquiry)
- Aged care? (current Royal Commission)

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