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# End of an **ERA**

## Farewell Graeme Samuel



After eight years in the Chairman's seat, Graeme Samuel reflects on the achievements over that time and looks to the challenges of the future for the regulator.

The substantial achievements of the ACCC over the past eight years are not mine alone and not even those of the seven Commissioners. The credit goes to the ACCC's 800 committed, rigorous and independent staff who have taken the ACCC to where it is today.

The achievements of the organisation can be measured by a number of standards including looking at how many additional responsibilities and powers that have been conferred by Australian governments on the ACCC over that time, including:

- › new tools under the Australian Consumer Law (ACL) to protect consumers from dishonest commercial conduct
- › substantially enhanced powers to regulate telecommunications, with key roles in Telstra's structural separation and the transition to and operation of the National Broadband Network
- › oversight of a new, national product-safety system with the ACCC now being the single national regulator in relation to product safety issues
- › oversight of industry codes for the franchising, horticulture and petroleum industries
- › enhancements to the laws guarding against businesses abusing their market power to damage rivals; and
- › enhancements to laws letting businesses band together in negotiations with, for example, suppliers or buyers of their produce.

We were also asked to devise and enforce rules encouraging the efficient trading of water in the Murray-Darling Basin, so this precious resource can literally flow more readily to its best uses.

We have undertaken various monitoring tasks and produced reports on sectors such as grocery and petrol as a way of increasing the transparency of competition in these industries.

We have played an important role in establishing various third party access regimes particularly in important export industries such as wheat and coal.

The Australian Energy Regulator (AER), within the ACCC, started with responsibility for energy generation with separate State regulators being responsible for distribution and retail energy regulation.

The AER has subsequently been given responsibility for the regulation of energy distribution and from July next year will become the single national energy regulator when it takes over responsibility for regulating a number of retail functions, such as service standards and hardship processes.

So our responsibilities have been extended considerably, testament to the credibility and rigour of the ACCC. Perhaps most importantly, we have been provided with a substantially enhanced penalties regime for anti-competitive conduct—including, in particular, the criminalisation of serious cartel conduct with one of the toughest incarceration regimes in the developed world.

Another measure of our achievements in that time is the record of the ACCC's enforcement activity.

The number of matters in which we have either commenced court proceedings or obtained court enforceable undertakings is at the highest level since at least the early 1990s.

Litigation is not the ACCC's action of first choice, however. We are consistently guided by our three-pronged approach: education and awareness raising to achieve compliance; obtaining out of court settlements where possible; and pursuing litigation and penalties where necessary or appropriate.

We have increased our focus on achieving effective outcomes through efficient alternative means to litigation. In appropriate cases, we seek to achieve our enforcement objectives through court enforceable undertakings, the effect of which is to require businesses to remedy the harm caused by their misconduct.

We have also had some particularly good, innovative and pragmatic outcomes across sectors by negotiating what we call 'global' undertakings. This has been significant in ►

**End of an Era** *continued*

the telecommunications industry, in relation to advertising standards and mobile handset warranties.

While I may be leaving the ACCC, the work of a regulator is never done and new challenges will arise as markets and industries change over time.

One of the significant challenges I see for competition regulators globally over the next decade will be the need to constantly review and revise their approaches to evolving media markets.

As rapidly changing technologies provide new means to distribute content to consumers, the traditional separation between various products and between various platforms, such as newspapers, television and the internet, is blurring and this can rapidly alter the competitive landscape. The existence of new forms of distribution such as Internet Protocol Television can also raise significant issues in defining the boundaries of relevant markets.

The 'old' media sector is becoming increasingly concentrated. But, at the same time, there is potential for competition from 'new' media.

It will be important to:

- › understand the dynamics and interrelationships between the different platforms
- › identify which new, untested 'new-media' entrants are likely to become important competitors in the future; and
- › identify whether and how content owners can get content to consumers.

Content control is paramount. We might have a series of pipes to distribute content to consumers, but if the compelling content is controlled by too few media players, they will

have a stranglehold over the competitive landscape in this important area.

Another area of great uncertainty and change is that of financial services. We are still facing some of the aftershocks of the Global Financial Crisis and this has made for a constantly changing landscape. For example, foreign banks are recapitalising their balance sheets and starting to re-enter the Australian corporate and institutional market.

Non-bank financial institutions, the one-time primary source of competitive interest rates in the residential market, are starting to find new sources of lower cost finance—but the operative word here is 'starting'.

With continuing uncertainty, it will be a complex and challenging task to predict the competitive effects of mergers in the finance industry.

There is much more to say than there is space. But I will finish by expressing what a privilege it has been to have led the ACCC over the past eight years. I am proud of what all my colleagues have achieved. For without any doubt, the ACCC is one of the most respected competition and consumer protection agencies in the world.

The ACCC is an organisation with the principles of professionalism deeply imbued in its culture. And most importantly, the work of the ACCC is increasingly relevant to the daily lives of all Australians.

For the success of our work over eight years, I say to each and every one of my colleagues—thank you.

