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ACCC - Review of health priority

Competition and consumer issues in the medical and health sector were a compliance and enforcement priority for two years (2015 and 2016). The ACCC addressed issues in the health industry by dealing with competition in health and consumer health issues separately.

In consumer health, we focussed our attention on assisting vulnerable patients and/or large groups of Australians affected by the conduct of health practitioners or corporations which may raise ACL concerns.

Our primary activities were:

- identifying and targeting misleading and unconscionable conduct in relation to:
 - The supply of health services, treatments or products by corporations or large businesses, with a particular focus where patient care is compromised
 - Claims about efficacy of new technology or emerging areas of medicine that are not supported by evidence, particularly where the potential for consumer detriment is widespread
 - Claims about health treatments or services which are not supported by scientific evidence, when they have the likelihood of deterring or delaying consumers from pursuing effective treatments.
- engaging with health regulators to assist information sharing and referral of matters
- raising awareness of consumer rights.

Our experience during the life of the health priority led the ACCC to propose the formation of the Consumer Health Regulators Group. We saw a need to foster communication and cooperation on regulatory issues, challenges and gaps and to continue engagement with health regulators, beyond the life of the priority.

Enforcement outcomes

- In April 2016, the Federal Court ordered Reckitt Benckiser (Australia) Pty Ltd to pay a penalty of \$1.7 million for engaging in misleading conduct by making representations on its website and packaging that Nurofen Specific Pain products were each formulated to specifically treat a particular type of pain, when this was not the case. The ACCC subsequently filed a Notice of Appeal from the Federal Court's decision to seek a penalty of at least \$6 million. The appeal hearing was heard in November 2016.
- In the second half of 2016, the ACCC instituted proceedings against three online e-cigarette retailers. In June, the ACCC alleged that the two companies, Social-Lites Pty Ltd and Elusion New Zealand Limited, breached the ACL by making representations on their websites from at least August 2015 that the e-cigarette products being sold did not contain carcinogens or toxic chemicals, and did not contain any of the chemicals found in conventional cigarettes.

In September, the ACCC instituted proceedings against The Joystick Company Pty Ltd for alleged false or misleading representations that its products did not contain any toxins or formaldehyde, were "independent from" chemicals found in conventional cigarettes, and had been approved by the ACCC.
- In September 2016, the ACCC accepted an administrative undertaking on behalf of Chemmart in relation to representations regarding the effectiveness of a myDNA genetic test in identifying an individual's response to certain drugs.
- In November 2016, the ACCC announced that several major IVF clinics have made changes to claims published on their websites about success rates following an ACCC into potentially false or misleading representations.
- In March 2017, the ACCC announced the results of the ACCC's audiology survey in a concise report, *Issues around the sale of hearing aids*.