

Carbon Alert

ACCC focus on carbon price impact claims

June 2012

As 1 July 2012 approaches, bringing with it the commencement of the carbon pricing regime, businesses should be careful when attributing any price increase to the introduction of the carbon price.

In accordance with a direction received from the Treasurer on 31 July 2011, the Australian Competition and Consumer Commission (**ACCC**) has stated that it will be monitoring carbon price related claims and in particular increased price claims based on the impact of the carbon price.

For many industries and businesses the impact of the carbon price is as yet unknown. It is expected that it will increase costs for many businesses. When taking steps to prepare for the anticipated business cost increases, companies should be careful to ensure that any statement regarding price increases consequent upon the carbon price are accurate and able to be substantiated.

Price Increases Attributed to the Carbon Price

The ACCC has stated that its focus is to ensure businesses do not make misleading claims about price increases as a result of the carbon price.

On 18 June 2012 the ACCC set up the ACCC Carbon Price Claims Hotline, and an online carbon price claim form. ACCC Chairman Rob Sims is quoted on the ACCC website saying: "The ACCC hotline will make it easier for consumers and small business to alert the ACCC if what they're seeing doesn't look quite right. Consumers or businesses can contact us if they think a carbon price claim is false."

Misleading claims can include statements:

- claiming that a price increase is a result of the carbon price, where that is only one of the reasons for the price increase; and
- claiming that a price increase is to cover increased costs associated with the carbon price where the price increase is greater than the amount needed to cover those costs.

You should be aware of how your business is making statements to consumers including:

- advertising including television, radio, catalogues and print media;
- company promotional resources including social media such as facebook and twitter;
- company public documents such as annual reports;
- company contracts;
- by staff on the telephone, by email and letters; and
- in stores, or on location with consumers or clients.

Businesses are entitled to increase prices without making any statements as to the reason for that price increase. Therefore, no explanation of a price increase may be safer than attributing it to any one cause, especially the carbon price.

There are significant risks in increasing prices before the introduction of the carbon price and explaining the price rise by the impact of the carbon price. This is because it will be very difficult to demonstrate that the amount of the increase directly reflects the impact of the carbon price.

Businesses should be wary in assuming that because their costs are increasing, (eg. utility accounts) that those cost rises are due to the introduction of the carbon price. Evidence of higher utility accounts may not be enough to prove that it is the carbon price causing the price increase particularly where those accounts do not attribute the cost increase to the carbon price. This is demonstrated by the

Essential Services Commission of South Australia (**ESCOSA**) allowing an increase of 18 per cent on annual electricity bills. The rise is attributed as 9 per cent to carbon price and 9 per cent to the maintenance and rebuilding of ageing distribution and transmission infrastructure and costs of compliance with climate change programs (renewable energy costs).

Even where the carbon price is partially the cause of the price increase, if the only explanation offered for the price rise is the carbon price, that explanation is misleading or deceptive.

Misleading or Deceptive Conduct

There have been no amendments to the *Competition and Consumer Act (2011)* (**the Act**) or specifically addressing conduct in relation to the carbon price. This is because conduct in respect of the carbon price which is misleading or deceptive or likely to mislead or deceive is already prohibited by the Australian Consumer Law.

Where a company or individual makes claims that are misleading or deceptive (including about the impact of the carbon price) the ACCC may take action against the company or individual seeking remedies including:

- Undertakings;
- Injunctions;
- Fines (up to \$1 million for corporations and \$220,000 for individuals);
- Adverse Publicity Orders;
- Disqualification Orders; and
- Convictions.

Anti-Competitive Conduct

The ACCC will also be watching industry groups carefully in this period. Any suggested pricing structures or agreed price lists may constitute an agreement, arrangement or understanding between competitors in relation to price. This is a contravention of the anti-competitive provisions of the Act and the penalties for corporations engaging in this anti-competitive conduct can be a fine of \$10 million or

30% of the benefit of the conduct or 10% of the company's annual turnover.

What should you do?

If you choose to avoid making any statement regarding the impact of the carbon price on your pricing or business generally, you should:

- inform all staff of that decision and that no comment contrary to this decision is to be made in respect of the carbon price;
- ensure that the company materials are consistent with this strategy;
- avoid any discussions with competitors (including through industry bodies) regarding the changes to pricing as a result of the carbon price; and
- seek further advice if you have any doubts.

If you choose to attribute a price increase or part of a price increase to the carbon tax, you should:

- decide on a simple consistent message regarding the pricing increase and the impact of the carbon price;
- compile sufficient information to support that claim. This may include invoices, statements, reconciliations or professional advice on the actual impact;
- ensure that your staff are trained to convey the claim authorised by the business and not any further or other information which may not be supported;
- review all company materials to ensure a consistent message about the pricing increase;
- avoid any discussions with competitors (including through industry bodies) regarding the changes to pricing as a result of the carbon price; and
- seek further advice if you have any doubts.

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