
Enforcement

This chapter reports on investigations and continuing proceedings originally undertaken by the former Trade Practices Commission as well as those initiated since 6 November 1995 by the Australian Competition and Consumer Commission. For the sake of simplicity the term 'Commission' has been used throughout in reference to both organisations.

Restrictive trade practices

Pioneer Concrete (Qld) Pty Ltd, Boral Resources (Qld) Pty Ltd and CSR Limited

Price fixing and market sharing agreements (s. 45)

On 4 December 1995 the Federal Court Sydney imposed penalties exceeding \$20 million on three pre-mixed concrete suppliers — Pioneer Concrete (Qld) Pty Ltd, Boral Resources (Qld) Pty Ltd and CSR Limited — and some executives after finding the three companies had engaged in price fixing and market sharing conduct in breach of s. 45 of the Trade Practices Act between mid-1989 and mid-1994.

The Commission had alleged that a well-organised cartel had existed for the supply of pre-mixed concrete in the Brisbane, Gold Coast and Toowoomba markets between mid-1989 and mid-1994.

The Court awarded pecuniary penalties of \$6.6 million each against Pioneer, Boral and CSR; \$50 000 each against executives Robin Torrisi (Sales Manager, Pioneer), Geoffrey Edward Stiles (Operations Manager, Boral), John Brown (Sales Manager South East Qld,

CSR, until 1993), Dennis Sheldon (Sales Manager, Brisbane, CSR from 1993) and Russell Redenbach (Concrete Manager, Boral); and \$100 000 against Peter Kinsella (Queensland General Manager, Boral).

The penalties sought would have been even higher but for the companies' cooperation with the Commission, and the fact that much of the conduct occurred before the maximum penalties under the Act were increased. In late 1994, the Commission had brought proceedings against Goodmix, Hymix and Rocla which resulted in penalties totalling \$530 000 being imposed against the companies and an executive. The companies provided a great deal of the information forming the basis of the present case.

Among the major projects found to have been affected by the conduct (in approximate date order) were:

- Brisbane City Council concrete tenders between 1989 and 1993;
- the Queensland Newspapers building at Murarrie;
- construction at the Queensland University of Technology in 1990;
- the Australian Tax Office at Chermiside;
- the Hale St roadworks;
- World Trade Centre site;
- Dockside;
- the Commonwealth Courts building;
- the Southbank Piazza;
- the Performing Arts Centre car park;
- the Mater Medical Centre;
- the Australian Tax Office at Mt Gravatt;
- the Carindale shopping centre expansion;
- works at the Wesley Hospital;
- the 111 George Street building (State Government);
- the Mater Hospital car park;
- the John Tonge building (morgue);
- works at Emmanuel College, University of Queensland;

- the City Plaza refurbishment;
- University of Queensland car park;
- Brisbane City Council bus depot, Mt Gravatt;
- the Coca Cola plant, Richlands;
- the Oxley Interchange, Harcourt and Rudd Streets, Oxley;
- works at the Morningside TAFE;
- the Goodwin Apartments, Kangaroo Point;
- Terrica Place, City;
- the Queensland Convention Centre;
- Fishermans Island rail link;
- Southbank construction work;
- Brisbane City railway tunnels (Stage 2);
- Browns Plains shopping centre;
- University of Queensland Biosciences building;
- Broncos Leagues Club;
- Queensland Rail, North Pine River construction site;
- Coronation Drive Office Park;
- Gateway arterial road construction;
- Westfield Shopping Town, Indooroopilly, extension;
- Queensland Rail South Brisbane to Park Road construction;
- Admiralty Towers, City;
- Taigum shopping centre;
- Southbank Northern Infrastructure;
- Sunnybank shopping centre;
- most Caboolture Shire Council work;
- Australia Post building, Kelvin Grove; and
- Quay Terraces, City.

On the Gold Coast, projects included:

- Belle Maison Apartments;
- Gold Coast Transit Centre;
- 50 Cavill Avenue, Surfers Paradise;
- Pacific Fair shopping centre extension;
- Coomera Rail Bridge; and
- Tweed River Bridge.

In Toowoomba, the projects were:

- Toowoomba Base Hospital construction site; and
- University of Southern Queensland construction site.

The Commission alleged that executives of all the companies, through more than 50 regular meetings and telephone conversations, conspired to fix the base price of pre-mixed

concrete in Brisbane, on the Gold Coast and in Toowoomba. It was also alleged that the participants agreed to maintain their market shares at predetermined levels, effected by numerous agreements not to compete for specific major projects and concrete orders. An accountant was engaged to collate movements in market share so that the parties could monitor market share.

The Commission alleged that either at meetings or by telephone (or both), executives of the companies agreed which company was to be successful in tendering for supply to these projects. The 'unsuccessful' companies agreed to quote prices at a level designed to ensure that the nominated company secured the work. Market shares were also allegedly maintained by the companies recognising certain customers (referred to as 'pets') as belonging to certain suppliers and agreeing not to compete for their business.

In another action brought at the same time, the Court also imposed penalties of \$400 000 against Hymix and \$50 000 against Mr Phillip Barrett, one of Hymix's executives, in respect of its Gold Coast conduct.

None of the companies entered a defence to the action. Counsel for the Commission made submissions to the Court on penalties with the agreement of Pioneer, Boral, CSR and Hymix and their executives.

**Monier Roofing Limited, Boral
Hollostone Masonry (South Aust) Pty
Limited, and Hallett Roofing Services
Pty Limited**

Anti-competitive agreements (s. 45)

On 4 December 1995, Justice Lockhart in the Federal Court Sydney handed down penalties of \$100 000 against each of the three roof tile manufacturers Monier Roofing Limited (Monier), Boral Hollostone Masonry (South Aust) Pty Limited (Boral), and Hallett Roofing Services Pty Limited (Hallett) which had admitted contravening the price fixing and boycott provisions of the Act. Justice Lockhart also ordered injunctions against the companies and three former employees of the companies

for a period of four years to restrain them from repeating the conduct in the future.

Monier is a wholly owned subsidiary of CSR Limited, Boral is a wholly owned subsidiary of Boral Limited, and Hallett (which no longer trades in South Australia) is a wholly owned subsidiary of Pioneer International Limited.

In late 1990, the Commission began investigations into allegations of anti-competitive arrangements in the South Australian roof tile industry, and instituted proceedings against the companies on 30 June 1994. The investigation suggested that the arrangements began in the late 1960s and continued until at least the time the Commission initiated proceedings.

The Commission alleged that, from mid-1988 to mid-1992, representatives of the manufacturers met annually with representatives of the South Australian Roof Tilers' Association (SARTA) to discuss and fix the tiling rates payable by the manufacturers to the tile fixers. These arrangements were known as 'industrial agreements'.

The 'industrial agreements' governed the engagement of each roof tile contractor and typically contained provisions which:

- set the rates for the fixing of all products of the manufacturers;
- set the minimum wage for employees of roof tile contractors and the procedure for review;
- set the rates for casual employees of roof tile contractors;
- dealt with working hours, overtime rates, travelling time allowances, vehicle allowances and country zone allowances;
- dealt with long service leave, sick leave, bereavement leave and public holidays, superannuation, redundancy and provident fund contributions;
- provided for dispute settlement procedures; instituting a Code of Fixing Practice;

dealing with a procedure for introduction of new products and methods; and

- ensured applicable work cover and accident insurance was taken out.

In addition, the Commission alleged that the manufacturers and SARTA also agreed that the manufacturers would give preference to roof tile contractors who were SARTA members.

Although the annual meetings ceased in mid-1992, the manufacturers continued to communicate with each other up to 1993 in various ways, including by telephone and facsimile, concerning the fixing rates which they paid to roof tile contractors who were SARTA members.

The Commission alleged that the arrangements had the purpose or effect of substantially lessening competition in each of the markets the companies operated in. It considered that the price fixing arrangements had a serious effect on competition because:

- but for the arrangements, Monier, Boral and Hallett would have been in competition with each other in determining the price for, and conditions of supply of, concrete and clay roofing tiles to consumers; and
- roof tile fixers would have been in competition with each other determining the price for, and conditions of supply of, roof tile affixing services to consumers of those services.

The Commission considered that the SARTA preference arrangements also had a serious effect on competition because they:

- excluded non-SARTA roof tile fixers from obtaining roof tile fixing work in South Australia; and
- hindered the entry of new roof tile companies to the market because of the inability of those companies to obtain the services of roof tile fixers.

On 25 July 1995 in the Adelaide Federal Court before Justice Branson, SARTA had admitted to all of the contraventions alleged against it.

As much of the conduct the subject of the present action occurred before January 1993, the penalties of \$100 000 imposed against each company were based on the maximum penalties per offence which applied before the Act was amended — \$250 000 for a company and \$50 000 for an individual. Current penalties are a \$10 million maximum per offence for a corporation and \$500 000 maximum per offence for an individual.

The companies have also agreed to implement a trade practices compliance program to ensure its staff are aware of their obligations under the Trade Practices Act.

Inghams Enterprises Ltd and Steggle's Ltd

Price fixing agreement (s. 45)

The Commission instituted proceedings against two of Australia's largest chicken processors, Inghams Enterprises Ltd and Steggle's Ltd, in the Federal Court on 30 October 1995.

The Commission alleged that Inghams' and Steggle's employees organised three meetings at Adelaide's Grosvenor Hotel in late 1992 and early 1993 which were attended by nearly all South Australia's chicken processors.

It was further alleged that market-sharing agreements were struck at the meetings. The agreements provided that each processor would retain existing retail customers and there would be no more discounting to 'poach' other processors' retail customers. The customers included supermarkets, chicken shops and butchers.

The agreements were alleged to have substantially lessened competition in the market for processed chicken products in South Australia. The market includes whole birds, rotisserie birds and various fillets. The parties to the agreements accounted for over 90 per cent of wholesale chicken products supplied in SA, with Inghams and Steggle's together accounting for approximately 80 per cent.

On 15 December 1995 in the Federal Court Adelaide, Inghams and Steggle's consented to maximum penalties of \$250 000 each after

admitting that they had made price fixing and market sharing agreements in the wholesale chicken meat market in South Australia.

The agreements were made only months before the maximum applicable penalties under the Trade Practices Act were raised from \$250 000 to \$10 million. It is possible that higher penalties could have been considered had the conduct occurred after the new penalties were introduced.

In addition to the monetary penalties, both companies consented to the issuing of injunctions restraining their future conduct and agreed to implement trade practices compliance programs. Each company also consented to payment of \$12 500 toward the Commission's costs.

Commonwealth Bureau of Meteorology

Misuse of market power (s. 46)

On 13 December 1995 the Commission instituted proceedings in the Federal Court Melbourne against the Commonwealth Bureau of Meteorology, claiming it had misused its market power for anti-competitive purposes.

The Commission has alleged that the Bureau breached s. 46 of the Act because it refused to supply basic meteorological information to a competitor for the purpose of deterring the entry of that competitor to the market for specialised meteorological services. It also alleged that the Bureau has provided specialised meteorological services on a non-commercial basis for the purpose of deterring competitive conduct.

The Commission alleges that there is a market for the provision of specialised meteorological services and that the Bureau operates in this market in competition with a number of private companies. It is alleged that specialised meteorological services are provided to, amongst others, the media; land care managers; oil, gas and mining companies; and the maritime industry.

These specialised services are distinct from the Bureau's Basic Service which includes basic forecasts and warnings, and which the Bureau

provides free to the Australian public out of public revenue.

The Commission alleges that in late 1994 the New Zealand-based MetService International entered the Australian market for the supply of colour weather graphics packages to newspaper customers. This service involves the creation of a colour template tailored to the requirements of the newspaper. The template is updated daily with meteorological data and digitally transmitted to the newspaper. When MetService entered the market there was no equivalent service available.

Following the entry of MetService to the Australian market, however, it is alleged that the Bureau offered similar specialised services to newspaper customers free of charge. It is alleged that the Bureau has at all times refused to supply meteorological information to MetService to enable the company to compile its newspaper service.

The Commission alleges that the Bureau supplies meteorological information to a number of other private competitors, including WeatherNews Pty Ltd which supplies meteorological graphics services to Pay TV customers and specialised meteorological services to other companies.

The Commission alleges that the Bureau in December 1994 threatened WeatherNews that continued supply of specialised weather information services to radio stations by WeatherNews could jeopardise the company's access to the Bureau's meteorological information.

The Commission alleges that the Bureau has engaged in conduct designed to prevent MetService and WeatherNews from engaging in competitive conduct in the market for specialised weather services.

The Commission is seeking a mandatory injunction (interlocutory and permanent) that the Bureau provide information to MetService and an injunction restraining the Bureau from supplying its specialised services other than on commercial terms.

A directions hearing will be held on 13 February 1996.

Mayo International Pty Ltd

Resale price maintenance (s. 48)

On 6 November 1995 the Commission instituted proceedings in the Federal Court Brisbane against Mayo International Pty Ltd, a national hair-care product manufacturer and wholesaler, for alleged resale price maintenance.

The Commission alleges that directors Jon Le Court and Brian Thom and area manager Alex Shaw attempted to induce, and induced, retailers Price Attack franchisees to prevent Mayo products being sold at less than Mayo's recommended retail price.

The company is alleged to have removed a 15 per cent wholesale discount allowed to the franchise chain, and threatened to stop supply altogether, because franchisees were selling Mayo products at less than Mayo's recommended retail prices.

Permanent injunctions are sought against the company, the directors and the area manager to restrain them from engaging in further resale price maintenance conduct. A mandatory injunction is also being sought requiring the company to restore the 15 per cent discount on the list price of Mayo goods. Pecuniary penalties are sought against all respondents.

The first directions hearing was held on 1 December 1995, with a further directions hearing set for 16 February 1996.

Ampol (Victoria) Pty Limited and Best Oil Co. Pty Limited

Price fixing arrangement (s. 45)

On 14 November 1995 the Commission instituted proceedings in the Federal Court Melbourne against Ampol (Victoria) Pty Limited and Best Oil Co. Pty Limited. It is alleged that from December 1994 to February 1995 Best Oil, via Ampol, induced or attempted to induce a Doveton Solo Service Station, a site supplied by Ampol, to enter into a price fixing arrangement for LPG and petrol. Best Oil is the operator of a large independent petrol service station located in Doveton.

It is alleged that, in one instance, the Solo franchisee was telephoned by an Ampol area manager and advised that Best Oil wanted to increase its price for petrol but would not move until the Solo site had increased its price.

It is also alleged that the conduct sought to ensure that prices for the Solo site would either match or be above the prices posted by Best Oil for petrol and LPG, and may have had a broader impact on the Melbourne metropolitan market.

The Commission claims the activities breached s. 45 of the Act.

The Commission is seeking monetary penalties against the two companies and the individuals, and has also asked the Court to issue restraining injunctions. A directions hearing is set for 13 February 1996.

J McPhee & Son (Australia)

Price fixing arrangement (s. 45)

On 20 December 1995 the Commission filed proceedings in the Federal Court Melbourne against a transport company and five of its managers, alleging an attempted price fix.

The Commission has alleged that J McPhee & Son (Australia) Pty Ltd had earlier this year attempted to reach an agreement with a competitor, Multigroup Distribution Services Pty Ltd, to provide a tender to a McPhee client which was to be at or above the rates which McPhee was seeking to charge the client. A director of McPhee and three of the company's senior managers are alleged to have been involved in the attempt.

The Commission has also alleged that in November 1994 a manager of McPhee in Gippsland, Victoria, approached a manager of Multigroup and reached an agreement with him that a quotation to be submitted to a McPhee client by Multigroup would be at rates in excess of those being charged by McPhee.

The matter has been listed for directions on 20 February 1996.

Swarovski International (Australia) Pty Limited

Price fixing arrangement (s. 45)

On 26 September 1995 the Commission accepted court enforceable undertakings from Swarovski International (Australia) Pty Limited, suppliers of specialist optical equipment including binoculars and telescopes.

The undertakings were offered after investigation of allegations that Swarovski had attempted to induce a price fixing arrangement or understanding with a competitor in the wholesale specialist optical equipment market.

The matter was brought to the Commission's attention by the company which Swarovski is alleged to have attempted via correspondence to induce to enter into a price fix.

The Commission formed the view that the conduct was in breach of s. 45 of the Act.

The undertakings provide that Swarovski will not fix, or attempt to induce the fixing of, prices on any goods supplied by Swarovski and its competitors, and that it will implement a trade practices compliance program which will remain in force for three years.

Model Agents and Managers Association Inc (MAMA)

Price fixing agreement (s. 45)

Following an investigation by the Commission, proceedings were instituted on 16 November 1995 in the Federal Court Sydney against five major model agents, six individuals and the Model Agents and Managers Association Inc (MAMA) for alleged price fixing.

Named in the Commission's statement of claim are: Chadwicks Model Agency Pty Ltd, Priscilla's Model Management Pty Ltd, Gordon Charles Management Pty Ltd, Cameron's Management Pty Ltd, Hirere Pty Ltd (trading as Vivien's Model Management), Peter Frederick Chadwick, Priscilla Josephine Leighton-Clark, Gary Saunders, Gordon Charles Donald, Jane Christine Cameron, Kevin Smith and the Model Agents and Managers Association Inc.

The Commission alleges they attempted a price fixing arrangement, or understanding, to enforce payment of an agency service fee of

10 per cent above negotiated fees for the hire of models from 1 July 1995.

It is further alleged that, at a meeting of MAMA held in May 1995, the five agencies and the individuals agreed to enter into a price fixing arrangement by coordinating the enforcement of the 10 per cent agency service fee to be paid by all their clients with effect from 1 July 1995.

The Commission is seeking penalties and injunctions. A directions hearing will be held in the Federal Court Sydney on 9 February 1996.

Mergers

M.S. McLeod Holdings Limited (trading as Downtown Duty Free) and City International Duty Free

Acquisition (s. 50)

On 19 November 1995 the Commission announced it would not oppose the acquisition of City International Duty Free by M.S. McLeod Holdings Limited, trading as Downtown Duty Free.

City International Duty Free and Downtown Duty Free are 'dedicated' duty free operators selling goods free of sales tax and customs and excise duty. ('Dedicated' duty free operators are those whose sole business is the sale of duty free goods.)

The Commission formed the view that although the acquisition will remove an effective competitor from the market, there are other dedicated duty free chains that compete in the same industry. Further, travellers may choose to buy products from inflight duty free services or at their international destination. Moreover, about 740 retailers around Australia offer sales tax free services to travellers. Collectively, these retailers represent a competitive threat to dedicated duty free chains.

The Commission has some concerns that a merged Downtown Duty Free/City International Duty Free would have the capacity to increase the price of sales tax free goods. As a result, the ACCC will monitor this market segment.

GNB Battery Technologies Ltd and Australian Battery Company Pty Ltd

Acquisition (s. 50)

On 21 November 1995 the Commission announced it would not oppose the acquisition of the Australian Battery Company Pty Ltd by GNB Battery Technologies Ltd.

The ACCC conducted market inquiries and found that the relevant market was for replacement automotive batteries. A total of 72 per cent of batteries sold in Australia are manufactured by Australian-based companies, with the remaining 28 per cent imported largely by companies based in Australia. Post-acquisition, GNB's market share would be 53 per cent.

The Commission concluded that the competition from imports was significant and the barriers to entry to the market, through imports, were low. As a result, it decided that the acquisition of ABC by GNB was unlikely to substantially lessen competition.

Email Ltd and Atlas Steels Ltd

Acquisition (s. 50)

On 27 November 1995, the Commission announced it would not oppose the acquisition by Email Ltd of Atlas Steels Ltd.

After making extensive inquiries of competing steel distributors and end users of steel products, it concluded that the acquisition would not substantially lessen competition.

The merged entity would have about 27.5 per cent of the market for the distribution of special steels.

The Commission concluded that products manufactured and/or distributed by Atlas were available from overseas sources.

Jones and Partners and Miller Moore and Partners

Merger (s. 50)

The Commission announced on 9 December 1995 it would not oppose the merger of two South Australian radiology practices, Jones and Partners and Miller Moore and Partners.

Jones and Partners is the third largest practice in South Australia while Miller Moore is the smallest private radiology group. A major benefit of the proposed merger from the point of view of Miller Moore is that it will gain access to specialist procedures which it presently does not perform. Miller Moore partners will have a greater access to specialised knowledge, which will improve their professional experience.

After considering the merger the Commission concluded that, rather than lessening competition, the merger may well enhance it.

Currently there is strong competition in the market based on:

- strategic geographic location;
- leading edge technology;
- a comprehensive range of services; and
- staff with high levels of expertise, qualifications and training.

The Commission's view was that although the market was quite concentrated, and the proposed merger would reduce the number of practices from four to three, it was probable that a stronger, more competitive practice would emerge from the merger.

Alcoa/Kobe and Comalco's aluminium rolling mills

Acquisition (s. 50)

On 20 December 1995 the Commission announced it would not oppose the acquisition of Comalco's aluminium rolling mills at Yennora, NSW by KAAL Australia Pty Ltd, a joint venture between Alcoa International Holdings Company (a wholly owned subsidiary of the Aluminum Company of America) and

Kobe Steel Australia Pty Ltd (a wholly owned subsidiary of Kobe Steel Ltd of Japan).

The Alcoa/Kobe joint venture partners have also applied for a tariff concession order to remove the tariff on aluminium bodystock, which is being processed by Commonwealth authorities.

The Yennora mills produce aluminium foil, general sheet and bodystock for beverage cans. Alcoa does not produce foil or general sheet, but is currently the only other domestic producer of aluminium can bodystock at Point Henry, Victoria.

While the parties argued that aluminium beverage cans compete with glass and PET bottles and that steel is a potential substitute in can making, the Commission's market inquiries indicated those products currently are not effective competitive constraints. Aluminium bodystock price increases in the order of 30 to 40 per cent in 1994 did not significantly alter the demand for aluminium bodystock, indicating limited responsiveness to price increases.

In making its decision, the Commission considered Comalco's stated intention to leave the downstream aluminium semi-fabrication sector. Information provided to the Commission raised serious questions about the viability of Comalco's rolling mills at Yennora as an independent entity.

The acquisition will deliver the entire domestic market for aluminium bodystock production to Alcoa. The only constraint will be imports, which are currently subject to a tariff of 7 per cent, reducing to 5 per cent in July 1996.

The removal of the tariff would limit the ability of the sole domestic supplier to raise prices charged to can makers. These prices flow through to consumers of products such as beer and soft drinks.

Wattyl and Taubmans

Acquisition (s. 50)

On 14 December 1995 the Commission announced it had advised Wattyl Limited that its proposed acquisition of Taubmans was likely to

substantially lessen competition in breach of the Trade Practices Act.

The Commission decided the proposed acquisition would remove a substantial market competitor and significantly increase market concentration. If the proposal were to proceed, the two largest manufacturers, Wattyl/Taubmans and Dulux, would account for about 80 per cent of the total Australian paint manufacture.

The Commission has agreed to a request from Wattyl to further discuss the acquisition proposal.

Consumer protection

Mayne Nickless Ltd (trading as MSS Alarm Services) — Neva Alone System

Misleading and deceptive conduct with respect to the promotion of alarm services (ss 52, 53, 55A)

On 3 October 1995, the Commission instituted proceedings in the Federal Court Brisbane against Mayne Nickless Limited trading as MSS Alarm Services. The proceedings relate to alleged false and misleading conduct in relation to the promotion of the supply, installation, monitoring and servicing of alarm equipment including the Neva Alone system (medical alert system), intruder and security alarm systems, plant systems and access alarm systems.

It is alleged that the respondent company had made, and was continuing to make, misrepresentations concerning:

- the standard, quality and grade of services provided and services which would be provided by the respondent;
- the performance characteristics and benefits of the services provided and services which would be provided by the respondent; and
- the nature, the characteristics and the suitability for their purpose of the services provided by the respondent.

An injunction is sought to restrain the company from engaging in this conduct.

The first directions hearing was held on 27 October 1995. A further directions hearing date is to be set by the Federal Court.

Garmer Ltd

Misleading or deceptive conduct (s. 52)

The Commission has obtained a Federal Court order against Garmer Ltd, a Hobart-based mail order firm, and its General Manager. The company had been involved in a misleading and deceptive mail order scheme originating from the UK. Garmer Ltd is a registered foreign company based in Hong Kong.

Acting on a flood of complaints from consumers Australia-wide, the Commission moved against the scheme which promised well-known European, high quality electrical goods for as little as \$39.95. The Commission took less than three weeks from initial complaints to the court-enforced solution.

The goods supposedly on offer from the European Appliance Factory Outlet (EAFO) included Miele dishwashers, Sony stereo/CD component centres, Sharp microwave ovens, La Cuisine food processors and GrillMaster barbecues. The Commission claimed that only the last two items were made available for distribution and their estimated combined value was approximately \$20. The EAFO offers originated in the UK and were operated by a Bahamas based company, International Direct Mail Order Corporation.

On 28 November 1995 the Commission obtained an ex parte interim order in the Federal Court Melbourne restraining Garmer Limited and its General Manager, Ian McKay, from dealing with the mail received at the Hobart post office box and freezing any EAFO-related bank accounts.

On 14 December 1995 Justice Northrop of the Federal Court of Australia issued an order permanently restraining Garmer Limited and Ian McKay from taking any action to fulfil orders for goods solicited by the UK offer. The Court also ordered the respondents to refund all moneys they received from consumers and to pay \$5000 towards the Commission's costs. The respondents consented to the orders.

MBF

Misleading or deceptive conduct (s. 52), false or misleading representations (s. 53(f))

On 9 November 1995, the Commission announced it had accepted undertakings from MBF to correct false and misleading statements made to consumers about MBF's 100% health cover product.

The Commonwealth Minister for Health, Dr Carmen Lawrence alerted the Commission to letters sent by MBF to Queensland consumers, which claimed that 'new legislative requirements mean that all members [on particular health tables] must transfer to our 100% hospital service by July 1997'. This was not the case.

Subsequent discussions between the Commission and MBF revealed that other letters sent to contributors in South Australia and New South Wales made further misleading statements about the requirements to upgrade to MBF's 100% cover.

MBF has agreed to:

- write a corrective letter to contributors in Queensland, New South Wales and South Australia who received the incorrect information;
- notify contributors that they may return to their previous level of cover, or transfer to another level, at no cost;
- publish corrective advertisements in a number of newspapers; and
- implement a trade practices compliance program.

The health industry will be a major focus of the ACCC's priorities. The Commission has warned that all aspects of the industry will be monitored and transgressions will be acted upon swiftly. It has already held extensive discussions with health industry representatives including doctors, specialists, funds and hospital associations about their responsibilities under the Trade Practices Act.

Buyers Network International Pty Ltd (trading as Willow Tree Press)

False or misleading representations (ss 51A, 53), misleading or deceptive conduct (s. 52), false or misleading statements about work-at-home schemes (s. 59)

The Commission received s. 87B undertakings from Buyers Network International Pty Ltd, a Sydney-based mail order company trading as Willow Tree Press, after investigating allegations that the company had published misleading advertisements for a proofreading book.

The Commission alleged that Buyers Network had advertised a publication, *Proofreading — The Complete Course*, nationwide over six months, representing that proofreading work was readily available to readers of its book, and that this work would be highly lucrative. The company has admitted it had no reasonable grounds for making these claims.

Market inquiries indicated that the representations about rates of pay, the demand for proofreaders, and the level of experience required to obtain proofreading work were false.

The Commission claimed that these advertisements had caused considerable consternation to consumers and to the publishing industry. For example, publishing houses had been flooded with inquiries from people who had purchased and read the proofreading book but who had not been offered work because of the limited vacancies in the industry and their lack of practical experience.

In the Commission's view, the advertisements targeted a vulnerable audience for whom the opportunity to earn a regular income from home would have been very appealing and for whom the \$25 cost of the book was not insignificant.

Buyers Network International has given undertakings to offer full refunds to the 9000 consumers who purchased the book. Undertakings have also been given by the company's director, Donald Scott Finlay, in

relation to his involvement in this conduct and in relation to his future business conduct.

The Commission will monitor the company carefully to ensure it complies with its undertakings.

The settlement required the company to implement complaint handling procedures which comply with Australian Standard AS 4269-1995 (Complaints Handling).

Cost Reduction Analysis (SA) Pty Ltd

Misleading conduct (s. 52), misrepresentation of nature of services (s. 55A), misleading representation about certain business activities (s. 59(2))

The Commission has investigated a complaint about an allegedly misleading and deceptive advertisement placed by Cost Reduction Analysis (SA) Pty Ltd.

The advertisement, which appeared in the 'business & partnerships' section of the *Adelaide Advertiser* newspaper, was headed 'Business Partner — \$100,000 + income potential' and indicated that an accountancy firm was seeking a non-accountant partner to operate a separate branch. It also indicated that a start-up capital of \$31 000 was required.

Commission inquiries indicated that the only connection with accountants, in fact, was that an accountancy firm (which was a part-owner of the company) was located in the same building, and the company, Cost Reduction Analysis (SA) Pty Ltd, was involved with financial investigations which frequently required working with accountants.

When contacted by the Commission, the company said it had had only six responses to the advertising and, of those, only one had taken up the offer.

The company was warned about its conduct and, following discussions, agreed to cease representing that the business opportunity it was offering was in any way connected to or involved with an accounting firm, or a partnership in an accounting firm, unless such a connection or involvement actually existed.

Harvey Norman Holdings Ltd

Misleading or deceptive conduct (s. 52), false or misleading representations (s. 53)

The Commission has accepted court enforceable undertakings given by retailing giant Harvey Norman Holdings Ltd (Harvey Norman), the hub of the Harvey Norman franchise retailing empire, after an investigation into the publication and distribution of a Harvey Norman catalogue which included more than 20 errors.

The catalogue errors included illustrations of sale items with incorrect accessories or functions or claims that packages contained particular features which were not, in fact, available on those models.

The Commission alleged misleading or deceptive conduct by Harvey Norman because it continued to distribute the catalogue without correcting all known errors.

The Commission found that in some country areas no corrective advertising was run in local newspapers. It alleged that in the three stores it sampled there were either no corrective advertisements at all or those that were displayed were inadequate. Some sales staff were unaware of the errors.

Through the undertakings, Harvey Norman has agreed to improve its handling of all forms of advertising, corrective advertising, and consumer complaints. The company will appoint a Customer Complaints Manager whose functions are to include monitoring the progress of all complaints made against Harvey Norman and its franchisees. It will also institute a complaint handling system that will satisfy the requirements of the Australian Standard AS4269-1995 (Complaints Handling).

These undertakings are unusual in that they will eventually include the participation of all of the people who operate franchises within Harvey Norman stores. Failure of those franchisees to comply with the requirements of the undertaking may result in the termination by Harvey Norman of their franchise.

Consumer Electronics Suppliers Association (CESA)

Anti-competitive agreements (s. 45), false or misleading representations about the existence, exclusion or effect of any warranty, guarantee, right or remedy (s. 53(g))

The Commission has recently concluded an investigation into the warranty policies of electronics manufacturers who are members of the Consumer Electronics Suppliers Association (CESA).

The investigation alleged that in early 1994 a number of major electronics manufacturers who were members of CESA had:

- met and unlawfully agreed to limit warranty claims to seven days;
- falsely represented to retailers and consumers that warranty claims are limited to seven days; and
- misled or deceived consumers concerning the nature and extent of statutory and express warranties.

Under the Trade Practices Act, consumers are always entitled to statutory warranty rights and these are in addition to any voluntary or express warranty given by manufacturers.

The Commission approached 26 manufacturers seeking a response to the allegations and information in relation to their respective warranty policies and procedures.

As a result of this compliance audit, most companies immediately undertook a review of their internal warranty return policies and procedures and introduced compliance programs to ensure that staff, retailers and service centres were aware of company warranty obligations.

This is the largest compliance audit of warranty provisions since the introduction of the Act in 1974.

British Airways

Misleading or deceptive conduct (s. 52)

On 6 November 1995 the Commission announced it had identified misleading advertising by British Airways in its recent 'London for Sale. \$1,699' advertising campaign in Western Australia. According to the advertising, the flights would cost only \$1699 for the period 16 January to 31 March 1996, whereas in fact the discount offer finished in February and flights during March were \$100 more expensive.

As a result of Commission action, British Airways has altered advertising and extended the discount period to March.

Other matters still before the Court

Restrictive trade practices

Pioneer (Warwick), ss 45, 46. Alleged predatory pricing by Pioneer in the Warwick pre-mixed concrete market. Proceedings instituted 30.9.92. Directions hearing 4.3.93 — Pioneer brought application to strike out Commission's statement of claim. 12.5.94 judgment handed down striking out part of statement of claim.

Respondents and Commission appealed. 1.8.94 leave to appeal and cross-appeal allowed. 5.8.94 Pioneer's appeal dismissed, and Commission's cross-appeal allowed with costs. 24.8.94 Pioneer sought special leave to appeal to the High Court.

10.3.95 Court refused Pioneer, saying Full Federal Court decision was 'plainly correct'. Matter reverted to Federal Court for directions hearing.

Directions hearing 15.12.95. Next directions hearing 12.4.96.

CC (New South Wales) Pty Ltd, Holland Stolte Pty Ltd, Multiplex Constructions Pty Ltd, Leighton Contractors Pty Ltd, Australian Federation of Construction Contractors (AFCC) & ors, ss 45, 52, 53, 55A. Alleged collusive tendering practices, misleading or deceptive conduct, false or misleading representations, conduct that is liable to mislead the public as to the nature, characteristics, suitability or quantity of any services. Proceedings instituted 30.8.94. Directions hearing 29.9.94 — Mr Russell Richmond, a former National Executive Director of the Australian Federation of Construction Contractors (AFCC), announced that he would not defend the proceedings brought against him and consented to the entry of a judgment against him. On the same day AFCC informed the Court that it did not propose to take further part in the proceedings. 24.11.94 the Court imposed a penalty of \$10 000 on Mr Richmond.

5.5.95 Holland Stolte Pty Limited and Mr Graham Duff, a former Managing Director of Holland Stolte Pty Limited, withdrew their defences and consented to judgment. Penalties totalling \$400 000 were imposed against Holland Stolte, and \$50 000 against Mr Duff.

2.8.95 Lindgren J in the Federal Court ordered CC (NSW) Pty Ltd, Multiplex Constructions Pty Ltd and Leighton Contractors Pty Ltd to give the Commission discovery of documents relating to alleged collusive tendering practices in respect of the building project known as the Commonwealth Offices Haymarket project.

8.9.95 Lindgren J in the Federal Court imposed the (previous) maximum penalty of \$250 000 for each of two offences on Leighton Contractors Pty Ltd and Multiplex Constructions Pty Ltd and ordered each company to pay \$75 000 costs. Personal penalties were imposed on Mr Leonard Dixon, a chief estimator for Leighton (\$25 000) and Mr Geoffrey Thomas Palmer, a retired director of Multiplex (\$50 000). The penalties followed the withdrawal of defences by Leighton, Multiplex, Dixon and Palmer. The companies have also made full restitution to the Australian Government of the \$750 000 'unsuccessful tenderers fee' which each had received from the successful tenderer, Holland Stolte.

Proceedings are continuing against CC (New South Wales) Pty Ltd.

Garden City Cabs Co-operative Ltd, s. 45. Alleged anti-competitive agreement. Proceedings instituted 22.7.94. Directions hearing 4.11.94. Interlocutory decision handed down 15.3.95. TPC unsuccessful in obtaining an interlocutory injunction to restrain conduct as Cooper J said there was no serious question to be tried and the balance of convenience was against granting the orders sought. TPC filed Notice of Motion 22.3.95 seeking leave to appeal. TPC withdrew notice of appeal and matter is to proceed to hearing — date not fixed.

Mobil Oil Australia Limited, BP Australia Limited, The Shell Company of Australia Limited, ss 45, 45A. Alleged anti-competitive agreements concerning the retail prices of petrol. Proceedings instituted 23.11.94. Strike-out applications filed by the respondents were heard before Ryan J on 20.3.95. With the consent of all parties the TPC filed a further amended statement of claim on 3.4.95. Respondents filed written submissions in response for the Court's consideration. Awaiting His Honour's decision.

IMB Group Pty Ltd, Logan Lions Ltd, Redbeak Pty Ltd & ors, ss 47(6), 52. Alleged third line forcing and misleading or deceptive conduct in relation to financial planning and property development. Interlocutory proceedings commenced 6.9.93. Proceedings withdrawn 17.9.93. Proceedings recommenced 20.9.93. Directions hearing re discovery issues 21.4.94. 20.9.94 judgment handed down ordering all respondents to file a list of discoverable documents. Directions hearing 28.7.95, 20.9.95. Further directions hearing to be held 8.12.95.

National Mutual Life Association of Australasia Ltd, ss 47(6), 52. Alleged third line forcing and misleading or deceptive conduct in the provision of share options and insurance policies in relation to the establishment of Logan Lions Leagues Club. Proceedings instituted 16.6.94. Directions hearings 28.7.95, 3.11.95. Further directions hearing 8.12.95.

Ampol Petroleum (Victoria) Pty Ltd, s. 48. Alleged resale price maintenance. Proceedings instituted 27.8.93. Notice of Motion filed by Ampol seeking further and better discovery heard by Federal Court on 13.4.95. Motion dismissed. Notice of Motion heard 3.8.95 seeking expedited hearing by consent of both parties. Sundberg J directed that the matter be referred to Registrar for expedited hearing. Trial set for 5.2.96, with three weeks set aside for the hearing.

Consumer protection

Bush Friends of Australia, ss 52, 53(eb). Alleged misleading or deceptive conduct in relation to the country of origin of soft toys partly manufactured in China. Proceedings instituted 23.9.94. Judgment delivered for the Commission on 16.12.94. 22.12.94 Bush Friends of Australia appealed the judgment. Appeal heard 31.5.95. Appeal dismissed 4.8.95.

Venture Industries and Collings Construction Company Pty Ltd, ss 51AB, 52. Alleged misleading, deceptive and unconscionable conduct in relation to building homes. Proceedings instituted 3.9.93. Representative action on behalf of seven families.

Venture filed Notice of Motion seeking stay of proceedings pending outcome of arbitration hearings.

Wilcox J indicated merit in appointing arbitrators to this case under Order 72 of Federal Court Rules. Parties instructed to agree on short minutes in relation to running of arbitration hearings. Ongoing negotiations. No agreement reached by parties to appoint arbitrators under Order 72.

Venture motion to stay proceedings and TPC motion to cross-vest proceedings to NSW Supreme Court heard 29–30.8.94. On 16.9.94 Wilcox J granted TPC motion and cross-vested the matter to NSW Supreme Court.

On 18.4.95 Hunter J in the Supreme Court made an order referring certain technical

building issues to a Court-appointed referee, Mr Lumsdaine. The reference began 13.6.95 and the referee released his report on 9.8.95. The Collings and Venture defendants opposed the adoption of the report; however, on 28.9.95 Hunter J adopted the report with some alterations, in accordance with submissions by the TPC.

Trial before Hunter J of NSW Supreme Court from 9.10.95 to 28.11.95. Awaiting judgment.

In December 1995 the Venture parties applied to the High Court to overturn the September 1994 cross-vesting of the matter from the Federal Court to the NSW Supreme Court. The expected 20.2.96 first hearing of the Venture application will be ex parte.

Vales Wines Co Pty Limited, s. 53. Alleged false or misleading description concerning bulk wines supplied to some of the major winemakers. Proceedings instituted 22.12.93. Matter heard 12.10.95. Set down for final addresses 11.12.95.

Gold Coast Land Sales Pty Limited & Channel 10, s. 53A. Alleged misleading advertising and false representations in regard to land sales in Maryvale. Proceedings instituted 17.3.94, interlocutory injunctions granted by consent against Gold Coast Property Sales, its directors and agents.

6.6.95 Court found Gold Coast Sales had contravened the Act and ordered that it be restrained from making further representations regarding Maryvale land. Also ordered to pay Commission costs.

8.9.95 further directions hearing against Channel 10. Further directions hearing 6.10.95.

Europark International Pty Limited & anor, ss 52, 53(c), 53(d). Alleged misleading or deceptive conduct and false representations concerning sponsorship, approval. Proceedings instituted 19.7.94. Directions hearings 20.8.94, 22.11.94, 16.12.94, 15.2.95, 12.5.95, 26.6.95, 4.8.95. 13.10.95 directions hearing seeking further amendments to statement of claim. 24.11.95 directions hearing — respondents did not object to statement of claim.

My-Life Corporation Pty Ltd, ss 52, 57, 61(2A). Alleged multi-level marketing scheme. Proceedings instituted 24.11.94. Directions hearings 10.3.95, 21.4.95, 17.5.95. Respondent sought Notice of Motion to have TPC's statement of claims struck out. 2.6.95 Court dismissed application and awarded costs to the Commission.

BioMetrics Contour Treatment, ss 52, 53(c), 55. Alleged misleading and deceptive advertising and promotion of goods. Proceedings instituted 6.1.95. Proceedings amended and a fifth respondent (Peter Foster) included on 19.5.95. 12.9.95 ex parte order obtained from the ACT Federal Court granting leave to serve the amended statement of claim on fifth respondent, Peter Foster, in the UK. 21.9.95 documents served on the fifth respondent in the UK.

Last directions hearing held 17.11.95.

Port Adelaide Wool Company Pty Ltd, ss 52, 53(a). Alleged false representations to wool exporters in relation to the quality and composition of wool being supplied. Injunction proceedings instituted 31.3.95. Directions hearings 5.5.95, 28.7.95, 11.9.95. Discovery given by TPC 26.7.95 and by respondents 5.9.95.

Notices of Motion filed by respondents 6.9.95 for third party discovery and cross-vesting of related private action proceedings in District Court Sydney to Federal Court Adelaide. Orders made 11.9.95 for Notices of Motion and argument on privilege to be heard 9.10.95.

Orders made 9.10.95 for limited third party discovery and for related private action proceedings to be transferred. No orders made for the two actions to be consolidated. Decision on further third party discovery adjourned. Awaiting decision on privilege.

Directions hearing 31.10.95. Trial date set for 26.2.96.

Optus Communications, s. 52. Alleged false and misleading conduct in relation to advertisements for telephone services. Proceedings instituted 27.6.95 in the Federal Court Sydney. Orders made 30.6.95 by

Einfeld J restraining advertising of Freestyle phones, which the TPC alleged is misleading.

Contempt proceedings filed 28.7.95, alleging Optus in contempt of Einfeld J's orders. Trial before Tamberlin J on 26-28.9.95. 8.11.95 His Honour heard arguments addressing written submissions. Judgment reserved. No date yet been set for the hearing of the contempt issue.

Holiday Concepts, ss 52, 53(c), 53A. Alleged misleading and deceptive conduct with respect to the promotion and selling of timeshare. Proceedings instituted 14.6.95 in the Federal Court Melbourne. At a directions hearing on 8.12.95 the matter was placed in the list of cases awaiting trial. A substantive hearing date has yet to be set.

Reef Distributing Company Pty Ltd, ss 52, 53(bb), 53(e), 55, 64. Alleged false and misleading representations in relation to the supply of fertiliser products. Proceedings instituted in the Federal Court Melbourne on 8.9.95. Directions hearing 19.9.95. Interim injunction granted restraining the company and its Director Russell Loel from continuing proceedings against farmers issued in the Manly Court. Matter adjourned — date to be fixed.

Nationwide News Pty Limited and SmartCom Telecommunications Pty Limited, ss 53(e), 53(g), 54. Alleged false and misleading representations in relation to a promotion offering 'free' mobile phones. Criminal proceedings instituted in the Federal Court Sydney 13.9.95. Directions hearing 20.10.95. Further directions hearing set for 15.12.95.

Cue Design Pty Ltd and Cue & Co. Pty Ltd, s. 53(e). Alleged false or misleading representations with respect to price. Proceedings instituted in the Federal Court Adelaide 18.9.95. Directions hearing 24.11.95.

Universal Vending Systems Pty Ltd and Corporate Catering Group Pty, ss 52, 58. Alleged misleading or deceptive conduct in respect of business opportunities for the supply of vending machines and sports cards and lack of provision of sites for snack food vending packages. 6.6.95 ex parte injunction granted

in the Federal Court Melbourne against both corporate and individual respondents restraining them from engaging in the conduct and freezing the assets of the corporate respondents. 1.9.95 Jenkinson J ordered that initial orders be held until matter is fully heard. Directions hearing 29.9.95. Order made for parties to make discovery of documents by 27.10.95. Directions hearing 17.11.95. Next directions hearing 9.2.96.

Mergers examined under s. 50

The following is a list of non-confidential mergers examined in the 1995 calendar year (the list will be updated as the matters considered become non-confidential). This list is periodically updated on a public register held at the Commission. Mergers on the public register for the calendar year 1994 are listed in the former Trade Practices Commission *Bulletin* 75, April 1994 (which also included matters considered in 1993) and *Bulletin* 80, February 1995.

Queensland Medical

Laboratory/Drs Sullivan & Nicolaides — Queensland pathology services. Proposed merger of Queensland's two largest private pathology practices, Queensland Medical Laboratory and Drs Sullivan & Nicolaides. This matter was raised initially in May 1993. After making extensive inquiries, the Commission concluded that the merger would, or would be likely to, have the effect of substantially lessening competition in the Queensland-Northern NSW market for pathology services for non-public patients.

The Commission opposed the merger.

(Please note that the last issue of *Bulletin* (no. 83) incorrectly stated that the Queensland Medical Laboratory/Drs Sullivan & Nicolaides merger was not opposed by the Commission. The merger was opposed by the Commission and did not proceed.)

Grant Broadcasters/The Geelong

Independent (Radio) Ltd — advertising on commercial radio within the Geelong radio licence area. This matter was first raised in July 1993 and involved a proposal by Grant Broadcasters Pty Ltd (owner of K-ROCK FM in Geelong) to acquire Geelong Independent (Radio) Ltd (owner of BAY FM in Geelong). However the initial proposal did not proceed. Then in December 1994 Grant Broadcasters advised that it intended to proceed with the proposal.

In January 1995 the Commission decided not to oppose the acquisition.

Australian Consolidated Press/David

Syme Magazines — magazine market. This matter was raised in June 1994. ACP and Syme proposed a joint venture arrangement into which they put some of their titles, principally motoring titles.

The Commission did not oppose the venture.

Chargeurs Textiles Pty Ltd/Geelong Wool

Combing Limited — wool combing. This matter was raised in July 1994. A possible international merger between Chargeurs and Bremer Woll Kammerei Ag of their wool combing operations. Geelong Wool Combing Limited is the Australian subsidiary of Bremer.

The parties abandoned the proposed merger.

Namoi Cotton Co-operative Ltd/Cotton

Trading Corporation Ltd — cotton marketing. This matter was raised in August 1994. Press reports indicated that Namoi Cotton Co-operative and Cotton Trading Corporation proposed merging or entering into a joint venture agreement.

The parties abandoned the proposed merger.

Howard Smith Limited/Campbells

Hardware and Timber — retail and wholesale supply of timber and hardware in Queensland. This matter was raised in August 1994. Howard Smith proposed acquiring Campbells Hardware and Timber from Jamieson Equity Limited.

The Commission did not oppose the acquisition.

Exxon Chemical Australia Limited/Nalco Australia Limited — manufacture of oil and gas production chemicals and refining process aids. This matter was raised in September 1994. Proposed joint venture between ECAL and Nalco for the manufacture and marketing of specialty chemicals for oil and gas production and petroleum refining industries.

The Commission did not oppose the venture.

Queensland Medical Laboratory/Peeverill Pathology — pathology services to non-public patients in Qld and northern NSW. This matter was raised in September 1994. QML acquired Peeverill Pathology in June 1994. QML is the largest and Peeverill the third largest private pathology practice in Queensland.

The Commission decided not to take separate action in respect of this acquisition. See *Queensland Medical Laboratory/Drs Sullivan & Nicolaides*.

Tenneco Gas Australia and the Pipelines Authority of South Australia — natural gas. This matter was raised in November 1994. Acquisition by Tenneco Gas Australia of the Pipelines Authority of South Australia assets sold by the South Australian Government. Assets acquired included the Moomba-Adelaide and Katnook natural gas pipelines, currently the only transmitters of natural gas to South Australian markets.

The Commission did not oppose the acquisition.

Australian Co-operative Foods/Queensco United Dairyfoods — dairy products. This matter was raised in November 1994. Proposed merger between Australian Co-operative Foods Limited and Queensco United Dairyfoods in the northern NSW/southern Queensland milk processing market.

The Commission did not oppose the merger.

Primac Ltd/Biloela Saleyard — livestock saleyards. This matter was raised in November 1994. Primac proposed to acquire Wesfarmers Dalgety Limited's share of the Biloela Queensland saleyard.

The Commission did not oppose the acquisition.

Shell/Transpacific — collection, treatment and supply of used oil to end users on a State by State basis. This matter was raised in November 1994. Joint venture between the two companies in relation to the collection and treatment of used oil.

The Commission did not oppose the venture.

Dalgety Farmers Limited, Elders Australia Limited/Computer Aided Livestock Marketing — livestock sales. This matter was raised in December 1994. Partial privatisation of Computer Aided Livestock Marketing, a method of electronic sales of cattle, sheep, pigs and other stock, 100 per cent owned by the Australian Meat and Livestock Corporation. Under the proposal, 75 per cent of CALM would be offered for sale to Elders and Dalgety.

The Commission did not oppose the sale.

Wesgo Ltd/Australian Radio Network — advertising on commercial radio within the Melbourne and Sydney radio licence areas. This matter was raised in December 1994. A proposal for Wesgo, recently acquired by APN Broadcasting, to acquire ARN. The proposal would lead to the merged entity having three commercial radio licences in Sydney and four in Melbourne.

Some of these stations were sold off as part of an arrangement with the Commission and the Australian Broadcasting Authority.

Oticon (Australia) Pty Limited/Ascom Audiosys (Australia) Pty Limited — hearing aids. This matter was raised in December 1994. Proposed international acquisition of Ascom Audiosys AG by Oticon Holdings A/S, a manufacturer of hearing aids.

The Commission did not oppose the acquisition.

Browning Ferris Industries (Australia) Pty Limited/Jennings Liquid Waste Unit Trust, Harpers Pty Ltd — collection, treatment and disposal of liquid wastes in Victoria. This matter was raised in December 1994. Proposed merger between Browning Ferris Industries and Jennings Liquid Waste and Harpers Pty Ltd.

The Commission did not oppose the merger.

AVCO Financial Services Inc/Household Financial Services of Australia Ltd — financial services. This matter was raised in December 1994. AVCO Financial Services Inc proposal to purchase the issued capital of Household Financial Services of Australia Ltd.

The Commission did not oppose the acquisition.

OPSM Limited and Eyebiz Pty Limited — Tasmanian optometry. This matter was raised in January 1995. Proposal by OPSM Limited to acquire the businesses of Eyebiz Pty Limited and several other companies operating in the optometry industry in Tasmania (the Eyebiz group).

The Commission did not oppose the acquisition.

Bank SA/Advance Bank Australia Ltd — banking. This matter was raised in January 1995. On 2 June 1995 the Commission announced it would not oppose the proposed sale of Bank SA to Advance Bank Australia Ltd.

Hoover Australia Limited/Southcorp Holdings Limited — whitegoods. Sale of Hoover Australia Limited, and its subsidiaries, to Southcorp Holdings Limited. The Commission concluded that although Southcorp and Hoover are domestic manufacturers of whitegoods there appeared to be no overlap in the products manufactured by each of the companies and that this reduced the possibility of increased prices to consumers following the acquisition.

The Commission announced it did not intend to oppose the acquisition on 3 January 1995.

Wesgo APN Broadcasting/KZFM Gold 104 — advertising on commercial radio in the Melbourne radio licence areas. This matter was raised in January 1995. Wesgo/APN agreed to purchase Gold 104 from Austereo. This acquisition in conjunction with the acquisition of the Australian Radio Network would see Wesgo/APN holding four commercial radio licences in Melbourne. Two of these stations were subsequently sold.

Fosters Brewing Group Limited/Lamicroft Pty Ltd — hotels. This matter was raised in

January 1995. Fosters Brewing Group proposed acquiring hotels from Australian Brewing and Hospitality Group. These hotels were owned, through a subsidiary, Lamicroft, 50 per cent by Fosters and 50 per cent by ABHG.

The Commission did not oppose the acquisition.

Foxtel/Australis Pay TV alliance — cable television joint venture. This matter was raised in February 1995. In April 1995 the Commission announced it would not take any action against the Foxtel Cable television joint venture (between - News Corporation and Telstra) and the Heads of Agreement between Foxtel and the Australis Media Group. As television broadcasting is a dynamic industry the Commission will monitor future developments.

Dauids Limited/Composite Buyers Limited — wholesale supply of groceries. On 3 February 1995 Dauids Limited lodged an application for authorisation of its proposed acquisition of Composite Buyers Limited. In support of its application Dauids submitted that any anti-competitive detriment of the proposed acquisition would be substantially outweighed by the public benefits. Dauids claimed significant rationalisation benefits would arise from the acquisition, part of which would be passed on directly to independent retailers in Victoria, NSW and ACT in the form of increased rebates.

The Commission granted authorisation. QIW Limited appealed to the Trade Practices Tribunal, which upheld the Commission's determination.

Elders Australia Ltd or VFF Consortium/Grain Elevators Board of Victoria — trading of grain in Victoria, part of southern NSW and a small part of eastern SA; storage and handling of grain in the same geographic region. This matter was raised in February 1995. The Victorian Government proposed to sell the Grain Elevators Board by tender process. The Commission did not oppose the possible acquisition of GEB by either Elders or a VFF consortium involving VFF, ABB and Grain Corp.

The VFF consortium was the successful tenderer.

AC Nielsen Australia Pty Ltd/Reark Research Pty Ltd — consumer and social research. This matter was raised in February 1995. Nielsen sought to acquire the remaining Reark shares from Rancoo Ltd. Nielsen already owned some 16 per cent of Rancoo shares through its acquisition of AGB McNair in 1994.

The Commission did not oppose the acquisition.

Jandakot Wool Dumpers Pty Ltd/AWP Holdings Ltd — wool scouring. This matter was raised in February 1995. Jandakot proposed to acquire the assets of AWP, in receivership, both of which operated wool scouring establishments in Western Australia.

The Commission did not oppose the acquisition.

Allders/MS McLeod — supply of duty free/sales tax free retail services to outbound travellers. This matter was raised in February 1995. Allders was one of three bidders for McLeod. Allders was the only potential acquirer with a local presence. Allders did not proceed with its bid.

Perisher Valley/Blue Cow ski resorts — merger of NSW ski resorts. Proposal to merge the snowfield businesses of Murray Publishers Pty Limited and Transfield Corporate Pty Limited. Murray owns the Perisher Ski Resort, incorporating Perisher Valley and Smiggins Holes, whilst Transfield owns and operates the Blue Cow Mountain Ski Resort, incorporating Blue Cow and Guthega, the Station resort, Jindabyne and the Skitube transportation system connecting Bullocks Flats, Perisher Valley and Blue Cow Mountain. The merger would form a 'ski circus' which would provide skiers with an increased choice of slopes and facilities.

On 8 February 1995 the Commission announced it would not oppose the merger.

EMI/Warner/Sony — sound recordings and pre-recorded video tapes. Joint venture between EMI, Sony and Warner to distribute sound recordings and pre-recorded video tapes.

On 20 February 1995 the Commission announced it would not oppose the joint venture.

Australian Liquor Marketers Pty Ltd/Chancellors — Tasmanian wine and spirits. ALM is Australia's largest wine and spirit wholesaler with distribution outlets in all States and Territories except South Australia and the ACT. Chancellors, owned by Tasmanian Breweries Ltd, was the largest wine and spirit merchant in Tasmania. Chancellors had held exclusive agencies with a number of major wine and spirit suppliers interstate, many of which carry market leading brands.

The Commission announced on 27 February 1995 that it would not oppose the acquisition after ALM gave s. 87B undertakings not to enter into any agency arrangements which restricted supply to Tasmanian resellers or affected their buying prices.

Eltin Pty Ltd/Roche Brothers Pty Limited — contract mining. This matter was raised in March 1995. Proposed merger in the contract mining industry.

The merger did not proceed.

Goodman Fielder/Bunge Industrial Pty Ltd — joint venture in flour market. This matter was raised in March 1995. Proposed joint venture to merge the milling, baking, pre-mix and starch/gluten operations of Goodman Fielder and Bunge Industrial Pty Ltd.

The Commission announced on 20 June 1995 that it would oppose the merger on the grounds that it would be likely to substantially lessen competition. The merger parties have forshadowed a revised proposal.

Arakella Pty Ltd (GNS)/Australian Stationery Distributors (ASD) — stationery products. This matter was raised in March 1995. Arakella Pty Ltd trading as Group Newsagency Supplies (GNS) proposed to acquire Australian Stationery Distributors (ASD). GNS is a stationery products wholesaler, supplying newsagents in NSW and Queensland. ASD operates in Queensland and Northern NSW. Both companies are controlled by newsagents.

The Commission was of the view that there would be significant competition to GNS/ASD from other wholesalers to newsagents and

wholesalers that supplied both newsagents and other small stationery retailers. In addition the conduct of GNS/ASD was likely to be constrained by large stationery suppliers and supermarkets.

The Commission did not oppose the acquisition.

John Fairfax Holdings/Australian Geographic Pty Limited — publication sales of outdoor magazines/advertising in all magazines. This matter was raised in March 1995. Fairfax proposed acquiring all the issued capital of Australian Geographic. Fairfax will acquire all business assets relating to publishing and distributing Australian Geographic and operating the chain of Australian Geographic retail stores.

The Commission did not oppose the acquisition.

CSR Ltd/Monier PGH Ltd — bricks, paver and roof tiles; softwood timber. This matter was raised in March 1995. CSR acquired Redland Plc's 49 per cent interest in Monier PGH. CSR also acquired additional softwood logging licences.

The Commission did not oppose the acquisition.

Health Care of Australia/Australian Medical Enterprises — provision of public and private hospital services to privately funded patients in NSW. This matter was raised in March 1995. Health Care of Australia proposed buying Australian Medical Enterprises. Both operate hospitals in metropolitan Sydney and country NSW.

The Commission did not oppose the acquisition.

Caltex Australia Limited/Pioneer International Limited — petrol. Proposed merger between Ampol Limited and Caltex Australia Limited of refining and marketing interests in Australia. The Commission accepted extensive s. 87B enforceable undertakings to address the competition issues arising from the merger.

On 28 March 1995 the Commission announced it would not oppose the merger.

Elders Australia Limited/Australian Agricultural Company Ltd — beef cattle production. This matter was raised in April 1995. Acquisition of Australian Agricultural Company Limited by Elders Australia Limited which would lift Elders' share of the Australian beef herd from approximately 2 per cent to 12 per cent.

The Commission did not oppose the acquisition.

Metro Meat International Limited/Smorgon Meat Group Naracoorte Abattoir (SW Meat Pty Ltd) — purchases of fat cattle in SA and western Victoria. This matter was raised in April 1995. Acquisition of Smorgon Meat Group abattoir at Naracoorte, South Australia, by Metro Meat International.

The Commission did not oppose the acquisition.

Sara Lee Holdings (Australia) Pty Ltd/Bon Gateaux — fresh and frozen cakes and pastries. This matter was raised in April 1995. Sara Lee proposed acquiring Bon Gateaux. Both companies manufacture and sell frozen cakes.

The Commission did not oppose the acquisition.

Optus Communications Pty Ltd/Continental Cablevision Inc./Publishing and Broadcasting Limited — joint venture offering telephony and Pay TV services. On 28 April 1995 the Commission announced it would take no action in relation to the draft Optus Vision Shareholders' Agreement between Optus Communications Pty Ltd, Continental Cablevision Inc. and Publishing and Broadcasting Limited. Initially the joint venture will offer telephony and pay television services. As technology develops, it is expected the joint venture will offer a range of broadband interactive services.

The Commission decided not to take action in respect of Optus Vision joint venture. However, the Commission announced it will monitor its implementation and any subsequent agreements relating to it.

Mitsubishi Motors Corporation (MMC)/Mitsubishi Motors Australia Limited (MMAL) — manufacture and distribution of passenger and commercial vehicles. This matter was raised in May 1995

FIRB sought TPC comment on an application by MMC to increase their shareholding in MMAL from 25 per cent to 60 per cent.

The Commission did not oppose the acquisition.

Vitalaire Australia Pty Ltd/Braids Limited

— medically and industrially applied manufactured gases. This matter was raised in May 1995. Vitalaire is a subsidiary of Air Liquide Australia Limited which is a manufacturer of industrial and medical gas. Braids is a publicly listed company which owns Medical Gases Australia Pty Ltd which sells medical gas and equipment to the domestic health care sector. Air Liquide and Braids compete only to a small extent in the Victorian domestic health sector.

The Commission did not oppose the acquisition.

United Biscuits/Original Pretzel Co —

snack foods. This matter was raised in May 1995. Proposed acquisition of The Original Pretzel Company by United Biscuits, the holding company of The Smith's Snackfood Company.

The Commission did not oppose the acquisition.

P&O Australia Ltd/ANL Limited —

trans-Tasman and Bass Strait shipping. In May 1995 the Commission decided not to oppose the possible acquisition by P&O Australia Ltd of ANL Limited.

QDL/LKJ Newman — pharmaceutical wholesalers. Proposal by Queensland Pharmaceutical wholesaler QDL Limited to acquire the Victorian pharmaceutical wholesaler LKJ Newman and Co Pty Limited.

The Commission did not oppose the acquisition.

Reuters Australian Pty Ltd/Infocast

Australia Pty Ltd — domestic and international equities information. This matter was raised in June 1994. Reuters Australia Pty Ltd proposed a takeover of Infocast Australia Pty Ltd.

The Commission did not oppose the acquisition and it proceeded with the acquirer being Reuter

Nederland BV instead of Reuters Australia Pty Ltd as initially proposed.

John Swire and Sons Pty Ltd/Export Park Cold Store Adelaide Airport —

cold storage. This matter was raised in June 1994. Swire Group proposed to acquire the Export Park facility which was being sold by the South Australian Government.

The Commission concluded that the acquisition was likely to substantially lessen competition in the Adelaide metropolitan and Hills region public cold storage market and as such the Commission opposed the acquisition. The tender was awarded to Safrate International.

Davids/Independent Holdings Limited —

grocery wholesaling/retailing. This matter was raised in July 1994. Davids Distribution Pty Ltd (Davids) proposed a takeover of Independent Holdings Limited in SA (IHL).

The Commission sought and obtained from Davids an undertaking that if the Commission formed the view that the acquisition of IHL would substantially lessen competition, Davids would dispose of such shares in Composite Buyers Limited as the Commission required. The Commission did not oppose the acquisition.

The Trade Practices Tribunal later authorised Davids to acquire Composite Buyers Ltd.

Alcan Australia Ltd/Comalco Australia

Ltd — production of aluminium extrusions in Australia; distribution of extruded aluminium and rolled aluminium products throughout Australia. This matter was first raised in July 1994. Alcan proposed to acquire the aluminium extrusions and distribution businesses of Comalco.

The Commission did not oppose the acquisition.

Goodman Fielder/Defiance Flour Milling

Tolling — floor and bread. This matter was first raised in August 1994. Goodman Fielder and Defiance proposed to enter into a series of arrangements in North and Central Queensland and South-western Australia in relation to the milling of flour and baking and distribution of bread. It proposed to commence the arrangements on 18 November 1994.

The Commission advised the parties that it was concerned that the arrangements were likely to substantially lessen competition. The Commission was also concerned that the arrangements may also breach s. 45 of the Act which apply to contracts, arrangements or understandings restricting dealings or affecting competition and s. 45A of the Act which concerns contracts, arrangements or understandings in relation to prices.

The Commission opposed the proposed arrangements. Goodman Fielder and Defiance withdrew the proposal.

Australian Wheat Board/GrainCorp Operations Ltd — storage, trading and handling of grain in NSW. This matter was raised in September 1994. The parties proposed to form a joint venture to trade in, handle and store grain in NSW.

After considering submissions from various parties the Commission concluded that the merger would be likely to substantially lessen competition in the markets for the trading of grain and the storage and handling of grain in NSW. The Commission opposed the joint venture.

In March 1995 the parties provided draft undertakings to the Commission which they submitted would alleviate the Commission's concerns. Having considered the undertakings and submissions and comments from industry players the Commission concluded that the draft undertakings did not remove its concerns.

Thomas Cook Pty Ltd/Interpayment Services Pty Ltd — travellers' cheques. This matter was raised in November 1994. Thomas Cook proposed acquiring the worldwide operations of Interpayment Services Ltd, which would increase its share of the Australian travellers' cheque market from 20 per cent to 41 per cent.

The Commission did not oppose the acquisition.

Hayman Reece Pty Ltd/Queensland Tow Bars Pty Ltd — national market for the manufacturing and distribution of tow bars. This matter was raised in January 1995.

Hayman Reece Pty Ltd proposed to acquire Queensland Tow Bars Pty Ltd.

The Commission did not oppose the acquisition.

Golden Chef Aust Pty Ltd/Queen of Hearts — fast food. This matter was raised in January 1995. Golden Chef, a food service business in South Australia, proposed to acquire Queen of Hearts, the next largest mobile food service operation in South Australia.

The Commission did not oppose the acquisition.

Pearson plc/Grundy Worldwide Limited — film and television production and distribution. This matter was raised in January 1995. Pearson plc, an English company which owns Thames Television, the Financial Times and other significant interests, acquired Grundy Worldwide Limited, a television production company operating in Australia and many other countries.

The Commission did not oppose the acquisition.

Southcorp Holdings Pty Ltd/Smorgon Consolidated Industries — manufacture of 'PET' containers. This matter was raised in February 1995. Southcorp Holdings Pty Ltd, a producer of plastic containers, proposed acquisition of Smorgon Consolidated Industries, a manufacturer of PET bottles and containers.

The Commission did not oppose the acquisition.

P T Bakrie Communications Corporation/Bellsouth Australia Pty Ltd, Advanced Communications Australasia Unit Trust — paper and message services, pagers and cellular phones. This matter was raised in February 1995. P T Bakrie Communications proposed to purchase 73 per cent of the units in Advanced Communications Australia Unit Trust and 73 per cent of the shares in Bellsouth Australia Pty Ltd.

The Commission did not oppose the acquisition.

Ticketmaster/BASS — computerised booking services. This matter was raised in February 1995. Ticketmaster proposed acquiring a 50 per cent interest in BASS.

The Commission did not oppose the acquisition.

Doctors Locum Service (DLS)/Australian Locum Service (ALS) — medical deputising services. This matter was raised in March 1995. The Commission received advice that a merger had been completed in December 1994 between the two largest medical deputising agencies in Adelaide, the Doctor Locum Service (DLS) and the Australian Locum Service (ALS) to form the Australian Medical Deputising Service (AMDS).

Inquiries indicated that prior to the merger there was only one other provider of medical deputising services in Adelaide, Northern Locum Service which serviced a limited geographic area. However post merger, a number of new medical deputising agencies commenced operations within Adelaide and were actively competing with the merged entity. Based on these inquiries it was decided not to intervene in this matter.

Otis Elevators or Schindler Lifts or Kone Elevators Australia Pty Ltd/ Boral Building Technologies (BBT) — installation and maintenance of elevators. This matter was raised in April 1995. Otis Elevators, Schindler Lifts and Kone Elevators Australia Pty Ltd each proposed to compete to acquire BBT when it was offered for tender.

The Commission did not oppose acquisition by any of the proposed tenderers. Otis Elevators was the successful tenderer.

Optus Vision P/L, ESPN Inc, Pay TV Holdings P/L (Nine), Tallylen P/L (Seven): Sports Vision Australia P/L — joint venture — supply of sports programming for pay television, television or home entertainment. This matter was raised in April 1995. Sports Vision P/L is a joint venture proposal between the above four companies. Sports Vision P/L is proposed to be a sports program packager and wholesaler to subscription television broadcasting.

The Commission did not oppose the joint venture.

Cultus Petroleum NL/GFE Resources Limited by State Government of Victoria — gas. This matter was raised in May 1995 when the Victorian Government invited bids for

the sale of GFE Resources Limited (GFE). The Commission examined those bidders which had interests in the gas industry, namely Santos Limited, Boral/Sagasco and Cultus Petroleum NL.

Based on the information available and results of market inquiries the Commission decided not to oppose the acquisition of GFE by any of the short-listed bidders. On 28 August 1995, the Victorian Government announced the sale of GFE to Cultus Petroleum NL.

Swiss Bank Corporation/S.G. Warburg Group plc — financial services. This matter was raised in June 1995 when the Swiss Bank Corporation proposed acquiring the Australian business of S.G. Warburg Group plc.

The Commission did not oppose the acquisition.

Reed Business Publishing Pty Ltd/Thomson Australian Holdings Pty Ltd — magazines, directories and exhibitions. This matter was raised in June 1995. Reed Business Publishing P/L proposed to acquire the Business, Publishing and Exhibition Divisions of Thomson Australian Holdings P/L.

The Commission did not oppose the acquisition.

Amcor Ltd/Priority Plastic Pty Ltd — manufacture of HDPE containers. This matter was raised in June 1995. Amcor proposed to acquire the Priority Plastics HDPE plastics business, which makes rigid plastic containers for use in the oil industry.

The Commission did not oppose the acquisition.

Tasmanian Seafoods Pty Ltd/Tassal Ltd — abalone. This matter was raised in June 1995. Tasmanian Seafoods P/L proposed acquisition of Tassal Ltd's abalone processing operations and/or quotas.

The Commission did not oppose the acquisition.

Mildara Blass Limited/Tolley Wines Ltd — wine production. This matter was raised in July 1995. Mildara Blass Limited proposed acquiring Tolley Wines.

The Commission did not oppose the acquisition.

Campbell Mushrooms Pty Ltd/Pixie Mushrooms Pty Ltd — production and supply of mushrooms. This matter was raised in July 1995. Campbell Mushrooms Pty Ltd, a Victorian mushroom producer, proposed acquiring Pixie Mushrooms Pty Ltd, a West Australian mushroom producer.

The Commission did not oppose the acquisition.

St George Bank Limited/Challenge Bank Limited — retail banking services in Western Australia. This matter was raised in July 1995. St George proposed to make a bid to acquire Challenge Bank.

The Commission did not oppose the proposed acquisition. St George later withdrew its bid.

Westpac Banking Corporation/Challenge Bank Limited — retail banking services. This matter was raised in July 1995. Westpac proposed to make a bid to acquire the West Australian based Challenge Bank.

The Commission did not oppose the acquisition.

Benchmark Communications Limited Partnership/Associated Communications Enterprises — advertising on commercial radio within the Wollongong licence area. This matter was raised in August 1995. Benchmark Communications, a US media company proposed to acquire the assets and business of radio station 2UUL-FM in Wollongong. Benchmark Communications did not hold any other investments in the Australian media industry.

The Commission did not oppose the acquisition.

Long Homes Limited/AV Jennings Holdings Limited — residential contract building and land development in NSW, Victoria and Queensland. This matter was raised in September 1995. The Commission decided that the acquisition of AV Jennings by Long Homes was not likely to breach s. 50 of the Act.

University of Queensland/Bond University campus — higher education. This matter was raised in September 1995. The land and buildings occupied by Bond University were for sale by tender. Bond University claimed that if

University of Queensland was the successful tenderer, the acquisition would breach s. 50. The Commission decided that Bond University operated as a specialised niche university and was not in direct competition with other public universities.

In November 1995 the Commission announced its decision that the acquisition was not likely to substantially lessen competition.

Bank of Scotland/Bank of Western Australia (Bank West) — retail banking services in Western Australia. This matter was raised in September 1995. Bank of Scotland was a new entrant to the market. In October 1995 the Commission decided not to oppose the acquisition.

Legal & General Life of Australia and SGIO Insurance Limited/SGIC Holdings Limited — general, health, life and business insurance. The matter was raised in October 1995. SGIC was put up for sale by the South Australian Government. Legal & General proposed to acquire the life insurance and superannuation businesses of SGIC, while SGIO proposed to acquire the health and general insurance businesses of SGIC.

The Commission did not oppose the acquisitions.

Angas Park Fruit Company Pty Ltd/Robinvale Producer — dried vine fruit. This matter was raised with the Commission in October 1995. The acquisition by Angas Park of Robinvale was due to be completed in January 1996.

In December 1995 the Commission decided not to oppose the acquisition.

GIO Australia Holdings Limited/SGIC Holdings Ltd — insurance. This matter was raised in November 1995. GIO made a bid for the purchase of all the insurance businesses of SGIC Holdings Ltd being sold by the SA Government.

The Commission did not oppose the acquisition.

PacifiCorp Australia Holdings P/L/Powercor Australia Limited — electricity. This matter was raised in November 1995. PacifiCorp Australia Holdings P/L proposed a takeover of Powercor Australia Limited, as part of the Victorian Government's privatisation of electricity generating operations.

The Commission did not oppose the acquisition.

Austereo Limited/Radio Newcastle Pty Ltd — Stations 2KO FM and NK FM — sale of advertising on commercial radio in Newcastle licence area. This matter was raised in December 1995. Austereo proposed to acquire Radio Newcastle Pty Ltd, the operator of the FM radio stations 2KO FM and NX FM in Newcastle.

The Commission did not oppose the acquisition.

Section 87B undertakings

A 1992 amendment to the Trade Practices Act conferred extensive powers on the Federal Court under s. 87B to enforce undertakings concerning future conduct given by a person to the Commission following a Commission investigation. The Commission keeps a public register of such undertakings.

The following is a list of s. 87B matters placed on the public register in 1995. (The register was first listed in *Bulletin 74*, February 1994.)

Bertolli of Australia Pty Ltd, Mr Robert Bertini, s. 48. Resale price maintenance of imported Italian pasta and olive oil.

9.1.95 undertaking that Bertolli and Mr Bertini would not engage in resale price maintenance and would write to all retailers of their products informing them that they were free to set their own retail price. The company also undertook to institute a compliance program for company officers.

BellSouth Australia Pty Limited, s. 52. Misleading and deceptive advertising in relation to digital mobile phones.

18.1.95 undertaking that any future advertising or promotion will clearly disclose any conditions of purchase, the total minimum purchase cost of the telephone and entry into a service contract or arrangement, and any other charges. BellSouth will also notify customers of these undertakings and make an alternative offer, plus institute a three-year trade practices compliance program.

The New South Wales Tennis Professionals Association Limited, s. 45. Code of ethics requiring members to abide by exclusionary or price fixing provisions.

18.1.95 undertaking not to be knowingly concerned in or party to members entering into or giving effect to any exclusionary provisions or price fixing agreements or understandings. The association will advise members of this in forms acceptable to the Commission including an article in its internal publication.

Australian Mutual Provident Society, s. 52. Misleading and deceptive representations in relation to the marketing of '80/20' investment policies.

30.1.95 undertakings including that AMP would institute a second method of valuing the policy while maintaining the old 'adjustment' method of valuation, that AMP would negotiate a settlement with policy owners who claimed they were unaware of the adjustment process when they bought the policy, and other provisions including better statement disclosure, better market testing of products, an ongoing audit program, provision of \$100 000 for a community education television program and a \$70 000 contribution to the Commission for assessing AMP's settlement offer.

Mobile Innovations Pty Ltd, ss 47(6), 52, 53(e), 53(g), 53C. Misleading and deceptive advertising in relation to the supply of mobile phones.

15.2.95 undertaking not to make false or misleading representations in relation to the price of mobile phones if the company is not

prepared to sell at that price, to disclose conditions attached to purchase and minimum costs of access to network. Mobile will also implement a trade practices compliance program.

The Pharmacy Press Pty Ltd, ss 45, 45A. Attempted price fixing and market sharing arrangement with competitors in relation to the sale of pharmacy labels.

22.2.95 undertaking not to induce any person to make a contract or arrangement, or arrive at an understanding with any person carrying on business as a manufacturer of pharmacy labels in Australia in relation to the price of, and/or market for, pharmacy labels.

Australian Brake Lining Company Pty Limited, ss 52, 53(eb). False and/or misleading representations about the country of origin of brake pad products.

1.3.95 undertaking that ABL would make clear the country of origin in any advertising, promotion, labelling and packaging of the products. ABL will also undertake an internal review of its marketing and dispatch procedures, develop and implement an internal trade practices compliance program, implement an education program for its officers and employees, and alert distributors to the misrepresentation.

Hart Fisheries Pty Ltd, ss 45(2)(a)(ii), 45(2)(b)(ii). Contract, arrangement or understanding to fix the price for the supply of barramundi larvae.

1.3.95 undertaking that Hart would not give effect to the agreement, would not engage in conduct amounting to a contract, arrangement or understanding either orally or in writing, to fix prices of barramundi larvae. Hart also undertook to establish a trade practices training program, and to advise specific barramundi growers/farmers of this investigation and undertaking.

Lyntune Pty Ltd (trading as Blue Water Barramundi), ss 45(2)(a)(ii), 45(2)(b)(ii). Contract, arrangement or understanding to fix the price for the supply of barramundi larvae.

1.3.95 undertaking that Lyntune would not give effect to the agreement, would not engage in conduct amounting to a contract, arrangement or understanding either orally or in writing, to fix prices of barramundi larvae. Lyntune also undertook to establish a trade practices training program, and to advise specific barramundi growers/farmers of this investigation and undertaking.

Nino Pty Ltd (trading as Barramundi Waters), ss 45(2)(a)(ii), 45(2)(b)(ii). Contract, arrangement or understanding to fix the price for the supply of barramundi larvae.

1.3.95 undertaking that Nino would not give effect to the agreement, would not engage in conduct amounting to a contract, arrangement or understanding either orally or in writing, to fix prices of barramundi larvae. Nino also undertook to establish a trade practices training program, and to advise specific barramundi growers/farmers of this investigation and undertaking.

Australian Liquor Marketers Pty Ltd, s. 50. Acquisition of Tasmanian liquor products supplier. Australian Liquor Marketers proposed acquiring from Tasmanian Breweries Ltd the business trading as Chancellors, including all stock and goodwill associated with that business.

8.3.95 undertaking that ALM and its related or associated bodies corporate will not enter into any contract, arrangement or understanding that has the purpose, or would have or be likely to have the effect, of preventing, restricting or hindering the supply of wine and spirits directly or indirectly to liquor resellers in Tasmania.

The Pharmacy Guild of Australia, s. 45(2). Contract, arrangement or understanding between members that contained an exclusionary provision against certain pharmaceutical companies.

10.3.95 undertaking by the guild and certain members including not to give effect to any contract, arrangement or understanding that may have arisen at specific meetings and involved guild members deferring placing orders with one or more pharmaceutical companies or to not be party to any contract, arrangement or

understanding in the next three years. The guild will also implement a trade practices compliance program within 12 months.

Pioneer International Limited, Caltex Australia Limited, Ampol Limited, s. 50. Merger that would substantially lessen competition in relation to the supply of petroleum products in a number of geographic areas.

28.3.95 undertakings, without admission, include the sale of large oil terminals and distributorships to independents, and the sale of distribution depots and country retail sites. The companies undertook to supply to independent wholesalers, distributors and retailers, and to release restrictive covenants on former independents who have left the industry. They also undertook not to place restrictions on any surplus retail sites and depots, to guarantee direct terminal access by independents with supply agreements, and to honour all existing supply agreements.

Vodafone Pty Limited, ss 52, 53(e). Misleading television promotion of 'flat' rates and misrepresentation in relation to the price of services for mobile phones.

31.3.95 undertakings not to advertise prices or rates for any service as being 'flat' when circumstances may determine otherwise, to place 60 corrective television advertisements, and in future advertising to ensure superscribed information is of a readable and understandable print size.

Lets Talk Communications Pty Ltd, s. 47(6). Exclusive dealing in relation to mobile phones.

5.4.95 undertaking not to supply or offer to supply mobile phones at a specified price, or to give or allow or offer to give or allow a discount, allowance or credit, conditional on purchaser connecting to a specified network. Lets Talk will also implement within three months a trade practices compliance program approved by the Commission which is to remain in force for five years.

Network Cellular Rentals Pty Ltd, s. 47(6). Third line forcing in relation to conditions of purchase of mobile phones.

12.4.95 undertaking not to supply or offer to supply mobile phones at a specified price, or to give or allow or offer to give or allow a discount, allowance or credit, conditional on purchaser connecting to a specified network. The company will also implement within three months a trade practices compliance program approved by the Commission which is to remain in force for five years.

Viking Office Products Pty Ltd, ss 52, 53. Misleading representations in the catalogue advertising of stationery and office products.

23.4.95 undertaking by Viking not to advertise products as having a recommended retail price when there is none, nor to represent that an amount of its own calculation is a manufacturer's, wholesaler's or supplier's recommended retail price, nor to advertise the prices of goods by superimposing the prices on pictures of goods of a different character. Viking will also include a corrective statement and business education guide on trade practices in future catalogues. During 1995 catalogues will be audited quarterly. Viking will implement a five-year trade practices compliance program and appoint a senior manager to oversee the program.

AN-ZA Pty Ltd, s. 47(6). Third line forcing in relation to conditions of purchase of mobile phones.

24.4.95 undertaking not to supply or offer to supply mobile phones at a specified price, or to give or allow or offer to give or allow a discount, allowance or credit, conditional on purchaser connecting to a specified network. The company also undertook to remove any misleading signs and notices in relation to this condition, and to notify all agents and employees of these undertakings within 30 days.

Bing Lee Electrics Pty Ltd, s. 47(6). Third line forcing in relation to conditions of purchase of mobile phones.

24.4.95 undertaking not to supply or offer to supply mobile phones at a specified price, or to give or allow or offer to give or allow a discount, allowance, rebate or credit,

conditional on purchaser connecting to a specified network. Bing Lee will also implement a trade practices compliance program approved by the Commission which is to remain in force for five years.

Forty Winks (Franchising) Pty Ltd, ss 52(1), 53(e). False and misleading representations in relation to savings claimed in catalogue advertising.

26.5.95 undertaking that for three years the company will not quote a recommended retail price unless specified by the manufacturer or supplier, and will not refer to 'savings' unless they are based on actual market prices or actual recommended retail prices. Forty Winks will maintain an advertising committee to ensure all advertising material is accurate. It will also implement a trade practices compliance program on which the company's solicitors will provide a report to the Commission annually for the next three years.

Stanilite Electronics Pty Ltd, ss 52, 53(a), 53(e), 53(g), 53C. Misleading and deceptive advertising in relation to the sale of mobile phones.

1.6.95 undertaking not to represent a particular price for the purchase of a mobile phone without disclosing total minimum price, service network conditions, and contract conditions. Stanilite will also individually advise everyone who bought a mobile phone before 26.9.94 of the contract's duration and amend the contract's wording relating to terms and conditions of service. The company will also undertake a three-year trade practices compliance program.

Austereo Limited, s. 50. Merger of Triple M Radio Network of Village Roadshow Limited with the radio network of Austereo may have the effect of substantially lessening competition for the supply of commercial radio broadcasting services in Melbourne.

7.6.95 undertaking that if Village directly or indirectly obtained control of the board of directors of Austereo or became entitled to more than 50 per cent of the issued ordinary shares of Austereo then Austereo would divest itself within six months (of a specified date) of

the radio station Gold 104 FM including all of its businesses and assets. If it was not sold within those six months Austereo would put it up for sale in a manner and terms directed by the Commission. The undertaking was later varied with the Commission's agreement.

Mayne Nickless Limited (trading as MSS Security Services), s. 52. False and misleading representations in relation to the number and kinds of inspections to be made by MSS's mobile patrol security service.

27.6.95 undertaking that the company will write to current and former mobile security patrol customers offering credits to current customers and an amount of free service or money in lieu to former customers. The company is also presently developing an interactive computer program to educate its relevant employees about compliance with the Trade Practices Act. Employees will be required to undertake and complete the program on subsequent occasions to ensure they are aware of the Act and their obligations.

Lyscard Pty Ltd, ss 51AB, 52, 53(f), 54. Unconscionable and misleading and deceptive conduct in relation to Collier encyclopaedias and false representations that a free gift accompanied purchase.

21.6.95 undertaking not to engage in unconscionable, misleading or deceptive conduct in the sale of books in Australia in future. Lyscard also undertook to reimburse consumers and establish a trade practices compliance program. The program is to be monitored and regular reports provided to the Commission.

Family Educational Publishers Pty Ltd, ss 51AB, 52, 53(f), 54. Unconscionable and misleading and deceptive conduct in relation to Collier encyclopaedias and false representations that a gift accompanied purchase.

21.6.95 undertaking not to engage in unconscionable, misleading or deceptive conduct in the sale of books in Australia in future. The company also undertook to reimburse consumers and establish a trade practices compliance program. The program is to be monitored and regular reports provided to the Commission.

Swarovski International (Australia) Pty Ltd, s. 45. Price fixing in relation to the supply of specialist optical equipment.

26.9.95 undertaking not to induce or engage in any price fixing arrangements in relation to the supply of specialist optical equipment. The company also undertook to prepare a trade practices compliance program to be implemented within three months of approval by the Commission, and to remain in force for three years.

Panache World Pty Ltd, ss 52(1), 53(c). False or misleading representations in relation to the Advance Australia Foundation's approval of use of the Advance Australia logo.

2.10.95 undertaking not to represent that any of its products are licensed by the Advance Australia Foundation to carry the Australian Made logo, and to remove or amend any representation purporting that Panache products have the Foundation's approval to carry the logo, unless it has the requisite approval. The company also undertook to implement a trade practices compliance program within three months of the Commission approving the program, to remain in force for a minimum of two years.

Harvey Norman Holdings Limited, ss 52, 53. False or misleading representations in relation to an advertising catalogue.

3.11.95 undertaking to improve its handling of all forms of advertising, corrective advertising, and consumer complaints. The company also undertook to implement a trade practices compliance program within three months of approval by the Commission, to implement a trade practices education program, and to strengthen its complaint handling system. The company's franchisees are also required to participate in the programs and system.

Medical Benefits Fund of Australia Limited, ss 52, 53(f). False or misleading representations in relation to correspondence sent to MBF members regarding new legislative requirements.

8.11.95 undertaking to cease the conduct, to send corrective letters to contributors, and to

place corrective advertising in newspapers. The company also undertook to implement a trade practices compliance program within six months of the date of acceptance of the undertakings. An independent review of the company's compliance with the undertakings and the trade practices compliance program will be conducted each year for five years.