Adjudication

Authorisations

The Commission has the role, through the authorisation process, of adjudicating on proposed mergers and certain anti-competitive practices that would otherwise breach the Trade Practices Act.

Authorisation provides immunity from court action, and is granted where the Commission is satisfied that the practice delivers offsetting public benefits.

Australian Competition Tribunal

Review of the Commission's determination to revoke authorisation of the accreditation system for advertising agencies

On 24 May 1976 the Commission granted conditional authorisation to an application by the Media Council of Australia for a system of accreditation for advertising agencies.

After an appeal by the applicant to the Trade Practices Tribunal the system was granted authorisation on 10 February 1978. In granting authorisation the Tribunal requested that the Commission periodically examine the working of the system to determine whether, by reason of altered circumstances, it was appropriate that the authorisation be varied or revoked.

After reviewing the system and considering a number of submissions, the Commission was satisfied that a material change of circumstances had occurred in a number of areas since 1978 which warranted revocation of the authorisation. Accordingly a revocation was issued on 5 October 1995 to take effect on 27 October 1995.

The Media Council and the Advertising Federation have applied to the Australian Competition Tribunal (formerly the Trade Practices Tribunal) for a review of the Commission's determination. A hearing is expected be held in March 1996.

The authorisation will continue to apply until the Tribunal application is decided.

(See also *Bulletin* 83, October 1995.)

Final determinations

Australian Stock Exchange Limited and Options Clearing House Pty Limited

Requirement that clearing members of ASX clear options and 'new trading instruments' traded on ASX markets through OCH (A30163)

Summary

- Draft determination proposing to grant authorisation for five years issued 20 September 1995
- Final determination granting authorisation issued 25 October 1995

On 18 November 1994, Australian Stock Exchange Limited (ASX) and Options Clearing House Pty Limited (OCH) lodged a joint application under s. 88(8) of the Act for authorisation of arrangements for the clearing of options and 'new trading instruments' traded on ASX markets which would or may constitute exclusive dealing (third line forcing). The conduct involved:

- ASX requiring clearing members to acquire clearing house services from OCH only, and if they did not agree, refusing to allow them to trade in an ASX market; and

- OCH providing clearing house services only to clearing members, and only on the condition that they abided by the ASX business rules in force from time to time.

The applicants defined 'new trading instruments' as 'financial instruments developed or introduced in Australia by ASX which may be traded lawfully on a market in Australia operated by ASX'. Share ratio contracts are an example of a 'new trading instrument'.

Options and share ratio contracts are derivative products (that is, they derive their value from the price of another, more basic financial instrument). An option is a contract that conveys a right, but not an obligation, to buy (a call option) or sell (a put option) an underlying security at a predetermined price for a specified length of time. Share ratio contracts are cash settled equity derivatives (with an expiry date) that create payment rights and obligations depending on the movement of the price of individual shares relative to the benchmark All Ordinaries Index.

Commission's conclusions

The Commission was concerned that authorisation of the conduct as described by the applicants, which included the requirement that 'clearing members abide by the ASX business rules in force from time to time, as a condition of using OCH clearing services', could be seen as endorsing, or also applying to, all existing and proposed ASX business rules relating to options, share ratio contracts and 'new trading instruments'. Therefore, to avoid any misunderstanding, it identified the conduct to be evaluated under the application as:

- the requirement that ASX clearing members, as a condition of trading on ASX's markets, acquire clearing house services from OCH; and

- OCH making its clearing house services available only to persons who are clearing members of ASX.

This conduct related to the trading of options and share ratio contracts on ASX's markets, although the applicants had proposed that the conduct also apply to 'new trading instruments' in the future.

The Commission considered that the conduct would be likely to result in some anti-competitive detriment. It noted that one of the effects of the conduct would be that all options and share ratio transactions on ASX's markets would have to be cleared by ASX clearing members through ASX's subsidiary, OCH. Therefore, OCH would not face any competition in the provision of such services to ASX clearing members. Another effect would be that OCH would be limited to supplying its clearing house services to persons trading on ASX markets, thus preventing OCH from competing for the supply of clearing house services to persons who engage in derivatives trading on other markets (such as the Sydney Futures Exchange).

However, it also appeared that providing market participants with a choice of clearing houses could have detrimental effects on the liquidity of the relevant market and the efficiency of the clearing of market transactions. The Commission also saw public benefit in arrangements that ensured the financial integrity of ASX's derivatives markets and in arrangements that enhanced ASX's ability to ensure orderly and fair markets for derivatives trading.

The Commission did not consider it appropriate or necessary to attempt to extend the proposed authorisation of ASX/OCH's clearing conduct to other 'new trading instruments' that may in the future be traded on ASX's markets, as proposed by the applicants. Because of recent amendments to the Trade Practices Act, ASX/OCH can now lodge a notification with the Commission in respect of such third line forcing conduct.

On 20 September 1995 the Commission issued a draft determination proposing to grant authorisation to ASX and OCH, for five years, for the conduct as defined by the Commission.

There was no request for a pre-decision conference. Therefore, on 25 October 1995

the Commission issued a final determination confirming its draft determination.

Sydney Futures Exchange Limited and Sydney Futures Exchange Clearing House Pty Limited

Arrangements and conduct relating to the operations and membership of the Sydney Futures Exchange Clearing House Pty Ltd (A90569–70)

Summary

- Draft determination proposing to grant authorisation issued 6 September 1995
- Final determination granting authorisation, subject to conditions, for five years issued 25 October 1995

On 21 March 1995, Sydney Futures Exchange Limited (SFE) and its wholly owned subsidiary Sydney Futures Exchange Clearing House Pty Limited (SFECH) lodged two applications for authorisation under s. 88(1) and s. 88(8) of the Trade Practices Act. The applications were lodged to extend the existing authorisations of arrangements and conduct (A90508–A90514), granted in 1991, which were due to expire on 30 October 1995.

The arrangements and conduct for which the applicants sought authorisation relate to the admission, expulsion, suspension or fining of SFECH members and the clearing procedures of SFECH, and are embodied in Part 2 of the SFECH by-laws and in certain articles of the SFE business rules.

Background

SFECH provides the clearing house function for SFE's futures market. Once futures contracts traded on SFE's markets are registered with SFECH, the clearing house guarantees to its clearing members (but not their clients) the financial performance of the contracts.

Only SFECH members (clearing members) may register contracts with the clearing house, and they are required to commit to SFECH's financial backing. SFECH maintains the financial security of the futures market through the system of margins which it administers and the A$100 million financial backing or guarantee of the clearing house, which is made up of $10 million capital contributed by SFE and $90 million in commitments by members and insurance.

A clearing member is required to make a $1 million fixed commitment, and depending upon the number of clearing members and the availability of insurance, additional variable commitments to the financial backing of SFECH. Clearing members are also required to meet a minimum $5 million net tangible assets requirement (a proposed increase from $2 million from 30 September 1995). In addition, under the by-laws, the SFECH board can prescribe an amount of net liquid assets to be held by clearing members, but to date no such requirement has been prescribed.

Under the by-laws, clearing members who breach their obligations and financial requirements may be fined, or have their clearing membership suspended or terminated by the board.

Commission conclusions

The Commission was concerned that SFECH's membership requirements included a number of subjective criteria that were open to interpretation. However, the Commission noted that applicants have a right of appeal to an independent appeal tribunal, and this lessens the likelihood that such criteria could be used to wrongfully exclude persons from membership (and thus lessens the anti-competitive potential of the criteria).

The Commission considered that the financial requirements of SFECH membership were a barrier to entry to the clearing of futures contracts and were anti-competitive. However, it also saw significant public benefit in the financial requirements as they enable SFECH to discharge its function of guaranteeing the financial performance of futures contracts, thus ensuring the financial integrity of SFE's futures markets. However, the Commission was concerned that if the SFECH board used its power to increase the net liquid asset requirement, this action would increase the barriers to entry.

In the Commission's view, there was little anti-competitive detriment in the requirement that SFECH members must also be either floor, full associate or market associate members of SFE. Market associate membership of SFE is readily available at relatively low cost. The Commission agreed that the tied membership requirement enhances SFE's ability to ensure an orderly and fair market for futures trading.

The Commission noted that the requirements that SFE members who are not clearing house members must clear all SFE trades through a clearing member, and that SFE floor members who are not clearing members must be guaranteed by a clearing member, ensure that all trades on SFE's market are cleared through SFECH. However, in view of the functions performed by a futures exchange clearing house it considered that there may be no practical alternative.

The Commission also considered that there was public benefit in ensuring that the business integrity and financial probity of clearing members was maintained through SFECH's disciplinary arrangements. It noted that the appeal rights of clearing members subject to disciplinary action by the SFECH board provide a safeguard for individual members, and against anti-competitive misuse of disciplinary provisions.

The Commission concluded that the arrangements and conduct yielded sufficient public benefit to outweigh any likely anti-competitive detriment, and on 6 September 1995 issued a draft determination proposing to grant authorisation.

There were no requests for a pre-decision conference. Therefore, on 25 October 1995 the Commission issued a final determination confirming its decision to grant authorisation for five years from the date of the determination.

The authorisation is subject to the condition that SFECH notify the Commission of any proposal to change the NTA requirement and/or prescribe a net liquid asset requirement for clearing members at least 90 days before the date the proposal is due to take effect.

South East Queensland Electricity Corporation (SEQEB)

Exclusive dealing in the supply of materials for use in electricity reticulation (A50015)

Summary

- Draft determination proposing to grant authorisation for two years issued 23 August 1995
- Pre-decision conference held 28 September 1995
- Final determination issued 24 November 1995

On 1 November 1994 the South East Queensland Electricity Board (SEQEB) lodged an application for authorisation under s. 88(8) of the Trade Practices Act to require real estate developers of new housing estates in South East Queensland (or contractors/consultants engaged by them) to purchase certain materials used for the reticulation of underground electricity from nominated suppliers. (Since lodgment of the application SEQEB has been corporatised. It is now the South East Queensland Electricity Corporation, trading as SEQEB.)

During the course of consideration of the application by the Commission the scope of the application changed. The conduct which was considered by the Commission was:

- a requirement that transformer units be purchased from a nominated supplier; and
- a requirement that other specified material (there are more than 400 such items) be purchased from one of a panel of suppliers.

Background

SEQEB is responsible for the supply of electricity in South East Queensland.

Until 1985, SEQEB managed the construction of the electricity supply network for all new sub-divisions, generally utilising SEQEB resources. Since then, SEQEB has allowed developers the option of designing and

constructing sub-divisions using other resources, usually consultants and contractors. Approximately 95 per cent of residential estates are now constructed by consultants/contractors on behalf of developers.

However, SEQEB continued to provide the necessary materials for these sub-divisions, with the exception of non-critical items. Under the supply agreement between SEQEB and the developer, the developer obtains all the required materials from SEQEB (with the exception of the non-critical items) and pays SEQEB for the estimated cost of these materials.

After conducting a feasibility study in 1993, SEQEB decided to adopt the proposal that the developers/consultants/contractors supply all materials required for reticulation. This led to the current application for authorisation.

The application

SEQEB's application related to supply of materials under two arrangements: the 'umbrella scenario' relating to padmounted transformers which would be bought from a nominated supplier; and the 'limited open ended scenario' relating to other specified materials (there are more than 400 such items) which would be bought from a panel of nominated suppliers.

Under the first scenario, SEQEB would identify conforming suppliers and contract with them through open tendering processes for the supply of padmounted transformers to future estate developments. The contracts would run for approximately two years. SEQEB would set the technical specifications and negotiate the price and terms of trading.

Under the second scenario, SEQEB would set out product specifications and assess the quality, safety, longevity and reliability of materials. Any supplier that satisfied the criteria that SEQEB established would be added to the list of nominated suppliers from which purchasers could buy.

In support of the application, SEQEB claimed public benefits relating to the need for quality assurance, safety, reliability and minimisation of operating costs over the life of the equipment.

Commission's conclusions

The Commission issued a draft determination on 23 August 1995 and a pre-decision conference was held on 28 September 1995.

In its draft determination the Commission proposed to grant authorisation, but only for two years, to the requirement that specified material be purchased from one of a panel of suppliers. It was not prepared to grant authorisation in respect of the requirement that transformer units be purchased from a nominated supplier. However, it was prepared to grant authorisation, for two years, to allow SEQEB to confine purchasers' choice of transformer unit suppliers to one of a panel of suppliers.

After considering issues raised at the conference and in subsequent submissions, the Commission reaffirmed its conclusion in the draft determination that considerable anti-competitive detriment could result from the proposal. It considers that the conduct could potentially result in limited competition between suppliers and also loss of competition between providers of services. While the Commission is satisfied that SEQEB's quality assurance requirements in relation to accreditation of supplies are not anti-competitive, it considered that SEQEB's internal assessment requirements may not be adequately articulated.

On the other hand, it recognised that there are public benefits, particularly in terms of enhancement of safety to SEQEB staff and the public generally, and also in terms of reliability, longevity and more competition in the supply of materials.

The Commission concluded, however, that the benefits could equally be generated by redrafting and articulating the specifications for materials to incorporate standards for safety, reliability and longevity. As to the anti-competitive detriments, the Commission considered that these may be reduced, for instance, by introducing an appeal mechanism.

SEQEB has agreed to modify its arrangements to address the Commission's concerns. Those modifications reduce the anti-competitive detriment and enhance the public benefits of SEQEB's proposals. However, SEQEB is unable to introduce all of the changes within the time frame expected by the Commission.

The Commission decided to accept the time frame proposed by SEQEB and has granted authorisation to allow SEQEB to limit purchasers' choice of materials to a panel of suppliers for periods up to four and a half years (depending on the product), on the condition that SEQEB:

- introduce a process to consider admission of manufacturers/suppliers to the panel of acceptable suppliers;
- develop a formal process for consulting with suppliers/manufacturers in developing specifications for significant materials;
- formalise and document internal appeals procedures in respect of specifications of materials; and
- put in place external appeals processes for specifications for materials.

The Commission will allow SEQEB six months to put those processes in place.

As the authorisations expire for each of the particular products the Commission understands SEQEB will then allow purchasers to purchase those products from any manufacturer provided:

- that supplier is quality certified by an independent certifying authority; and
- materials supplied conform with specifications.

ASX Settlement and Transfer Corporation Pty Ltd and Australian Payments Clearing Association Ltd

In relation to phase 2 of the Clearing House Electronic Subregister System (CHESS) (A90579, A90580, A90587)

Summary

- Draft determination proposing to grant authorisation, subject to conditions, issued 22 November 1995
- Final determination granting authorisation issued 13 December 1995

The Commission has considered three applications for authorisation: two lodged by ASX Settlement and Transfer Corporation Pty Ltd (ASTC) and one lodged jointly by ASTC and the Australian Payments Clearing Association (APCA), relating to the proposed introduction of phase 2 of the Clearing House Electronic Subregister System (CHESS). (APCA is owned and controlled by Australia's banks, building societies and credit unions, and is responsible for coordinating and managing Australia's payments clearing and settlement systems and procedures.)

Background

CHESS is being introduced in two phases. Phase 1, which was introduced in September 1994, established the CHESS subregister and provided a system for the electronic transfer of CHESS-approved securities. The Commission granted authorisation in respect of the phase 1 arrangements and conduct on 28 June 1994. In its determination, the Commission concluded that the introduction of CHESS phase 1 would be likely to result in efficiencies and cost savings in the processing (registration and transfer) of securities transactions.

The CHESS phase 2 proposal will establish electronic settlement of securities transactions on a delivery versus payment (DvP) basis, that is, the irrevocable exchange of good title to securities for good value 'cleared' funds. CHESS phase 2 will establish an electronic interface between CHESS (particularly the broker and non-broker participants in CHESS) and the payments system (particularly the financial institution participants in the payments system), and provide for the electronic transfer of funds in the settlement of securities transactions.

During the settlement process, securities will be transferred between CHESS participants

through the CHESS subregister; and, in conjunction, relevant financial institutions will be instructed through an electronic interface to transfer payment to or from payment facilities maintained on behalf of the CHESS participants.

The proposal

Under the CHESS phase 2 proposal, from 18 March 1996 or such later date as may be determined by ASTC, all existing and proposed CHESS participants will be required, in order to be admitted as 'settlement participants', to have in place at all times a facility operated for the participant by a 'payments provider' for the purposes of paying and receiving payments in DvP settlement. Only settlement participants will be entitled to settle in CHESS.

A payments provider is defined as a bank, building society, credit union or special service provider (SSP) under the Financial Institutions Code that:

- has either direct or, in the case of building societies and credit unions, indirect access to an exchange settlement (or similar) account with the Reserve Bank, and the Reserve Bank Information and Transfer System (RITS);
- is approved by a yet to be determined 'financial supervisor' (such as the Reserve Bank, the Australian Financial Institutions Commission, the Council of Financial Supervisors or the Federal Treasurer) as having the capacity to meet the indemnity requirements of the Standard Payments Provider Deed, and not to affect the orderly operation of the CHESS Payment Providers User Group (a sub-group within RITS);
- meets the technical and performance requirements prescribed by ASTC; and
- is a member of APCA or has given a non-member undertaking to APCA.

(Initially, the Reserve Bank's Information and Transfer System (RITS) will be the payment system used for payment transfers between payment providers during CHESS settlement. The Standard Payments Provider Deed is a proposed standard form agreement between ASTC, TNSC (a subsidiary of ASTC), APCA and each payments provider. It sets out the obligations of the payments provider in DvP settlement and the procedures to be followed for electronic funds transfer in DvP settlement.)

A financial institution must have access to a settlement account with the Reserve Bank in order to complete the settlement of securities transactions. During the time the Commission was considering the applications, ASTC amended its proposal so that banks, with direct access to a settlement account, and building societies and credit unions, with indirect access to a settlement account through their SSPs, might participate in the payments side of DvP settlement. The amended proposal was in response to the concerns of interested parties and the Commission as to the anti-competitive effects of ASTC's original proposal that would have confined participation in DvP settlement to banks with direct access to a settlement account.

Commission's conclusions

The Commission noted that DvP settlement is aimed at minimising principal risk — the risk that the seller of the security could deliver the security but not receive payment, and the risk that the buyer of the security could make payment but not receive delivery of the security. The Commission also noted that linking the securities clearing system with an electronic payments system, so that the transfer of funds in settlement of securities transactions occurs electronically (and is irrevocable), will promote efficiency as well as reduce risk.

In general terms, the Commission accepted that there was public benefit in arrangements and conduct that reduced the risks, and improved the efficiency, of settlement of securities transactions.

ASTC's amended proposal introduced the requirement that in order for a bank, building society or credit union to be a payments provider, it must be approved by a yet to be determined 'financial supervisor' (or, pending the supervisor's appointment, by ASTC) as having the capacity to meet any liability to indemnity incurred under the scheme, and not

to affect the orderly operation of the settlement process.

The Commission viewed its authorisation of this approval process as an interim measure to allow DvP settlement to be implemented in March 1996. It would also allow for further development of the approval process, and the underlying criteria for participation of financial institutions, in the light of experience. The subjective nature of the proposed approval process was of concern, and the Commission indicated it would be unlikely to grant further authorisation of the approval process in its current form when the current authorisation lapses in July 1997.

The Commission noted the proposal that ASTC be empowered to suspend or terminate the participation of CHESS participants, as well as the participation of banks, building societies and credit unions from DvP settlement, in certain circumstances. In response to the Commission's draft determination, ASTC advised that it will amend the proposed arrangements to provide a right of appeal in respect of lengthy suspensions or termination of participation.

On 22 November 1995 the Commission issued a draft determination proposing to grant authorisation. There was no request for a pre-decision conference.

On 13 December 1995 the Commission issued a final determination confirming its proposal to grant authorisation to the relevant CHESS phase 2 arrangements and conduct. The authorisation will remain in force until 20 July 1997 (when the authorisation granted in respect of the CHESS phase 1 arrangements and conduct will also expire).

Authorisation under review

Newspaper and magazine distribution in NSW/ACT, Victoria and Queensland

In 1980 the Commission authorised distribution arrangements for newspapers and magazines in NSW/ACT, which provided the model for the subsequent Victorian and Queensland authorisations granted in the 1980s. The arrangements generally provided for:

- horizontal agreements between publishers;
- combined delivery, supply to sub-agents and retail functions; and
- close control of newsagency businesses by newsagency councils.

In 1995 the Commission decided to review the authorised arrangements in the eastern States and Territories. This decision followed the Trade Practices Tribunal's decision in November 1994 to set aside a July 1993 authorisation by the Commission of a revised distribution system in Victoria.

It appears to the Commission that a number of changed circumstances have materially affected the original authorisations and that the public benefits said to flow from the authorised arrangements may no longer outweigh the anti-competitive detriments. Small business may now be substantially constrained by the current arrangements.

The Commission is reviewing the authorisations in the light of these apparent changes. It has received a large number of submissions and is currently considering them. No decision has yet been made.

(See also *Bulletin* 82, August 1995.)

Revocation of authorisations

Under s. 91(4) of the Trade Practices Act, where it is satisfied that there has been a material change of circumstance since an authorisation was granted, the Commission may revoke the authorisation, and if it considers it appropriate to do so, grant a substitute authorisation.

Melbourne Woolbrokers' Association

Conditions for the sale of wool

On 10 April 1981 the Australian Mercantile Land & Finance Company Ltd, on behalf of the Melbourne Woolbrokers' Association, was granted authorisation relating to the Association's conditions for sale of wool auctioned at its Melbourne sale rooms.

The Commission contacted the Association advising it that there had been significant changes in the industry since the authorisation was granted, most notably the demise of the Australian Wool Corporation and its replacement with the Australian Wool Exchange Ltd.

The Association advised the Commission that the authorisation was no longer relevant and requested it be withdrawn.

The revocation was issued on 11 October 1995 to take effect on 2 November 1995.

Adelaide Woolbrokers' Association

Conditions for the sale of wool

On 23 July 1982, Elders IXL Ltd on behalf of itself and Bennetts Farmers Ltd, the only other member of the Adelaide Woolbrokers' Association, was granted authorisation relating to the conditions of sale for wool auctioned at the Association's Adelaide sale rooms.

The Commission considered that there had been a material change in circumstances since the authorisation was granted, most notably the demise of the Australian Wool Corporation and its replacement with the Australian Wool Exchange Ltd. The Commission was also advised that the authorised agreement was no longer used.

Revocation was issued on 11 October 1995 to take effect on 2 November 1995.

National Council of Wool Selling Brokers of Australia

Constitution and rules of the Council

On 10 April 1981 the Australian Mercantile Land and Finance Company Ltd, on behalf of the National Council of Wool Selling Brokers of Australia, was granted authorisation relating to the Council's constitution and rules.

The Commission considered that there had been a material change of circumstances since the authorisation was granted, most notably the demise of the Australian Wool Corporation and its replacement with the Australian Wool Exchange Ltd.

The Commission was advised that the Council had been incorporated in July 1993, and it appeared to the Commission that the Memorandum of Understanding and Articles of Association for the new incorporated body do not require authorisation at the current time.

The revocation was issued on 11 October 1995 to take effect on 2 November 1995.

Sydney Stock Exchange Limited

Arrangements relating to the operation of the international options market

On 16 April 1984 Sydney Stock Exchange Limited (SSE) lodged an application for authorisation (A30100) under s. 88(1) of the Trade Practices Act with respect to various arrangements relating to the operation of the international options market. The Commission granted authorisation to this application on 28 September 1984.

In 1987, SSE became a subsidiary of the newly formed Australian Stock Exchange Limited (ASX).

ASX advised the Commission that SSE (which had changed its name to Australian Stock Exchange (Sydney) Limited, and had subsequently been liquidated) no longer operated in the international options market. It also advised that it had no objection to the revocation of the authorisation.

The Commission was satisfied that a material change of circumstance had occurred since the authorisation was granted and issued a revocation on 6 December 1995 to take effect on 28 December 1995.

Private Treaty Wool Merchants' Association of Western Australia

Use of a standard form contract for private treaty sales

On 26 April 1983 the Private Treaty Wool Merchants' Association of Western Australia (Inc) lodged an application (A90386) with the Commission under s. 88(1) of the Act for authorisation relating to the use of a standard wool clip contract by members of the Association in their dealings with wool sellers.

On 20 September 1995 the Private Treaty Wool Merchants of Australia, a national body now representing private treaty wool merchants, advised the Commission that a new document replacing the old contract was being launched nationally.

The Commission was satisfied that a material change of circumstances had occurred since the authorisation was granted. On 13 December 1995 the Commission revoked the authorisation, to take effect on 4 January 1996.

Real Estate Institute of South Australia

Maximum scale of fees

On 21 April 1988 the Commission granted authorisation to an application (A6005) by the Real Estate Institute of South Australia (REISA) in respect of a maximum scale of fees. The authorisation was granted after REISA agreed to:

- amend the Sales Agency Agreement to make it clear that fees are negotiable; and
- place at least six times a year an appropriate advertisement informing the public that commission rates are maximum recommended fees and are negotiable with the agent.

The Commission formed the view that there has been a material change of circumstances since the authorisation was granted.

Submissions received from REISA and the Minister for Consumer Affairs South Australia support the removal of the maximum scale of fees.

REISA pointed out in its submission that the maximum scale of fees has not been regularly updated and therefore bears little relationship to agents' actual costs. Further, because of the emphasis that REISA has placed on training agents, they are now better able to assess their own costs and are therefore better equipped to determine their own parameters for negotiating a fee rather than relying on a general fee.

The Commission had granted the authorisation subject to a number of conditions aimed at stimulating fee negotiation and price competition in the industry, because it had seen no public benefit in the mere publication of a maximum scale of fees. Based on the information supplied by REISA in its submission, as well as the finding in the Prices Surveillance Report issued in September 1992 that South Australia had a much higher level of discounting than the other States, the Commission is satisfied that fee negotiations and price competition are now characteristics of the South Australian real estate market.

The Commission is of the view that the maximum scale of fees is irrelevant and no longer delivers any public benefit, and that these developments constitute a material change of circumstances.

The revocation was issued on 13 December 1995 to take effect on 3 January 1995.

Pre-1977 'deemed' authorisations

Before 1 July 1977, the Commission granted clearances to a number of companies under s. 92(2) of the Trade Practices Act for various contracts, arrangements or understandings that may have been in restraint of trade.

On 1 July 1977 the Trade Practices Act was amended and s. 92 repealed. Under the amendments, any s. 92(2) notices that had been granted clearance before 1 July 1977 were deemed authorisations under ss 88(1) or (5) of the amended Act.

The Commission has been reviewing all pre-1977 'deemed' authorisations in an effort to bring its register up to date.

Authorisations to the following companies for various agreements in this category have now been revoked since it appeared to the Commission that material changes in circumstances had occurred in that the agreements had expired or had been terminated.

- Edwards Dunlop & Co Ltd and BJ Ball Ltd (various agency distribution agreements) — the revocation of 27 notices was issued on 20 September 1995 to take effect on 12 October 1995.

- Emmo Pty Ltd (various distribution agreements) — the revocation of eight notices was issued on 27 September 1995 to take effect on 19 October 1995.

- Alderson Projects Pty Ltd, Automotive & Girling Pty Ltd, Applied Chemicals Pty Ltd, Bathurst Touristels Pty Ltd, Elizabeth Myhill, Abbey Orchard Property Investments Pty Ltd (various distribution and lease agreements) — the revocation of eight notices was issued on 1 November 1995 to take effect on 23 November 1995.

- Silverton Limited, Beaumont Estates Pty Ltd, Rank Industries Australia Pty Ltd, Allendale Holdings Pty Ltd, Bisley Homes Pty Ltd, Total Australia Limited, BP Australia Limited (various purchase, distribution and lease agreements) — the revocation of 43 notices was issued on 1 November 1995 to take effect on 23 November 1995.

- Artagen Investments Pty Ltd, National Mutual Life Association of Australasia Limited, Australian National Industries Limited, Tooheys Pty Ltd, Australian Guarantee Corporation Limited (various lease and commercial agreements) — the revocation of 47 notices was issued on 17 November 1995 to take effect on 9 December 1995.

- White Wings Ltd, Bliss Welded Products Ltd, H.L. Brisbane & Wunderlich Ltd, Mantons Pty Ltd, Mobil Oil Australia Ltd (various purchase, distribution and agency agreements) — the revocation of 30 notices was issued on 15 November 1995 to take effect on 7 December 1995.

- Medical Applications Pty Ltd, BEA Motors Pty Ltd, Rocla Concrete Pipes and Rocla Industries, Bermingham Investments Pty Ltd, Bevillesta Pty Ltd, Amalgamet Australia Ltd, Jord Engineers Pty Ltd (various distribution and lease agreements) — the revocation of 33 notices was issued on 15 November 1995 to take effect on 7 December 1995.

Authorisation applications under consideration

SA Stock Salesmen's Association (A60012, A60013)

Rules and regulations of association, terms and conditions of livestock auction sales conducted by members and exclusionary provision.

Consideration deferred pending VSAA and SSAA appeals to Trade Practices Tribunal.

8.7.94 Requested advice on whether SA Stock Salesmen's Association will proceed with application following VSAA and SSAA decision to withdraw appeal to the Trade Practices Tribunal.

30.6.95 SASSA's solicitors advised regulations being rewritten to address Commission's concerns.

Delhi Petroleum (A90547)

Joint venture operations for SA gas supply.

Existing interim authorisation extended until final determination is made.

Further consideration deferred pending review of AGL authorisation A90424.

Santos Limited (A90559)

Agreement relating to the sale and marketing of liquid hydrocarbons from natural gas in south-west Queensland.

Further consideration deferred pending review of AGL authorisation A90424 and consideration of new application A90568 to address Commission concerns.

Santos Limited (A90560)

SA Cooper Basin — joint venture — natural gas.

Further consideration deferred pending review of AGL authorisation A90424.

Advertiser Newspapers Limited & others (A60020, A60021)

Contracts and rules for the operation of SA newsagency system.

Interim authorisation granted until 31.12.95.

Franchising Code Administration Council Ltd (A30164)

Voluntary code of practice for the franchising sector.

Interim authorisation granted until 1.2.96.

Santos Ltd (A90568)

Sale of commingled liquid hydrocarbons from Cooper Basin in SA and Qld.

8.2.95 Interim authorisation granted.

CSR Ltd (A50016)

Application for authorisation for negotiation and agreements on cartage rates with independent contractor concrete carriers.

Notification

Under the Act, immunity from legal proceedings is available for exclusive dealing conduct, including third line forcing, when notification is given to the Commission. Exclusive dealing conduct, except third line forcing, gains immediate and automatic immunity when notified to the Commission. In the case of third line forcing, immunity comes into force at the end of the prescribed period from the time the Commission receives the notice. Immunity remains unless revoked by the Commission.

Mercantile Mutual Insurance

The Commission has recently accepted a Mercantile Mutual Insurance (Australia) Ltd proposal involving third line forcing which requires young drivers insuring with it to undertake an extended driving instruction program, the Roadsafe Drivers Club.

The club will promote motor vehicle insurance with premium discounts and other benefits to young drivers or their parents if the young drivers undertake and pass approved driving courses. Each club member who completes all of the nominated driving courses will be given maximum rebates or discounts on insurance premiums, will attract a lower age excess on their policies and receive a quarterly newsletter reinforcing good driving habits.

The program was suggested by the North Sydney branch of the Rotary Club in response to the high level of motor vehicle accidents

involving young drivers — about 20 per cent. The program will offer instruction in driving and defensive driving under varying conditions. The aim of the program is to provide young drivers with the attitude and skills necessary for them to become and remain competent and responsible drivers.

Under the Trade Practices Act it is illegal to force a product or service onto a purchaser who is buying another product. It is possible, however, to notify the Commission of the intention to do so and, if the benefit to the public of the action is greater than its anti-competitive effect, the Commission can grant immunity.

In considering the proposal, the Commission felt that the public benefit easily outweighed the anti-competitive detriment.