
Adjudication

Authorisations

The Commission has the function, 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.

NEM access code

On 29 April 1997 the National Electricity Code Administrator (NECA) lodged an application for authorisation of an access code for the proposed National Electricity Market (NEM).

The application is largely identical to the draft application NECA submitted in November 1996. The delay in lodging the formal application for the NEM access code was due to legislative changes required to establish assessment guidelines and to streamline public consultation processes.

The Commission will examine the NEM access code to determine whether it is in the interests of network operators, network users and the Australian community more generally.

The access code describes the procedures and requirements for generators and electricity users to gain access to the electricity transmission and distribution networks. It covers system security, network connection, network pricing, metering, dispute resolution, enforcement and provides for transitional arrangements for participating jurisdictions to adjust to the requirements of the NEM Code.

The Commission is concurrently assessing the authorisation application for the National Electricity Code and the transitional arrangements in New South Wales, Victoria and the Australian Capital Territory. While the Commission's work on the electricity access and authorisation applications are complementary, the processes, criteria and decisions are quite separate.

Copies of the NEM access code are available from Commission offices or electronically from its Internet site.

Final determination

Inghams Enterprises Pty Ltd

In relation to a collective agreement with contract chicken growers (A90595)

- Interim determination granted 26 June 1996
- Draft determination proposing to grant authorisation issued 20 November 1996
- Final determination granting authorisation for five years issued 9 April 1997

The application

On 31 May 1996, Inghams Enterprises Pty Ltd applied for authorisation for its proposal to collectively negotiate a standard five-year growing agreement with its South Australian contract chicken growers. The Commission granted Inghams interim authorisation on 26 June 1996.

The growing agreement provides for a standard fee payable to contract growers at the end of the growing cycle. This fee is based on the concept of a 'model farm', where the fee each contract grower receives depends on his or her

efficiency compared to other contract growers. Efficiency is measured by the conversion of feed (the most expensive input in the growing process) to chicken meat. Inghams proposes to meet representatives of the contract growers every six months to review the standard fee. Contract growers will have the option of negotiating individually with Inghams if they do not wish to be part of the collective negotiation process.

The growing agreement includes a code of practice which governs issues pertaining to negotiations between Inghams and its contract growers.

Background

Inghams' application was lodged in anticipation of deregulation of the South Australian chicken meat industry. Under regulation, chicken grower contracts, terms and conditions, fees, and associated matters were negotiated on a State-wide industry basis.

The chicken industry is highly vertically integrated, with two large processing companies, Inghams and Steggles, controlling 86 per cent of the South Australian market. Chicken growers are required to make significant capital investment in sheds and equipment that have virtually no alternative use, but never own the chickens or many of the inputs in the chicken growing process.

Commission conclusion

The Commission was satisfied that the public benefits of Inghams' proposed arrangements were likely to outweigh the anti-competitive effects. Given the nature of the proposal and the structure and dynamics of the industry, these public benefits include:

- assisting a smooth transition from regulation to deregulation, which will ensure lower adjustment costs for the South Australian chicken meat industry;
- providing chicken growers with countervailing bargaining power; and

- a likely reduction in production costs, as a result of the collective negotiation process, which could lead to lower retail prices.

On 9 April 1997, the Commission issued its final determination granting authorisation to the proposed agreement and code of practice for five years while the industry is in transition to a deregulated market.

Draft determination

Proprietary Medicines Association of Australia and the Nutritional Foods Association of Australia

In relation to the Therapeutic Goods Advertising Code (A90600)

- Interim authorisation granted 18 December 1996
- Draft determination issued 29 April 1997

On 29 April 1997 the Commission issued a draft determination proposing to grant authorisation to new arrangements for the administration of the Therapeutic Goods Advertising Code.

The application was lodged by the Proprietary Medicines Association of Australia and the Nutritional Foods Association of Australia. The proposed arrangements provide for:

- the establishment of a Therapeutic Goods Advertising Code Council;
- the adoption of the Therapeutic Goods Advertising Code as an industry standard; and
- the establishment of a complaints resolution panel and appeal mechanism to deal with disputes.

According to the applicants the arrangements are intended to ensure continuity of consumer protection following the abandonment of the self-regulation scheme previously administered by the Media Council of Australia.

On 18 December 1996 the Commission granted interim authorisation to the arrangements.

The Commission considered that the proposed arrangements might substantially lessen competition, because of:

- the extension of advertising restrictions beyond the provisions of the Therapeutic Goods Act; and
- provision for the imposition of sanctions where an advertisement is found to be in breach of the code.

However, it was of the view that the detriment associated with these two aspects of the arrangements was likely to be limited.

It considered that the arrangements would benefit the public through:

- the continued application of a Therapeutic Goods Advertising Code, together with effective mechanisms to ensure compliance;
- the implementation of a flexible system capable of responding quickly to complaints and changes in community needs and attitudes;
- broad coverage (albeit incomplete for the time being) of the code across various media; and
- consistency in application of the code between over-the-counter medicines and health and nutrition products.

These benefits were expected to outweigh any anti-competitive detriment associated with the code.

The Commission proposes to grant authorisation to the application for four years.

A pre-decision conference will be held on 26 May 1997.

Revocation of authorisation

Amalgamated Wireless (Australia) Ltd, David Syme & Co. Ltd, Standard Newspapers Ltd, Sunraysia Publishing Company Ltd, John Fairfax & Son Ltd, Country Television Services Ltd

In relation to the Media Council of Australia accreditation system

In May 1976 the Trade Practices Commission granted conditional authorisation to an application for authorisation lodged on behalf of the Media Council of Australia for a system of accreditation for advertising agencies. The decision was appealed to the Trade Practices Tribunal, and in February 1978 the accreditation system was authorised.

On 16 July 1976 the Commission granted authorisation to several applications which related to the accreditation system, as follows.

- Agreement of the members of the Federation of Australian Commercial Broadcasters that the rate of commission to accredited agencies shall be 12.5 per cent.
- Agreement of the Australian Newspaper Council that the rate of the commission to accredited advertising agencies shall be 10 per cent.
- Agreement of the Australian Suburban Newspapers' Association that the rate of commission to accredited advertising agencies shall be 10 per cent.
- Agreement of the Regional Dailies of Australia Limited that the rate of commission to accredited advertising agencies shall be 10 per cent.

Two further applications were granted authorisation by the Commission, relating to:

- amendments to the rules of MCA governing accreditation of advertising agencies as previously authorised by the Commission — granted 22 June 1982; and

- the prescription of a maximum commission rate payable by members of the Federation of Australian Commercial Television Stations to accredited advertising agencies — granted 12 September 1984.

Following a review in 1995, the Commission revoked the authorisation of the accreditation system in October 1996, because it was satisfied that a material change of circumstances had occurred. The decision was appealed to the Tribunal, which subsequently affirmed the Commission's determination. The revocation took effect from 3 February 1997 (see *ACCC Journal* 5, pp. 51–2).

On 14 May 1997 the Commission issued a revocation of the related authorisations, to take effect on 5 June 1997. It was satisfied that there had been a material change of circumstances since the authorisations had been granted.

Notifications

Notifications considered

Commercial Union Assurance Company (N90366) (Allowed to stand)

Reduction in home and contents insurance premiums if a home alarm is installed by a member of a specified security institute or association.

Dick Smith Electronics Franchising Pty Ltd (N30738) (Allowed to stand)

Proposed inclusion of terms in a franchising agreement for the offer of franchises of Dick Smith Electronic stores, requiring franchisees to purchase all products from Dick Smith Electronics Pty Ltd.

TNT Australia Pty Limited (N90356) (Allowed to stand)

Entering into contracts for the carriage of motor vehicles on condition the cartage contractor purchase Ford Louisville prime movers from Austrans.

14.11.96 Draft notice issued.
19.12.96 Pre-decision conference held.
13.2.97 Amended notification lodged.

Australian National Railways Commission (N60026) (Allowed to stand)

Supply of rail haulage services to Australian Wheat Board, Australian Barley Board and South Australian Co-operative Bulk Handling Ltd on condition that 90 per cent of export grain stored by them at certain rail-served sites be reserved for rail.

Medical Benefits Fund of Australia Ltd (N30739) (Allowed to stand)

MBF will provide benefits to members in respect of acupuncture services only if they obtain such services from a group of acupuncture providers who are recognised by MBF (third line forcing).

Westpac Banking Corporation (N30740) (Allowed to stand)

Directing clients to utilise a sole sponsor (being a wholly owned subsidiary of Westpac) in a manner which enables Westpac to provide financial accommodation to the shareholder using the shares as lending security (third line forcing).

Adelaide Bank Limited (N60027) (Allowed to stand)

Making it a pre-condition of providing financial accommodation that borrowers use the funds provided to acquire certain investments and that borrowers use a wholly owned subsidiary of Adelaide Bank Ltd to hold investments which are used as lending security for loans by Adelaide Bank Ltd (third line forcing).

NRMA Insurance Ltd, NRMA Financial Planning Pty Ltd, NRMA Finance Ltd, NRMA Financial Management Ltd, NRMA Life Ltd (N90368-72) (Allowed to stand)

NRMA to provide a discount in relation to the supply of goods or services to customers of NRMA on the condition the customer will acquire goods or services from another NRMA group member.

Powercor Australia Ltd (N40208) (Allowed to stand)

The Bank of Western Australia will give a discount in relation to the supply of a home loan product to Powercor customers or employees who are referred to the bank by Powercor. Powercor will act as an agent of the bank for the purpose of referring customers and employees to the bank (third line forcing).

Australian Dental Association Inc (federal body and State and Territory branches) (N90375-82) (Allowed to stand)

Requirement that dental practitioners seeking to join membership of a State/Territory branch of the Australian Dental Association must also become a member of the federal body.