
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.

Final determination

United Energy Limited

In relation to the value of Lost Load Contract Repackaging Scheme (A90593-4)

- Draft determination proposing to grant authorisation issued 17 July 1996
- Interim authorisation granted until final determination
- Final determination granting authorisation to amended applications issued 18 December 1996

The Commission has considered two applications for authorisation lodged by United Energy Limited regarding a proposed Value of Lost Load Contract Re-Packaging (VCR) Scheme.

One application was concerned with proposed rules of the VCR Scheme that will constitute a contract between the administrator of the scheme and each member of the scheme, and also between members of the scheme.

The other application concerned provisions of the scheme that may constitute exclusive dealing:

- the requirement that sellers of generation capacity to the scheme give a commitment, for a contract period one or more years in advance, as to the amount of their generation capacity which will be excluded from the scheme for the particular contract period;
- the secondary trading arrangements under the scheme; and
- the basis for calculating the seller's commission under the scheme.

According to the applications, the VCR Scheme is intended to:

- provide relatively 'firm' hedging cover to, initially, Victorian electricity retailers and generators during periods in which the spot price for electricity is very high; and
- facilitate the provision to end-use customers of firm retail prices even in periods of high spot prices.

In the past, these functions have been served in the market by a compulsory Generator Co-Insurance Scheme which was terminated on 30 September 1996.

The Commission concluded that the VCR Scheme may substantially lessen competition, primarily due to the control of secondary trading through the scheme and the tying up of generation capacity.

The Commission was also satisfied that the scheme would benefit the public through enhanced market responsiveness and the facilitation of the market transition from a regulated environment. Limited public benefit was also expected to result from the incentive

that the scheme would provide for generators to make capacity available to the market. The Commission considered these public benefits outweighed the anti-competitive detriment associated with the scheme.

Accordingly, the Commission issued a draft determination on 13 March 1996 proposing to grant authorisation to the applications.

No request for a pre-decision conference was received. However, the Commission received several amendments to the VCR Scheme Rules from United Energy. None of the interested parties considered the amendments to represent a significant change to the operation of the scheme.

On 18 December 1996 the Commission granted authorisation to the amended applications for three years.

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.

Tasmanian Wool Brokers' Association

In relation to certain arrangements or understandings in relation to the sale of wool in Tasmania (A5020)

On 8 July 1981 the Commission granted authorisation to the Tasmanian Wool Brokers' Association to give effect to certain arrangements or understandings in relation to the sale of wool in Tasmania.

On 23 August 1995 the Commission wrote to the association advising that, given the demise of the Australian Wool Corporation and its replacement with the Australian Wool Exchange Limited, it appeared to the Commission that there had been material changes of

circumstance since the authorisation was granted.

The association advised the Commission that its members had agreed to wind up the association and that the authorisation was no longer required. It requested that the Commission withdraw the authorisation.

The Commission was satisfied that there had been a material change of circumstances since the authorisation was granted. On 20 November 1996 it issued a revocation to take effect on 12 December 1996.

Australian Competition Tribunal

Review of the Commission's decision to deny authorisation of Wattyl's acquisition of Taubmans

On 11 March 1996 the Commission filed an application in the Federal Court seeking an interlocutory order restraining the acquisition of Taubmans' Australian business by Wattyl (Australia) Pty Limited.

On 3 April 1996 Wattyl and Taubmans lodged an application for authorisation of the proposed acquisition. The Commission announced on 17 May 1996 that it proposed to deny the authorisation. (See also *ACCC Journal* 3, pp. 22-23, 46-47).

On 7 June 1996 Wattyl lodged an application with the Australian Competition Tribunal for review of the decision. On 14 June 1996 the s. 50 proceedings were stayed pending the outcome of the Tribunal's review of the decision.

On 20 August 1996 Courtaulds (Australia) Pty Limited, the owner of Taubmans Industries Ltd, announced that it had sold the Taubmans' architectural and decorative paint business to Plascon Taubmans Pty Limited.

On 7 November 1996 the Tribunal granted leave to Wattyl and Taubmans to withdraw their applications for review.

On 14 January 1997 the Federal Court granted the Commission's application to discontinue the s. 50 proceedings. (See also *ACCC Journal* 5, pp. 47-48.)

Notifications

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.

Notifications considered

Oratel Pty Ltd (N90351) (Allowed to stand)

Supply of cardswitches on condition that customer purchase airtime agreements with nominated service providers (third line forcing).

Dymocks Franchise Systems Pty Ltd (N90350) (Allowed to stand)

Charging of reduced franchise fees on condition that franchisees buy stock from suppliers on an approved supplier list (third line forcing).

Optus Vision Pty Ltd (N90352) (Allowed to stand)

Optus Vision offer of \$40 allowance to subscribers to its pay TV service who acquire membership of the Carlton Football Club, Melbourne Football Club or Australian Football League for 1997 (third line forcing).

Commonwealth Bank of Australia (N90353) (Allowed to stand)

Proposed lending by Commonwealth Bank to clients using shares as security on condition the clients enter into CHESs sponsorship agreements with a subsidiary of the bank (third line forcing).

ANZ Banking Group Ltd (N90355) (Allowed to stand)

Proposed lending by ANZ to clients using shares as security on condition the clients enter into CHESs sponsorship agreements with a subsidiary of ANZ; or transfer the legal interest in shares and acquire administrative services in respect of (certified) shares (third line forcing).