

## Appendix 2 Public information

This appendix contains:

- lists of:
  - current publications
  - speeches by Commissioners;
  - media releases; and
- some public registers material.

### Publications

The following publications are available free from Commission offices unless otherwise indicated. Publications available on the Commission's web site (<http://www.accc.gov.au>) are indicated by an asterisk.

The Commission does not invoice but publications can be purchased by sending a cheque or money order made out to the Australian Competition and Consumer Commission with your order; via a telephone order using Mastercard, Visa or Bankcard; or over the counter at Commission offices.

(Some of the publications listed were published by the Trade Practices Commission, or Prices Surveillance Authority or Federal Bureau of Consumer Affairs.)

#### Regular publications

ACCC Journal — bi-monthly journal (\$75.00 annual fee, second and following subscriptions to same address \$37.50. \$25.00 student subscription). Six issues per year.

Journal back issues \$10.00 each.

#### Annual Reports

The first ACCC Annual Report (\$19.95) as well as past Annual Reports of the Trade Practices Commission and Prices Surveillance Authority are available from Government Info Shops.

#### Guides to the legislation and ACCC procedures

Best and fairest — compliance training package — January 1996 (\$390.00)

Summaries of the Trade Practices Act and Prices Surveillance Act — November 1995 (\$10.00 or \$7.50 for orders of 10 or more)\*

Revised merger guidelines — a guide to the Commission's administration of the merger provisions (ss 50, 50A) of the Trade Practices Act — July 1996 (\$15.00)\*

Guide to authorisations and notifications — a guide on provisions for exemptions from anti-competitive conduct under the Trade Practices Act — November 1995 (\$10.00)\*

Telecommunications industry — ACCC role — an outline — October 1997 (\$10.00)

Telecommunications — competition notice guideline — June 1997\*

Advertising and selling — October 1997 (\$10.00)\*

Exports and the Trade Practices Act — October 1997 (\$10.00)\*

Benchmarks for dispute avoidance and resolution — a guide — October 1997\*

Contracted employment services and the Trade Practices Act — September 1997\*

Local government and the Trade Practices Act — June 1996\*

Small business and the Trade Practices Act — a practical guide for small business — November 1995\*

A guide to the Trade Practices Act for the health sector — November 1995 — (\$10.00)\*

Access regime — a guide to Part IIIA of the Trade Practices Act — November 1995 (\$10.00)

Access undertakings — a draft guide to access undertakings under Part IIIA of the Trade Practices Act — December 1996

Access undertakings — an overview of Part IIIA of the TPA and the draft undertakings guide — December 1996 (\$10.00 for the two-volume set)

Access pricing principles — telecommunications — guide — July 1997 (\$10.00)\*

Section 87B of the Trade Practices Act — a guideline on the Trade Practices Commission's use of enforceable undertakings — August 1995 (\$10.00)\*

Section 155 of the Trade Practices Act — a guide to the administration of the Trade Practices Commission's power to require provision of information — November 1994 (\$10.00)\*

When goods are defective — a guide to the product liability provisions of the Trade Practices Act — June 1993 (\$10.00)

Unconscionable conduct in commercial dealings — a guide to section 51AA of the Trade Practices Act (\$5.00 each or \$7.50 per set)

Unconscionable conduct in consumer transactions — a guide to section 51AB of the Trade Practices Act — October 1993 (\$5.00 each or \$7.50 per set)

Misleading job ads — how to handle them (manual for classified advertising staff by TPC, Media Council of Australia and JobWatch) — June 1994. Available from Media Council.

Misuse of market power — Section 46 of the Trade Practices Act — a background paper — February 1990

### **Business and consumer information sheets and leaflets**

News for business — Internet service providers — October 1997

News for business — Disposable cigarette lighters — October 1997

Exports and the Trade Practices Act — October 1997

Scams — Protect your business from them — May 1997

Making markets work — April 1997

Refusal to deal — March 1997\*

Warranties and refunds — December 1996\*

Authorisations and notifications — July 1996

Fruit juice labelling — June 1996

Warranties — retailers have rights too — May 1996

Know your credit card — March 1996

Product liability — a guide for business — June 1993

The right to safe goods — June 1993

Hold the phone — read this before you buy a mobile — January 1995 (Published jointly by TPC, TIO, Austel, Optus, Telecom and Vodafone)\*

Recycling claims for used consumer plastic packaging — April 1995\*

Telefraud — new name for an old scam — don't pay for ads you didn't order — January 1994

Don't let your suppliers tell you what to charge — resale price maintenance — November 1990

### **Product safety guides**

Consumer product standards and bans — a compliance guide for suppliers — October 1996

Exercise cycles — 1996 (\$10.00)

Children's nightclothes — 1994

Sunglasses and fashion spectacles — 1994

Children's toys — 1994

Cyclists' helmets — 1992

Children's flotation toys and swimming aids — 1992

Ingredient labelling of cosmetics — 1992  
(photocopy only)

Care labelling — 1991

Vehicle jacks, trolley jacks, ramps and stands — 1991

## Reports and discussion papers

### Acquisitions

Acquisitions and the failing company argument — discussion paper by the TPC and the NZ Commerce Commission — October 1993 (\$3.00)

### Airport pricing

Regulation of airport pricing — is the New Zealand approach applicable to Australia? — May 1995 (PSA)

### Banking and insurance

ACCC second submission to the Financial System Inquiry — September 1996 (\$25.00)

The social responsibilities of banks — March 1995 (PSA)

Taking advantage — sale of life insurance to Aboriginal people in remote communities — March 1994 (\$10.00) (TPC)

Life insurance and superannuation — information paper on an inquiry by the Trade Practices Commission at the direction of the Minister for Justice and Consumer Affairs — June 1992

Electronic funds transfer — report by the Treasury and the Trade Practices Commission

on the operation of the EFT code of conduct — July 1990 (\$10.00)

### Bar code scanning (computerised checkouts)

Checkout the price — review of the supermarket scanning code — July 1992 (\$10.00) (TPC)

### Building

Home building — consumer problems and solutions — final report of the Trade Practices Commission review — November 1993 (\$15.00)

### Competition issues

Non-price competition — October 1995 (\$10.00) (PSA)

Market definition and competition issues in commercial broadcast radio — June 1994 (\$10.00) (TPC)

Submission to the National Competition Policy Review (Hilmer) — April 1993 (TPC) (photocopy only)

### Intellectual property

Application of the Trade Practices Act to intellectual property — July 1991 (\$10.00) (TPC)

### On-line commerce

The global enforcement challenge — enforcement of consumer protection laws in a global marketplace — August 1997\*

### Petroleum

Issues paper for the inquiry into the petroleum products declaration — February 1996

### Professions

Can the professions survive under a national competition policy? — a joint conference on competition law and the professions — May 1997 (published proceedings \$15.00, audio tapes \$20.00)\*

Study of the legal profession — March 1994 (full report \$30.00, summary (photocopy only)) (TPC)

Study of the architectural profession — September 1992 (\$10.00) (TPC)

### **Utilities**

National electricity market: Network Pricing Forum (proceedings) — July 1996 (\$35.00)

National electricity market code of conduct — comments and issues arising — June 1996 (photocopy only)

National electricity market code of conduct — issues paper — March 1996

Review of the Victorian electricity industry access arrangements — a report to the Assistant Treasurer — May 1995 (TPC)

Safeguarding the consumer interest in reformed public utilities and complying with the Trade Practices Act — March 1995 (TPC)

Passing on the benefits — Consumers and the reform of Australia's utilities — papers from Trade Practices Commission conference — March 1994 (\$50.00)

### **Pricing inquiry reports — 1995 and 1996**

Petroleum products declaration — August 1996 (\$20.00)

Steel mill products declaration — December 1995 (\$10.00)

Harbour towage declaration — December 1995 (\$10.00)

Welded steel pipes declaration — October 1995 (\$10.00)

Concrete roof tile declaration — June 1995 (\$10.00)

Toothpaste declaration — June 1995 (\$10.00)

Glass container declaration — June 1995 (\$10.00)

Fees and charges imposed on retail accounts by banks and other financial institutions and by retailers on EFTPOS transactions — June 1995 (summary only)

Book prices and parallel imports — April 1995 (\$10.00)

### **Pricing monitoring reports — 1995 and 1996**

Coastal shipping freight rates (no. 3) 1993 and 1994 — December 1995 (\$10.00)

Movements in average air fares 1990–95 — April 1996 (\$10.00)

Movements in average air fares (quarterly reports) — January 1995, May 1995, September 1995, March 1996

Pay TV subscription prices — August 1995 (\$10.00)

Credit card pricing — May 1995 (\$10.00)

Stevedoring costs and charges on terminal handling charges — May 1995 (\$10.00)

## **Speeches**

### **Commission Chairman Professor Allan Fels**

*Regulating the national electricity industry post privatisation.* AIC Annual National Power Conference — 2 September 1997

*Economic regulation of phase II airports.* Calcutt Watson & Associates — 16 September 1997

*Trade practices — The national access regime.* 30th Aust Legal Convention — 19 September 1997

*Banking markets and competition in Australia post Wallis and the Bank of Melbourne.* First Pacific Banking Conference — 26 September 1997

**Commission Deputy Chairman  
Allan Asher**

*The eyes of the world are on us. The service challenge for Australian business.* SOCAP 97 — 21 August 1997

*Negotiating with the ACCC.* 30th Aust Legal Convention — 18 September 1997

*Lessons learned from competition and regulation in the Australian market.* AIC New Zealand Utilities Markets Summit — 24. 25 September 1997

*Globalisation versus consolidation in the financial services industry — impact on the domestic competition in financial markets.* Australian Institute of Banking and Finance Conference — 29 September 1997

**Commissioner Sitesh Bhojani**

*Challenges for the new era — the way forward for the pharmaceutical sector.* Australian Pharmaceutical Manufacturers Association Inc (APMA) Annual Conference 1997 — 3 September 1997

*The Trade Practices Act and the professions.* Consulting Surveyors Australia — 23 September 1997

**Commissioner David Lieberman**

*Deregulation of telecommunications.* Computers and the Law Society (Clayton Utz) — 8 August 1997

**Commissioner Rod Shogren**

*Access issues for content creators and content service providers in the new telecom environment post 1 July 1997.* Australian Interactive Multimedia Industry Association (AIMIA) 1997 Conference — 1 August 1997

*Role of the ACCC in a deregulated environment.* AIF Conference Telecommunications Access and Pricing — 12 August 1997

*Two months down the road — how are we travelling?* ATUG Queensland Branch — 2 September 1997

*The new telecommunications environment.* University of Melbourne seminar — 11 September 1997

*ACCC's role in telecommunications and recent ACCC activity in the area.* ATUG — Meet the ACCC — 24 September 1997

**Commissioner Rhonda Smith**

*Review of the role of internal competition policy in securing an efficient industrial Australia.* CEDA — Driving Australia's Growth — 13 August 1997

For copies of speeches, please contact Ms Jennifer Moore on ph. (02) 6243 1133.

**Media releases**

- 114/97 ACCC warns of NT phone advertising scams — 23.9.97
- 115/97 ACCC calls for solution to interstate gas sales impasse — 24.9.97
- 116/97 BP petrol discount deal 'good for consumers' — 25.9.97
- 117/97 Riviana apologises to rice customers over Australian grown claims — 26.9.97
- 118/97 ACCC welcomes Cabinet consideration of CD reform — 29.9.97
- 119/97 Interim authorisation for Queensland interim electricity market — 30.9.97
- 120/97 ACCC welcomes strengthened small business role — 30.9.97
- 121/97 Strong warning to advertising industry to 'get it right first time' — 1.10.97
- 122/97 ACCC court action against Toys R Us for 'No refund' signs — 2.10.97
- 123/97 Multi-national record companies gain Ms Hanson's support against Aussie battlers — 2.10.97

- 124/97 Guidelines on exports and the Trade Practices Act issued — 8.10.97
- 125/97 Garden City Cabs withdraws anti-double shifting rule — 8.10.97
- 126/97 ACCC welcomes CDs decision — 8.10.97
- 127/97 ACCC obtains consent orders for unsafe jacks — 9.10.97
- 128/97 ACCC calls for new culture for business — 10.10.97
- 129/97 ACCC alleges diesel adulteration — 10.10.97
- 130/97 Court orders stop Government Purchasing and Tender Index — 13.10.97
- 131/97 No decision on the Foxtel/Australis Media proposed merger — 13.10.97
- 132/97 ACCC files against Sydney anaesthetists, Society of Anaesthetists — 14.10.97
- 133/97 ACCC to oppose Foxtel/Australis Media merger — 14.10.97
- 134/97 Tribunal sets new benchmark for competition — 14.10.97
- 135/97 ACCC authorises collective agreement between CSR and owner-drivers — 15.10.97
- 136/97 International agencies swoop on Internet scams — 15.10.97
- 137/97 ACCC invites submissions on North West Gas Shelf — 16.10.97
- 138/97 'Slam-a-scam' — 16.10.97
- 139/97 ACCC backs home loan information pamphlet — 20.10.97
- 140/97 ACCC: increased workload, new mix of issues — 22.10.97
- 141/97 ACCC not to oppose Memtec acquisition — 28.10.97
- 142/97 ACCC and AGL go forward on competition in NSW gas market — 28.10.97
- 143/97 ACCC releases draft TAF Telecommunications Access Code — 29.10.97
- 144/97 'Consumer Business Register' restrained — 29.10.97
- 145/97 ACCC not to oppose acquisition by Brambles — 29.10.97
- 146/97 Fertiliser company action settled — 3.11.97
- 147/97 Australis Media job shakeout — 5.11.97
- 148/97 ACCC releases complete draft TAF Telecommunications Access Code — 6.11.97
- 149/97 Internet providers under ACCC/TIO scrutiny — 7.11.97
- 150/97 Pay TV — 7.11.97
- 151/97 Telstra lodges draft undertaking for interconnection prices — 10.11.97
- 152/97 ACCC action against weight loss promotion — 11.11.97
- 153/97 ACCC not to oppose Toll acquisition of some TNT businesses — 14.11.97

Media releases are available from the Media Liaison Officer Ms Lin Enright on ph. (02) 6243 1108, and from the Commission's Internet web site at <http://www.accc.gov.au>

## Public registers

The Commission is required to maintain a number of public registers, including documents relating to:

- applications for authorisation of anti-competitive practices;
- notifications of exclusive dealing;
- conferences held on bans or mandatory product recalls;

- Commission responsibilities under Part IIIA of the Trade Practices Act (the access regime); and
- price notifications.

These documents include statutory forms of application, supporting material, submissions by interested parties, related correspondence, the Commission's draft and final determinations and records of predecision conferences.

Such documents are available, or can be made available, for inspection at Commission offices during normal business hours. A fee is charged for photocopies. It is advisable to give prior notice of a request to see documents as not all are kept in all Commission offices.

The Commission voluntarily maintains summary registers listing merger matters it has considered and of enforceable undertakings given under s. 87B. These summaries, and a list of subsection 51(1) exemptions from the Trade Practices Act are published progressively in the *Journal*.

## Mergers examined under s. 50

The following continues the list of mergers examined in 1997. Mergers examined earlier in the year are listed in previous 1997 issues. The list of non-confidential mergers examined by the Commission 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. Mergers examined in the calendar year 1995 are listed in *ACCC Journal* nos 1-2. Mergers examined in the calendar year 1996 are listed in *ACCC Journal* 8.

**Foxtel/Australis Media** — pay TV. This proposed merger was first raised with the Commission in July 1997.

On 14 October 1997, the Commission sought a Federal Court injunction to prevent the proposed merger on the grounds that it was likely to damage competition in the local telephony and pay TV markets because it would weaken the capacity of Optus to compete. The Commission alleged that the merger would give a combined Foxtel/Australis Media a high market share, a factor of paramount importance in the pay TV industry, particularly with respect to an operator's ability to obtain and retain programming.

The parties indicated that they intended to proceed with the merger in the absence of the Commission seeking an injunction.

The Commission raised its concerns with the parties and sought undertakings that they would not take further steps to complete the merger without advance notice to the Commission. The parties would not give the undertakings requested. Accordingly, the Commission took court action.

On 17 November 1997 Australis Media announced that it had received notices from News Limited and Telstra (the Foxtel partners) of their intention to terminate the merger. On 20 November 1997 the Commission was advised that the merger was terminated.

The Court gave the Commission leave on 24 November 1997 to file a notice of discontinuance of the proceedings and ordered by consent that each party pay its own costs.

**Infratil/Port of Portland** — supply of port services at Portland, Victoria. This acquisition was first notified to the Commission in March 1997.

On 6 March 1996 Infratil and Ascot Investments acquired the port of Portland from the State of Victoria, with each partner having a 50 per cent shareholding. The acquisition was examined by the Commission at the time and, subject to several undertakings, was not opposed. These undertakings were signed by both parties.

Infratil subsequently proposed to increase its holding to 100 per cent. The Commission considered that this proposal would not change

control of Port of Portland. Since it did not oppose the joint venture acquisition of Port of Portland when Infratil already had a controlling interest, the Commission concluded that the proposal by Infratil to increase its holding to 100 per cent did not warrant further examination. The existing undertakings would be varied to reflect the new arrangements.

The Commission decided in July 1997 not to oppose the acquisition.

**CSR Limited/Excel Pty Ltd** — pre-mixed concrete in Brisbane. This proposed co-production agreement was first notified to the Commission in April 1997.

CSR's rationale for entering this particular arrangement with Excel was that it had entered a bid for a large construction contract, then discovered that it could not deliver pre-mixed concrete as efficiently as Excel's nearby plant. It began purchasing concrete from Excel for the contract, then considered that it could achieve greater efficiencies if it closed down its own plant in the same area and sourced wholly from Excel. The parties agreed on a batching rate, and an arrangement to 'swap' aggregate at other plants — Excel will supply all aggregate required for the concrete it will produce for CSR, on the condition that it acquires a reciprocal amount of aggregate from CSR at other plants.

The Commission considered that the particular arrangements between CSR and Excel at the Murrarie plant were not likely to substantially lessen competition. The arrangement is a singular commercial agreement in a metropolitan market where there are many other competitive participants. The parties will not be coordinating their activities in any other area.

However, the Commission will closely scrutinise any further proposals between competitors in this market, to ensure that a proliferation of such 'tolling' agreements does not have the effect of market sharing or price fixing.

The Commission decided in May 1997 not to oppose the arrangements.

**Avery Dennison Australia Group Holdings Pty Limited/Unistat Pty Limited** —

self-adhesive labels. This acquisition was first notified to the Commission in April 1997.

The acquisition did not appear to trigger the Commission's concentration thresholds. In addition, barriers to entry were low and there was a moderate amount of import competition.

The Commission decided in June 1997 not to oppose the acquisition.

**Taubmans Pty Limited/Bristol Paints** — paint manufacturing. This merger was first notified to the Commission in May 1997.

The Commission considered that the proposed Taubmans/Bristol merger would create a third major player in the market to compete with Dulux and Wattyl. The merged firm would be the third largest paint supplier in all States except Queensland where it would be second behind Dulux.

Dulux and Wattyl were the largest manufacturers of paint in Australia with approximately 40 per cent and 28 per cent of the market for architectural and decorative paint in Australia, respectively. Taubmans and Bristol had market shares of approximately 14 per cent and 8 per cent, respectively. Dulux and Wattyl enjoyed a competitive advantage over both Taubmans and Bristol, with a national presence and significant market shares in every State. Taubmans was relatively weak in Victoria/Tasmania and South Australia/Northern Territory. Bristol was a significant player only in Victoria/Tasmania.

Dulux and Wattyl each had strong brand names — the former had Dulux, Berger, British Paints and Cabots and the latter had Solver, Pascol and Wattyl. The merged firm would have two strong brands, Taubmans and Bristol, with which to compete with the market leaders.

Further, Bristol's plants were somewhat older than Taubmans' plant which was one of the most efficient in Australia. Although the capital costs of constructing a paint manufacturing plant were not high, the merged firm could reduce total paint manufacturing costs by rationalising production. Bristol distributed



paint from its manufacturing plants in Victoria and Queensland. Taubmans had a national distribution system delivering from a NSW manufacturing site. The parties said the merger would enhance the distribution capacities of the merged firm.

The small paint manufacturers, such as Bristol, generally follow the prices of the major paint manufacturers. The Commission expected the merged firm would have the motive to compete because it would be the smallest of the three major paint manufacturers, with the incentive to increase its market share by challenging Dulux and Wattyl.

The Commission believed the proposed merger of Taubmans and Bristol may well be pro-competitive rather than substantially lessening competition. The Commission announced in July 1997 that it would not oppose the merger.

**SGS Pathology Queensland Pty Ltd/JJ Sullivan & NJ Nicolaides & Partners** — pathology services to private patients in Queensland and northern NSW. This acquisition was first notified to the Commission in May 1997.

The Queensland pathology market is highly concentrated, with a CR4 (combined market share of four largest participants) of more than 90 per cent. However, SGS did not own any pathology businesses in Queensland or Northern New South Wales before the acquisition. Therefore the acquisition did not change the level of market concentration.

The Commission concluded that the acquisition was unlikely to substantially lessen competition and in May 1997 decided not to oppose it.

**Radio Canberra Pty Limited/Radio station 2CA** — market for advertising on commercial radio in Canberra. The Commission was first advised of this acquisition in July 1997.

Radio Canberra Pty Limited acquired radio station 2CA from the Austereo/ARN joint venture on 30 June 1997. Before the acquisition, there were four commercial radio licences in Canberra. Radio Canberra owned 2CC, the only other AM radio station. The two

FM stations were owned by the Austereo/ARN joint venture. The acquisition changed ownership of radio stations in the hands of the joint venture and Radio Canberra respectively from 3:1 to 2:2. The Commission considered it necessary to compare the competitive effect of this outcome with the likely effect on competition if 2CA had been acquired by a third party.

The Commission concluded that it was unlikely that these two outcomes would differ greatly in their effects, given the relatively weak position of AM radio. It considered that the acquisition might even provide greater competition in the market, because common ownership of the two AM stations would provide them with an incentive to alter their programming to maximise their joint audience. To the extent that this drew listeners away from FM, it would encourage competition with the FM stations. Similarly, the Commission considered that the joint venture's recently announced intention to alter the programming of the two FM stations might bring about greater competition with the AM stations.

Barriers to entry were absolute because there were only four commercial radio licences in Canberra. The Australian Broadcasting Authority is progressively introducing new FM licences, but it is unclear when new licences will be issued in Canberra.

With regard to the availability of substitutes, it could be argued, due to the lower prices of Canberra television advertising compared to some other markets, that television is a substitute for radio advertising in Canberra, depending on the target audience.

The Commission considered that the acquisition was unlikely to substantially lessen competition and in July 1997 decided not to oppose it.

**Media Monitors Australia Pty Ltd/certain assets of MediaTrak** — broadcasting media monitoring. This acquisition was first notified to the Commission in July 1997.

The Commission's market inquiries indicated that barriers to entry to the industry were low — it cost about \$20 000 to \$50 000 to set up a new media monitoring business. Substitutes

were readily available — customers could monitor the media themselves, buy tapes from the broadcaster (ABC only) or get summaries of radio news from the Internet.

The Commission considered that the acquisition was unlikely to substantially lessen competition and decided in July 1997 not to oppose it.

**Funeral Services of Australia/Timmins Group** — funeral director services in Sydney. This acquisition was first notified to the Commission in July 1997.

The acquisition did not appear to trigger the Commission's concentration thresholds. In addition, FSOA was not vertically integrated with crematoria and cemeteries, like some of its competitors.

The Commission considered that the acquisition was unlikely to substantially lessen competition and decided in August 1997 not to oppose it.

**Panavision Inc/Samuelson Group** — sale and hire of film equipment. This acquisition was first notified to the Commission in July 1997.

Before the acquisition, Panavision's only activity in Australia was as a supplier of equipment to companies in the Samuelson Group. Therefore the acquisition was a vertical merger. There did not appear to be an upstream (manufacturing) market for film equipment in Australia (major manufacturers are in the USA, Germany, Austria, France and the UK). The acquisition did not trigger the Commission's merger concentration thresholds.

The Commission decided in September 1997 not to oppose the acquisition.

**Telstra Corporation Ltd/Pacific Access Pty Ltd** — business advertising services. The Commission first became aware of this acquisition in August 1997.

Telstra outsourced the management and production of its National Directory Services operations to Pacific Access. In doing so, it increased its shareholding in Pacific Access from 50 per cent to 62.5 per cent.

The Commission considered that, with regard to the business directories market, the additional benefit to advertisers shifting to the White Pages from the Yellow Pages would be very minor. Business advertising in the White Pages was likely to be a very small, and perhaps declining, segment of the total market for business directories.

Because the acquisition only involved an increase in Telstra's already substantial shareholding in Pacific Access, and because business advertising in the White Pages was likely to comprise a very small share of total business advertising, the Commission considered that the transaction was unlikely to lessen competition in any substantial market. It decided in September 1997 to take no action in regard to the matter.

**Tyco International Pty Ltd/Rondo Building Services Pty Ltd** — metal door frames. This acquisition was first brought to the Commission's attention in August 1997.

Rondo is a 50/50 joint venture between CSR Limited and Boral Limited. Tyco is the market leader in the production and supply of metal door frames.

Other Australian metal door frame manufacturers possessed significant excess capacity which ensured they could readily respond to any price increase by the merged firm. In addition, barriers to entry appeared to be low. At least in relation to commercial door frames, it appeared that there were many metal manufacturers with equipment that could be readily adapted to manufacture metal door frames.

The Commission considered that the proposed transaction was unlikely to substantially lessen competition and decided in September 1997 not to oppose it.

**Betatene Limited/certain assets of Western Biotechnology Limited** — beta-carotene. This proposed acquisition was first notified to the Commission in September 1997.

Betatene and Western Biotechnology both cultivate and harvest *Dunaliella Salina* algae,

from which they extract and process beta-carotene for distribution to manufacturers of food colouring and dietary supplements. About 87 per cent of beta-carotene supplied in Australia is imported, mainly from large international companies.

Because of the strength of imports, the Commission decided in September 1997 that the acquisition was unlikely to substantially lessen competition.

**First Provincial Building Society Limited/Sunstate Credit Union Limited/Northern Building Society Limited** — retail financial services in Queensland. This proposed merger was first notified to the Commission in September 1997.

The Commission examined the proposed merger in the context of the six sub-markets within retail banking services identified during its analysis of the Westpac/Bank of Melbourne merger. These were deposits, home loans, personal loans, small business banking, credit cards and transactions accounts.

The proposed merger did not trigger the Commission's concentration thresholds. In September 1997 the Commission decided that the merger was unlikely to substantially lessen competition in any retail banking market and that it would not oppose the merger.

**DMG Radio Investments Pty Limited/Regional Broadcasters Australia Pty Limited** — advertising on commercial radio in various country areas. This acquisition was first brought to the Commission's attention in September 1997.

The Commission considered that the acquisition would not result in any change in concentration in any of the markets because none of the radio stations to be acquired by DMG were in, or overlapped with, the licence areas of the stations they held at the time. In the Commission's view, the acquisition was unlikely to substantially lessen competition in any of the markets.

The Commission decided in September 1997 not to oppose the acquisition.

**Brambles Australia Limited/Cockburn Corporation Limited** — general equipment hire in WA and NT. This proposed acquisition was first notified to the Commission in September 1997.

Cockburn had an equipment hire operation in Western Australia and the Northern Territory. Brambles' equipment business, Wreckair, operated Australia-wide.

The Commission considered that a merged Wreckair/Cockburn would face competition from Coates and, to some degree, from specialist operators for each type of product it offered for hire. Further, barriers to entering the markets appeared to be low. In particular, there appeared to be a number of potential sources of entry to the WA and NT markets, namely equipment hire firms operating on the east coast of Australia and equipment manufacturers that might offer their equipment for hire. The Commission considered that the threat of potential competition would constrain the merged firm.

The Commission concluded that the proposed acquisition was unlikely to substantially lessen competition and decided in October 1997 not to oppose it.

**US Filter Corporation/Memtec** — waste and waste water treatment, microfiltration. This proposed acquisition was first raised with the Commission in September 1997.

The Commission considered that there was a sufficient threat of potential entry in the areas in which the parties competed to inhibit the exercise of market power by the merged firm. Barriers to entry to the industry appeared to be moderate.

The Commission considered that the proposed acquisition was unlikely to substantially lessen competition and decided in October 1997 not to intervene in the matter.

**Carlton & United Breweries/Boags Brewery** — bulk and packaged beer. This proposed distribution arrangement was first notified to the Commission in September 1997. Under the arrangements, the parties proposed to terminate their pre-existing

distribution agreement, where Boags distributed Cascade for CUB in Tasmania, and instead to execute a distribution agreement where CUB would distribute Boags on the mainland.

The proposed new settlement agreement did not appear to pose any competition concerns in the mainland States. In addition, the Commission considered that the termination of the existing Cascade distribution agreement between CUB and Boags might enhance competition between Cascade (now owned by CUB) and Boags in Tasmania.

The Commission decided in October 1997 not to oppose the proposed supply arrangements.

## 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 continues the list of s. 87B matters placed on the public register in 1997. (The register was first listed in the Trade Practices Commission *Bulletin* 74, February 1994.)

**Northaust Auto Hire Pty Ltd**, ss 45(2)(a) and 45(2)(b). Price fixing arrangements in relation to car rental.

27.6.97 undertaking to compensate affected customers; implement a trade practices compliance program.

**AAPT Limited**, ss 52, 53(e), 53(g), 55A. Misleading representations in relation to its Smartchat rates.

27.7.97 undertaking to issue corrective advertising; ensure that its staff inform customers of important Smartchat charging features; develop its existing compliance program.

**Global Dance Foundation Incorporated**, s. 52. Misleading and deceptive conduct in relation to representations about the World Dance Congress.

20.8.97 undertaking to send corrective letters to organisations to which promotional material about the Congress had been sent; place a copy of the letter on its Internet web site; implement a trade practices compliance program.

**TNT Australia Pty Ltd**, s. 50. Proposed management of the Port of Hastings, Victoria.

26.8.97 undertaking to provide access to land transport operators and freight forwarding operators on reasonable commercial terms.

**Icenet Pty Ltd**, s. 52. Misrepresentations in relation to the provision of Internet access services.

27.8.97 undertaking to offer to terminate the contracts of affected customers; send corrective letters to affected customers and display corrective information on its web page; publish a corrective advertisement in a newspaper; implement a trade practices compliance program.

**Austereo Pty Ltd**, s. 50. Proposed acquisition of one of more subsidiary radio stations in Perth and then sell Triple M.

28.8.97 undertaking to sell Triple M within six months to an independent third party if the acquisitions take place. Austereo also undertook not to license the station's new owner to use the Triple M call sign, nor to license the owner of any other radio station in Perth to use that call sign.

**AU Agency Pty Ltd** (trading as Country Fresh), s. 53(eb). Misleading representations in relation to its orange juice.

10.9.97 undertaking to remove incorrect labels; and not to claim that its products are made in Australia unless the concentrate is made exclusively in Australia.

**Riviana Foods Pty Limited**, ss 52, 53(eb). Misleading representations in relation to origin of rice.

22.9.97 undertaking to issue corrective advertising; review its label designs; and implement a trade practices compliance program.

**Garden City Cabs Co-operative Ltd**, ss 45, 46. Misuse of market power in relation to its 'five-day' rule.

22.9.97 undertaking to implement a trade practices compliance program.

**Australian Gas Light Company**, s. 46. Misuse of market power in relation to its proposal to apply a tariff to gas users who were on interim supply arrangements.

24.10.97 undertaking to extend the interim pricing arrangements to these customers until 1 December 1997.

**MNB Variety Imports Pty Ltd**, s. 65C. Supply of swim aids and sunglasses which did not comply with the relevant mandatory consumer product safety standards.

31.10.97 undertaking not to supply products which do not meet the prescribed consumer product safety and product information standards; to implement a trade practices compliance program; and to implement a staff education program.

**The Reject Shop (Aust) Pty Ltd**, s. 65D. Supply of cosmetic products which did not comply with the mandatory product information standard for cosmetic products.

11.11.97 undertaking not to supply cosmetic products which do not comply with the prescribed product information standard; provide to consumers an ingredient list of those products sold within three months of acceptance of the undertaking which did not comply with the standard, if the list is available, and where there is no list available, provide a refund to consumers who purchased those products; implement a trade practices compliance program.

## **Sub-section 51(1) exceptions from the Trade Practices Act**

Under s. 51(1) of the Trade Practices Act, statutory exceptions from certain prohibitions is available for conduct that is specifically authorised or approved by a Commonwealth or State Act, or a Territory law, or any regulation under such Act, which expressly refers to the Trade Practices Act. Exceptions made by regulation are limited to two years. As part of the competition policy reform program, the Commission is required to provide a cumulative list of such legislation in its Annual Report.

The *ACCC Journal* will progressively update this list throughout the year.

### **New South Wales**

*Sydney Organising Committee for the Olympic Games Amendment Act 1996*

*Dairy Industry Act 1996*

### **Victoria**

*Electricity Industry (Amendment) Act 1996*

*Water Industry Regulations 1995*

*Competition Policy (Gas Supply Contract Exemption) Regulations 1996* — SR No. 135

### **Queensland**

*Competition Policy Reform (Queensland — Exemptions) Regulation 1996*

*Forestry Act 1959* (s. 46 — specific authorisation)

*Water Resources Act 1989* (s. 231 — specific authorisation)

**South Australia**

*Cooper Basin (Ratification) Act 1975*

*Dairy Industry Act 1992*

*Industries Development Act 1941*

*Roxby Downs (Indenture Ratification) Act  
1982*

*Stony Point (Liquids Project) Ratification Act  
1981*

**Tasmania**

*Electricity Supply Industry Act 1995*

*Electricity Supply Industry Restructuring  
(Savings and Transitional Provisions) Act  
1995*

**Western Australia**

*North West Gas Development (Woodside)  
Agreement Amendment Act 1996*