
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.

Draft determinations

Ansett Australia Limited, Ansett International Limited, Air New Zealand Limited and Singapore Airlines Limited

In relation to an alliance agreement (A90649, A90655)

- Draft determination proposing to grant conditional authorisation issued 10 June 1998.

On 22 December 1997 Ansett Australia Limited, Ansett International Limited, Air New Zealand Limited and Singapore Airlines Limited (the alliance carriers) lodged an application for authorisation to enter into an alliance agreement. The agreement provides for the coordination of various aspects of their airline services, including capacity, frequency and prices, on services operated between Singapore and New Zealand, between Australia and South-East Asia, trans-Tasman, on Australian domestic routes, and on routes beyond Australia, New Zealand and Singapore.

On 6 March 1998 the alliance carriers lodged an application for authorisation of clause 23 of

the alliance agreement which may be an exclusionary provision.

The Commission received written submissions from 21 interested parties. All but one of these parties supported or did not oppose the alliance, including four which gave qualified support.

The Commission formed the view that the alliance was likely to have public benefits in terms of:

- increased competition, particularly with the Qantas/British Airways group;
- more efficient use of resources and elimination of duplication; and
- improved customer service through integration of computer systems, seamless service, wider lounge access and the ability to earn frequent flyer points on economy class travel with Singapore Airlines.

However, it did not accept the public benefit claims made by the alliance carriers that:

- the joint procurement of aircraft or the establishment of a joint venture in information technology would result in savings;
- the alliance would result in more routes or frequencies;
- the alliance was required to ensure that Ansett remains a viable competitor to Qantas in the domestic market; and
- the alliance would generate employment benefits.

It also expressed concern about clause 41.1 of the proposed alliance agreement, which provides for an extension of cooperation between the alliance carriers from time to time

in areas such as codesharing, network scheduling, revenue allocation, promotion and marketing, ground handling, loyalty programs, joint procurement, joint ventures, engineering and air freight coordination.

However, the Commission concluded that the proposed conduct would be likely to result in a benefit to the public which would outweigh the detriment. On 11 June 1998 it issued a draft determination proposing to grant authorisation for five years on condition that the carriers inform the Commission of any proposal to extend the alliance agreement under clause 41.1 at least 14 days before the proposed extension is to come into effect.

A pre-determination conference to discuss the draft was called by Mr Peter Wakeman. It was held on 2 July 1998 in Canberra.

ASX Settlement and Transfer Corporation Pty Ltd (ASTC), Australian Stock Exchange Ltd (ASX), and Australian Payments Clearing Association Ltd (APCA)

In relation to the Clearing House Electronic Subregister System (CHES) arrangements (A90596, A30180-2)

- Draft determination proposing to grant authorisation issued 18 June 1998.

The Commission has considered a number of applications for authorisation lodged by ASX Settlement and Transfer Corporation Pty Ltd (ASTC), Australian Stock Exchange Ltd (ASX), and Australian Payments Clearing Association Ltd (APCA) relating to the operation of the Clearing House Electronic Subregister System (CHES).

CHES is operated by ASTC as the Securities Clearing House (SCH) approved under the Corporations Law. It is an electronic system for the registration of legal title to, and the clearing and settling of transactions in, ASX listed securities.

The CHES arrangements were previously authorised by the Commission in June 1994 and December 1995. When these

authorisations expired in July 1997 the Commission granted interim authorisation in respect of the new applications.

The Commission considered the current applications in light of the proposed demutualisation of ASX, which would be a significant change to the environment in which CHES operated under the previous authorisations.

The rules for which authorisation is sought govern participation in, and the operation of, CHES and enable ASTC and ASX to exclude individuals and organisations from participating in CHES. Under the proposed new rules:

- ASX can require all brokers and all issuers listed on ASX to acquire services from ASTC irrespective of the fees charged for those services; and
- ASTC can require all CHES participants to acquire services from a recognised payments provider to enable settlement.

The Commission noted that the extent of any efficiency gains that were likely to result in benefits to the public depended on the fees that ASTC charges for CHES services.

The applicants propose to remove articles 59A and 86 from ASTC's articles of association, which the Commission considered to be a substantial safeguard against the introduction of extortionate compulsory fees by ASTC's board. The Commission noted that the proposed removal of these articles would have to be approved by the Treasurer under the Corporations Law.

Should articles 59A and 86 remain, the Commission concluded that it should reauthorise the CHES arrangements on condition that:

- the current exclusion of ASX market transactions in debt securities from clearing and settlement through CHES, which ensures that ASTC does not compete for the provision of such services, is removed; and

- the payments provider criterion that an entity must maintain an exchange settlement account or similar settlement account with the RBA in its own name is not further qualified to exclude particular types of institutions with such settlement facilities.

Should articles 59A and/or 86 be removed, the Commission proposes to grant authorisation on condition that the applicants:

- alter their rules to allow brokers to use a clearing and settlement facility other than that operated by ASTC, to clear and settle ASX market transactions; and
- not prevent or unreasonably constrain an entity from competing with ASTC in the provision of clearing and settlement services.

On 18 June 1998 the Commission issued a draft determination proposing to grant authorisation, subject to these conditions, for five years.

A pre-determination conference to discuss the draft was called by the Sydney Futures Exchange. It was held on 9 July 1998 in Sydney.

Notifications

Notifications considered

Western Power Corporation (N70071) (Allowed to stand)

Packaging of Smart Power Electricity Service with reverse cycle air conditioners (third line forcing).

Australand Holdings Limited Projects Pty Ltd (N90466) (Allowed to stand)

Sale of land on condition that the purchaser enter into a building contract with a specified builder (third line forcing).

State Bank of NSW, Colonial Mutual General Insurance Co Ltd, First State Fund Managers Ltd, Jacques Martin Pty Ltd, Colonial Mutual Superannuation Pty Ltd, The Colonial Mutual Life Assurance Society Ltd, Colonial Stockbroking Ltd, Colonial Financial Services Pty Ltd, Jacques Martin Administration and Consulting Pty Ltd, Colonial Financial Services Pty Ltd, Colonial Investment Funds Ltd, Colonial Mutual Funds Ltd, Colonial Investment Management Ltd, CIC Insurance Ltd, HIH Casualty and General Insurance Ltd (N30787-801) (Allowed to stand)

Offer of a discount or allowance in relation to supply of particular service on condition customers also purchase a product from a member of Colonial Group or HIH Group (third line forcing).

National Australia Bank Ltd, Were Securities Ltd, JB Were Capital Markets Ltd, JB Were Equity Finance Ltd, Were Stockbroking Ltd, JB Were Asset Management Ltd, Invia Custodian Pty Ltd, JB Were Futures Pty Ltd, JB Were Financial Services Pty Ltd (N40249-57) (Allowed to stand)

Offer of tailored banking services on condition customers also acquire products from JB Were Group (third line forcing).

Optus Mobile Pty Ltd (N90407) (Allowed to stand)

The offering of a mobile package to home business link wireline long distance mobile digital networks through Optus Mobile Pty Ltd (third line forcing).

Optus Networks Pty Ltd (N90408) (Allowed to stand)

The offering of a mobile package to home business link wireline long distance mobile digital networks through Optus Networks Pty Ltd (third line forcing).