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## Appendix 2 Public information

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This appendix contains:

- lists of:
  - speeches by Commissioners;
  - media releases; and
  - some public register material.

### Speeches

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

*The regulatory framework.* National Power Conference. 9 August 1999

*Privatisation review.* Airports and Aviation Outlook '99. 13 August 1999

*Competition issues arising out of the leasing of assets in South Australia.* SA Power Lease Briefing. 20 September 1999

*The ACCC's role in preventing price exploitation in relation to the new tax system changes.* National Conference of the Association of School Bursars and Administrators. 28 September 1999

#### **Commission Deputy Chairman Allan Asher**

*The regulatory safeguards provided by product liability and consumer protection laws.* APEC Seminar on Good Regulatory Practice. 6 August 1999

*The status of national gas reform.* North Australian & PNG Gas Summit. 30 September 1999

*Interconnection issues in the NEM.* Network Pricing, VoLL and Interconnection in the NEM Conference. 30 September 1999

*Advertising medical services — in whose interests?* ACCC/HCCC Conference. 14 October 1999

*Advancing competition: where?* Australian Gas Association 1999 Convention. 27 October 1999

*Lessons from Australia's reform and privatisation of energy assets.* New Zealand National Power Conference. 27 October 1999

#### **Commissioner Sitesh Bhojani**

*Past, present and future of competition laws and the ACCC's role for the private health sector.* 9 August 1999

*Accessorial liability of professional/business advisers in ACCC litigation under the TPA.* Trade Practices Workshop. 30 August 1999

#### **Commissioner David Cousins**

*The ACCC and the GST.* Trade Practices Seminar. 13 August 1999

#### **Commissioner Rod Shogren**

*Telecommunications regulation in practice: Perspectives of a practitioner.* 1999 Conference of Economists Business Symposium. 30 September

For copies of speeches please contact Sharon Clancy on ph. (02) 6243 1133

### Media releases

164/99 ACCC decision on NSW electricity vesting contracts, 2.9.99

165/99 Y2K 'News for business', 2.9.99

166/99 ACCC institutes against record companies, 2.9.99

- 167/99 Merger guidelines issued, 3.9.99
- 168/99 ACCC not to oppose the acquisition of Yarra Trams by Metrolink, 3.9.99
- 169/99 ACCC concerned with Perth autogas prices, 3.9.99
- 170/99 New home builder to fix GST representations, 7.9.99
- 171/99 ACCC issues discussion paper on interconnection charges, 7.9.99
- 172/99 ACCC issues draft decision on Central West Pipeline access arrangement, 8.9.99
- 173/99 Telecommunications access dispute, 10.9.99
- 174/99 ACCC cracks down on bogus health claims, 13.9.99
- 175/99 Study of interchange fees and access in debit and credit card schemes, 13.9.99
- 176/99 Internet pyramid scheme stopped, 16.9.99
- 177/99 ACCC does not oppose building products acquisition, 16.9.99
- 178/99 ACCC and Boral, 17.9.99
- 179/99 ACCC/US FTC. break global internet porn scam, 23.9.99
- 180/99 Testing the net: international sweep day benchmarks e-commerce service, 23.9.99
- 181/99 ACCC to institute proceedings against McDonald's, 23.9.99
- 182/99 Telecommunications access dispute, 24.9.99
- 183/99 First GST public compliance commitment, 27.9.99
- 184/99 ACCC draft determination on electricity code changes, 27.9.99
- 185/99 ACCC to monitor negotiations over payphone service, 28.9.99
- 186/99 ACCC mandates mobile number portability, 29.9.99
- 187/99 ACCC institutes against power transformer manufacturers, 1.10.99
- 188/99 ONE.TEL offers refunds, signs up on Telco consumer code, 7.10.99
- 189/99 ACCC alleges price fixing, market sharing in QLD fire protection market, 7.10.99
- 190/99 Court declares REIWA, rules anti-competitive, 11.10.99
- 191/99 ACCC obtains orders against Golden Sphere in Vanuatu, 11.10.99
- 192/99 ACCC ends Australian Vee Eight Supercar Company investigation, 12.10.99
- 193/99 International regulation under the spotlight, 12.10.99
- 194/99 Advertising medicine — how far is too far?
- 195/99 Facilities access code to apply from 13 October 1999
- 196/99 ACCC to examine insurance premium increases, 12.10.99
- 197/99 E-commerce fails the test: international sweep day results show most sites don't provide basic consumer information, 12.10.99
- 198/99 Telecommunications access dispute, 13.10.99
- 199/99 ACCC report reviews 25 years of the Trade Practices Act 1974, 13.10.99
- 200/99 ACCC not to intervene in Pacific Dunlop and Atkins Carlyle joint venture, 13.10.99
- 201/99 ACCC issues discussion paper on Telstra's new interconnection undertaking, 14.10.99
- 202/99 ACCC settles Gasgo court action, 14.10.99
- 203/99 ACCC decision on charges for new terminal at Adelaide airport, 18.10.99
- 204/99 ACCC institutes against debt collection agency, 21.10.99
- 205/99 Motor vehicle trader to correct GST representations, 21.10.99
- 206/99 ACCC issues final determination on electricity code changes, 22.10.99

207/99 ACCC letter to SOCOG, 22.10.99

208/99 ACCC to pursue potential profiteers, 27.10.99

209/99 ACCC/SOCOG Olympic tickets initiative, 27.10.99

Media releases are available from the Director, Public Relations, Ms Lin Enright on ph. (02) 6243 1108, and from the Commission's Internet website 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 pre-decision and pre-determination 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 sub-section 51(1) exceptions from the Trade Practices Act are published progressively in the Journal.

## Mergers examined under s. 50

The following is a list of mergers examined by the Commission during the reporting period. The list of non-confidential mergers examined by the Commission is periodically updated on a public register held at the Commission.

**Reckitt & Colman Pty Limited/Benckiser Australia Pty Limited** — national markets for the manufacture of each of the following: multi-purpose cleaners, disinfectants, toilet cleaners, laundry detergents, laundry additives, other fabric care products and hand dishwashing products.

The Commission received a submission on 19 August 1999 outlining the proposed merger. The merger was the result of a proposed international merger between Reckitt & Colman plc and Benckiser NV.

The Commission decided on 8 September 1999 that it would not oppose the merger as the Commission's concentration thresholds were crossed in only a limited number of markets. In those markets where the concentration thresholds were crossed, barriers to expansion appeared relatively low and there was a relatively high degree of substitutability for demand and supply.

**AlliedSignal Inc/Honeywell Inc.** — acquisition of shares in Honeywell outside of Australia resulting in a worldwide merger of the two traders. The only area in Australia where the traders' activities overlap is the sales of commercial Traffic Collision Avoidance Systems which are part of the respective traders' global avionics businesses.

The Commission concluded that there appears to be little overlap between the business activities of the merger parties and will not be taking any action on the basis of the information provided to it pursuant to s. 50 of the Trade Practices Act.

**Mercantile Mutual Holdings Ltd/Heine Management Ltd** — retail and wholesale funds management.

On 3 September 1999 the Foreign Investment Review Board informed the Commission of a

proposal by Mercantile Mutual to purchase Heine Management Ltd. On 15 September 1999 the Commission decided not to intervene as the proposed acquisition would not raise any competition concerns.

**Austral Brick Company Pty Limited** — proposed acquisition of Pioneer International Limited's Queensland clay brick manufacturing operation.

On 16 August 1999 Austral advised the Commission of the proposed acquisition. After making market inquiries the Commission concluded on 15 September 1999 that the proposed acquisition is unlikely to substantially lessen competition in the Queensland and New South Wales clay brick markets. Austral will continue to compete with CSR and Boral in both Queensland and New South Wales.

The Commission will be concerned to ensure that rationalisation in the building products industry is achieved without causing higher prices to consumers. These include many business consumers who rely on competitive prices from building product manufacturers to compete effectively in their own markets.

**Merial New Zealand Limited** — acquisition of the Fernz range of off-patent animal health products.

On 28 May 1999 Merial advised the Commission of its acquisition of Fernz' range of off-patent animal health products. Based on Merial's post-acquisition market share and the competition it faces from a number of significant multinational suppliers, the Commission concluded that the acquisition appeared unlikely to substantially lessen competition.

**Manly Warringah Credit Union Ltd/Brookvale and Mona Vale Bus Depots Credit Union Ltd** — State-based markets for deposits, transaction accounts, home loans and other lending.

On 16 August 1999 the Australian Prudential Regulation Authority informed the Commission of the proposed acquisition. On 1 September 1999 the Commission decided not to oppose the merger as it did not cross the its market concentration thresholds.

**Bankers Trust Australia Ltd and BT Hotel Group/ BT Hotel Ltd and BT Hotel Trust** — hotels and/or property trusts.

On 19 August 1999 the Foreign Investment Review Board informed the Commission of a proposal by Bankers Trust Australia Ltd, through its wholly owned subsidiary BT Hotel Group, to acquire BT Hotel Ltd and BT Hotel Trust. On 30 August 1999 the Commission decided not to intervene in the proposed acquisition as the companies operate in separate markets.

**Personal line insurance operations of NRMA and RACV Ltd** — merger of personal line insurance operations.

The Commission announced on 23 August 1989 it will not oppose this merger which combines two of the largest insurance providers in Australia.

The Commission was particularly concerned about the effect of the proposed merger of the personal lines insurance operations of RACV and NRMA on competition in the supply of motor vehicle insurance in the Victorian market. After conducting market inquiries the Commission found that the continuing competition from other players in the market would ensure the market remained competitive post-merger.

It is likely the joint venture will enable the merger parties to access a more diversified risk portfolio, by allowing both parties to achieve economies of scale and diversify their operations across more products and a larger geographic area to the benefit of consumers.

**Pacific Dunlop/Atkins Carlyle** — automotive parts wholesaling joint venture.

On 16 August 1999 the Commission was informed of a proposal by Pacific Dunlop and Atkins Carlyle to enter into an automotive wholesaling joint venture.

Under the proposal, The Distribution Group, a subsidiary of Pacific Dunlop, was to acquire the procurement, warehousing and distribution assets of the CarParts business of Atkins Carlyle. A joint venture company to be jointly owned by The Distribution Group and Atkins Carlyle was to take over the sales and marketing operations of the CarParts business

of Atkins Carlyle and the Trader Auto Spares and Repco Service Station Wholesale businesses of The Distribution Group.

The Commission decided the proposal was unlikely to substantially lessen competition in the relevant market. It noted that it is becoming increasingly common for retailers to bypass the automotive spare parts wholesalers by obtaining products directly from manufacturers and importers. The Commission also noted there are a number of alternative wholesalers who would continue to service the market. Further it noted that motor vehicle dealers have a constraining effect in the market, as consumers appear to view going to motor vehicle dealers for 'genuine' spare parts and servicing of motor vehicles as a viable substitute to purchasing from dealers who sell non-genuine, after-market parts.

**Rhodia SA/Albright & Wilson** — a French-based chemicals company acquiring a majority shareholding in a UK-based chemicals company.

In July 1999 the Commission was informed that Rhodia SA intended to acquire a majority shareholding in Albright & Wilson.

There is overlap in the businesses of these companies in the phosphates and surfactants markets. However, it appears these markets are characterised by domestic and import competition, and there appears to be an availability of substitutes and the presence of countervailing power in many market segments. In the surfactants market in particular, market inquiries revealed that barriers to entry are quite low. On this basis, the Commission decided not to intervene in this matter pursuant to s. 50.

**Tyco Flow Control Pacific Pty Limited/Swan Metal Skirtings Pty Limited** — manufacture and supply of metal frames, cable supports and pipe supports.

On 22 July 1999 the Commission was advised that Tyco Flow Control Pacific proposed to acquire the whole of the shares in Swan Metal Skirtings which relate to the business known as Unistrut Australia.

On 1 September 1999 the Commission decided not to oppose the proposed acquisition on the basis that even though the acquisition

would appear to cross the Commission's concentration thresholds (whether the market is defined broadly or narrowly) it would be unlikely to result in a significant reduction in competition in the relevant market or markets.

**Bartter Enterprises Pty Limited/Steggles Limited** — market for the wholesale supply of processed chicken in south-east Australia.

On 24 August 1999 the Commission announced it would not intervene in the acquisition of Steggles by Bartter Enterprises.

From discussions with firms throughout the chicken industry, the Commission found that, with the merged entity holding approximately 30 per cent market share, the merger would not cross its concentration thresholds. It decided that barriers to entry and expansion do not appear to be prohibitive. The Commission also concluded that a number of smaller poultry processors that have been able to expand in the industry over the past ten years would remain in the market post-acquisition.

**Sigma Company Limited's/Glaxo Wellcome Australia Pty Ltd** — acquisition of products.

On 1 September 1999 the Commission informed Sigma that it would not oppose its proposal to acquire 11 prescription pharmaceutical products from Glaxo. Both Sigma and Glaxo manufacture prescription pharmaceutical products in Australia and Sigma is also a wholesaler and retailer of prescription pharmaceutical products.

The Commission noted the regulatory role that the Federal Government's Pharmaceutical Benefits Scheme (PBS) has on the prescription pharmaceutical industry in Australia. The Commission formed the view that acquisition would not result in a significant increase in Sigma's share of sales within the pharmaceutical industry.

**Hamilton Island Limited/Hamilton Airport Pty Limited** — airport services.

On 5 August 1999 the Commission was advised that Hamilton Island Limited proposed to acquire a further 50 per cent interest in Hamilton Airport Pty Limited.

On 18 August 1999 the Commission decided the proposed acquisition would not raise any competition concerns.

**Ngaliwurru-Wuli Association/Timber Creek Hotel** —petrol retailing, tourist services and grocery retailing in the north-west of the Northern Territory.

On 6 November 1998 the Ngaliwurru-Wuli Association (NWA) sought the Commission's view of a proposed joint venture between the NWA and proprietors of the Timber Creek Hotel to operate jointly both hotels in Timber Creek. Since the merged firm's market share was unlikely to cross the Commission's market concentration thresholds and barriers to entry appeared to be low, on 1 December 1998 the Commission found the proposal was unlikely to substantially lessen competition.

## 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 Journal lists s. 87B matters placed on the public register in the reporting period.

**International FreeNet2000**, ss 57, 61. Referral selling of internet services with financial rewards for introducing new members. 1.9.99 undertaking to cease promoting the scheme, notify participants that the scheme is no longer being offered, and to offer subscribers refunds if they no longer want to use Freenet2000's internet service. Undertaking not to repeat the conduct in breach of the Trade Practices Act.

**Baker Bros (Aust) Pty Ltd**, ss 45(2)(a)(i)(ii), 45(2)(i)(ii). Market sharing and price fixing agreement in the Australian compressor market. 2.9.99 undertaking to develop a trade practices corporate compliance program with defined characteristics and attributes.

**Beautician's Laser Clinic Pty Ltd**, ss 52, 53(c). Misleading or deceptive representations and false representations about performance characteristics, use or benefits of hair removal

services. 9.9.99 undertaking to offer corrective advertising, apologise to its competitors and consumers and offer a refund to consumers misled by the claims; not make similar claims in the future; withdraw the client advice signs and implement a trade practices compliance program.

**Werribee Motor Traders Pty Ltd**, ss 52, 53(e). 30.9.99 undertaking about misleading advertising in a leaflet 'Beat the GST Price Increase' and to implement a trade practices compliance program.

**Firewatch (Victoria) Pty Ltd**, ss 52, 53(a)(c), 65(C). Misleading representations about the rating of modified fire extinguishers. 30.9.99 undertaking to supply full serial number details for orders received and to implement a corporate compliance program.

**One.Tel Limited**, ss 51AB, 52, 53, 53(g). Unconscionable and misleading conduct in reliance on variation clauses to vary mobile phone customer contracts. 7.10.99 undertakings to amend contract, not to vary existing customer contracts, to provide refunds, to finish trade practices compliance program and to sign up to ACIF Code.

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

Under s. 51(1) of the Trade Practices Act, statutory exception 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.

### Commonwealth

Trade Practices Amendment (Country of Origin Representations) Act 1998 Item 1, Schedule 3

Wheat Marketing Legislation Amendment Act 1998

Australian Postal Corporation Act 1989

Year 2000 Information Disclosure Act 1999

### **New South Wales**

Sydney Organising Committee for the Olympic Games Amendment Act 1996

Totalizator Legislation Amendment Act 1997 No 151

Liquor and Registered Clubs Legislation Amendment (Community Partnership) Act 1998

Marketing of Primary Products Amendment (Rice Marketing Board) Act 1998

Marketing of Primary Products Amendment (Wine Grapes Marketing Board) Act 1997

Dairy Industry Amendment (Trade Practices Exemption) Act 1998

Farm Produce (Repeal) Act 1996

Competition Policy Reform (NSW) Amendment (Waste) Regulation 1998

Competition Policy Reform (NSW) Amendment (Grain Marketing) Regulation 1998

Competition Policy Reform (NSW) Amendment (SOCOG and SPOC) Regulation 1998

### **Queensland**

Competition Policy Reform (Queensland — Dairy Produce Exemptions) Regulation 1997 (as amended)

Competition Policy Reform (Queensland — Chicken Meat Industry Exemptions) Regulation 1998

### **Victoria**

Electricity Industry Act 1993

Gas Industry Act 1994

### **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

### **South Australia**

Dairy Industry Act 1992

### **Australian Capital Territory**

Milk Authority (Amendment) Act 1999 (No. 2 of 1999)