
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.

Determination

Mereenie Producers

In relation to the Gasgo Sales Agreement (A90637-45)

- Draft determination issued 6 January 1999.
- Pre-determination conference held 25 January 1999.
- Determination issued 7 April 1999.

On 2 December 1997 the Mereenie Producers lodged applications for authorisation in relation to the Gasgo Sales Agreement.

The agreement is a long term 'take-or-pay' contract for the supply of natural gas in the Northern Territory by the Mereenie Producers to Gasgo Pty Limited, a subsidiary of the NT Power and Water Authority (PAWA). The applications also sought approval for the producers to discuss and agree on common terms, including price, for the supply of gas under the agreement.

The Gasgo Agreement is the third in a series of contracts between the Mereenie Producers and Gasgo for the supply of gas. The gas is ultimately sold to PAWA for the generation of electricity in the Northern Territory.

Authorisation has not been sought to date for the first two contracts, which are still current.

While separate to the Gasgo Agreement, and not included in the applications for authorisation, the Original Gas Purchase Agreement (Original GPA) between the Mereenie Producers and Gasgo contains a pre-emptive right that requires the Mereenie Producers, before selling gas to a third party, to first offer that gas to Gasgo on the same terms and conditions, including price. The pre-emptive right was the main issue that arose during the public consultation process.

The Commission took the view that the existence of the pre-emptive right in the Original GPA was likely to increase the anti-competitive effects that were likely to flow from the other contracts negotiated by the Mereenie Producers, including the Gasgo Agreement. It had concerns that the Gasgo Agreement, in association with the pre-emptive right, had the potential to prevent or hinder the entry of new gas purchasers who could potentially compete in downstream markets, by limiting the availability of gas for supply in the Northern Territory.

The Commission accepted that there was significant public benefit in providing for the continued and secure supply of gas in the Northern Territory for the generation of electricity over the term of the Gasgo Agreement. Although it took the view that the anti-competitive detriment likely to result from the Gasgo Agreement was substantial, and was increased by the existence of the pre-emptive right in the Original GPA, it was outweighed by the likely public benefit.

Accordingly the Commission granted the authorisation sought, subject to the condition that the applicants advise the Commission of any offer by the Mereenie Producers to Gasgo in accordance with the pre-emptive right provisions contained in the Original GPA. The

Commission noted its concern that the exercise of the pre-emptive right might alter the balance between the public benefit and detriment of the Gasgo Agreement and justify a review of the authorisation in terms of s. 91B of the Trade Practices Act.

The authorisation is limited to the term of the Gasgo Agreement, as lodged with the Commission as part of this authorisation application. Authorisation does not apply to any changes to the provisions of the Gasgo Agreement.

The Commission accepted the applicants' request to extend the authorisation to their respective successors and assigns that become parties to the Gasgo Agreement in the future.

Authorisation does not extend to any provisions contained in any other agreements between the applicants and Gasgo, including the pre-emptive right contained in the Original GPA. In the Commission's view the pre-emptive right is anti-competitive, represents a barrier to entry to the gas and electricity markets in the Northern Territory, and may well be in breach of the Trade Practices Act.

On 6 May 1999 the Commission instituted proceedings in the Federal Court Darwin alleging the provisions are in breach of s. 45 of the Trade Practices Act.

Draft determinations

Australian Stock Exchange Limited

In relation to the capital liquidity requirements of proposed business rule 1A (A90657)

■ Draft determination issued 30 March 1999.

On 20 March 1999 the Australian Stock Exchange Limited (ASX) lodged an application for authorisation of revised capital liquidity requirements for participating organisations, as contained in the proposed business rule 1A.1.

ASX advised that the proposed requirements aim to overcome the shortcomings in existing business rule 1.1, which is currently authorised.

Rule 1A is due to take effect on 1 May 1999, with an 18 month transition period for its implementation.

The new capital liquidity approach is to be based on an assessment of the risks inherent in the activities undertaken by the participating organisation, rather than on its legal structure or balance sheet liabilities.

Proposed rule 1A sets a minimum amount of 'core liquid capital' for each participating organisation at \$100 000.

The Commission noted that only ASX participating organisations may conduct stockbroking businesses and trade on the securities market of ASX. The capital liquidity requirements of proposed rule 1A would therefore have an anti-competitive effect in that such requirements would represent a barrier to entry to firms seeking to provide stockbroking or securities services. However, the Commission did not receive any submissions expressing concern at the level of capital required under proposed rule 1A.

The Commission considered that there was public benefit in ASX setting a minimum capital standard for participating organisations that covers the inherent risks of these organisations' activities. It would contribute to the efficient functioning of the ASX securities market by providing a level of confidence in the stability of participating organisations, among both market participants and investors. It would also be likely to reduce systemic risk in ASX's market and provide a level of protection to investors in addition to that provided by the National Guarantee Fund (NGF).

The Commission also considered that by ASX adopting capital liquidity requirements comparable with international standards, compliance costs should be reduced for foreign security firms seeking to participate in ASX's securities market and for Australian brokers seeking to participate in overseas securities markets.

On 30 March 1999 the Commission issued a draft determination proposing to grant authorisation for five years in respect of the proposed business rule 1A.

Clay Brick and Paver Association of New South Wales

In relation to a scheme to increase the number of trained bricklayers in NSW (A90676)

- Draft determination issued 7 April 1999.

On 23 September 1998 the Clay Brick and Paver Association of New South Wales lodged an application for authorisation in respect of the Association's proposal to charge a levy on its members of \$1.00 per thousand bricks sold. The purpose of the levy is to establish a Group Training Company, which has the aim of encouraging and assisting host employers with the employment of apprentice bricklayers.

While the Commission considered that the levy would have the effect of increasing the price of bricks to consumers, it also considered that public benefit would flow from the proposed arrangements through:

- an alleviation of skill shortages in the NSW bricklaying trade, allowing for an increase in the number of skilled tradespeople capable of offering high quality work to consumers;
- an alleviation of cyclical fluctuations in the laying rates, with sharp increases in bricklaying costs during periods of high demand for scarce bricklayers; and
- a reduction in the time required to complete building projects, due to a more readily available supply of skilled bricklayers.

The Commission concluded that the public benefits likely to result from the arrangements would outweigh the anti-competitive detriment.

On 7 April 1999 it issued a draft determination proposing to grant authorisation to the proposed arrangements for three years to allow the industry to monitor the effectiveness of the scheme.

Notifications

Notifications considered

Bank of Queensland Ltd (N90617) (Allowed to stand)

Third line forcing in relation to provision of financial services.

Revello No 2 Pty Ltd (N40320) (Allowed to stand)

Supply of petrol at a discount on condition customers have purchased from participating stores (third line forcing).

McDonald and Murphy Pty Ltd, John Gillen, Robhow Pty Ltd, Neil Fitzgerald, Santanic Pty Ltd (N40328–32) (Allowed to stand)

Supply of petrol at a discount on condition customers have purchased groceries from participating stores (third line forcing).

NRD Pty Ltd (N90636) (Allowed to stand)

Franchisee required to purchase all 'No Regrets' goods from a nominated supplier (who has a merchandise franchise) (third line forcing).

Pilkington Australia Ltd (N90644) (Allowed to stand)

Offer of approved home loan customers if the customer agrees to purchase specified energy saving products from a number of nominated suppliers (third line forcing).

Dingley Conveyancing Services Pty Ltd (N90645) (Allowed to stand)

Offer of conveyancing services at no charge to customers who obtain a mortgage loan from St George (third line forcing).

Optus Internet Pty Ltd, Optus Mobile Pty Ltd, Optus Network Pty Ltd (N90638–40) (Allowed to stand)

Offer of discount by Optus to persons who purchase wireline telephone services or subscribe to mobile telephone services on condition they acquire Internet services from Optus Internet Pty Ltd, formerly known as Microplex (third line forcing).

Optus Vision Pty Ltd, Optus Internet Pty

Ltd (N90648-9) (Allowed to stand)

Offer of discounts on telephony and pay TV services on condition that customers also acquire Internet services from Optus Internet Pty Ltd (and vice versa) (third line forcing).

Optus Internet Pty Ltd (N90652) (Allowed to stand)

Supply of product at a discount to persons who have acquired a Macintosh OS computer from Apple Computer Australia (third line forcing).

Gregcove Pty Ltd and Woelders

Investments Pty Ltd (N50098) (Allowed to stand)

Forced purchase of a home building package as a condition to the purchase of land (third line forcing).

Australian Stock Exchange Ltd (N30845) (Allowed to stand)

Trading participants supplying services to clients on condition they acquire clearing services from a nominated clearing participant (third line forcing).