
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.

Australian Competition Tribunal

Review of ACCC determinations concerning distribution of newspapers and magazines in NSW/ACT, Qld and Vic

On 18 November 1998 the Australian Competition Tribunal handed down its decision in respect of the review of applications by 7-Eleven Stores Pty Ltd, Independent Newsagents Association and Australasian Association of Convenience Stores Inc of Commission determination nos A15421, A15422-3, A15425-6, A15605, A30092-3,



A2061, A2064 and A2089. The determinations related to the arrangements for distribution of newspapers and magazines in NSW/ACT, Queensland and Victoria.

The Tribunal determined that:

- the above authorisations be revoked and that further authorisations be granted in substitution until 1 July 1999, at which point the Newsagency Council rules as they relate to magazines and lookalikes will no longer be authorised;
- the rules as they relate to the prohibition or restriction on publishers from supplying their publications to any outlet other than the authorised newsagent be authorised until 1 February 2000; and
- the rules in respect of the home delivery of newspapers be authorised until 1 February 2001.

(See *ACCC Journal* 17, 'Adjudication'.)

Following the Tribunal decision, the Minister for Financial Services and Regulation, the Hon. Joe Hockey MP wrote to the Commission requesting it to consult stakeholders in the industry for the purpose of assisting the Minister to develop a way forward for the industry that was consistent with the Government's commitment to maintain a newspaper home delivery system and which delivers a fair and commercially viable outcome for the industry.

The Commission has begun consultations with the parties. It sees its role in this process as one of purely facilitating discussions between the Australian Newsagents Federation and each of the major newspaper and magazine suppliers by bringing the parties together and providing guidance on any trade practices implications that may arise throughout the process. The Commission is to report to the Minister by 15 February 1999 on the outcome of the process.

Draft determination

Inter-hospital agreement between Friendly Society Private Hospital Bundaberg, St Stephen's Private Hospital Maryborough, St Andrew's Private Hospital Toowoomba, St Andrew's War Memorial Hospital Brisbane and the Wesley Hospital Brisbane (A50019)

On 12 June 1998 an application for authorisation of an inter-hospital agreement was lodged with the Commission by:

- Bundaberg Associated Friendly Societies' Medical Institute, trading as the Friendly Society Private Hospital;
- St Andrew's Toowoomba Hospital;
- St Andrew's War Memorial Hospital Brisbane; and
- the Uniting Church in Australia Property Trust (Queensland), trading as St Stephen's Private Hospital in Maryborough and the Wesley Hospital in Brisbane.

The applicant hospitals provide a range of private medical services. They seek authorisation to enter an agreement to:

- exchange non-fee related information;
- exchange fee related information; and
- establish a common agent to facilitate the exchange of aggregated data and to assist in the negotiation of hospital purchaser/provider agreements (HPPAs).

The applicant hospitals submitted that:

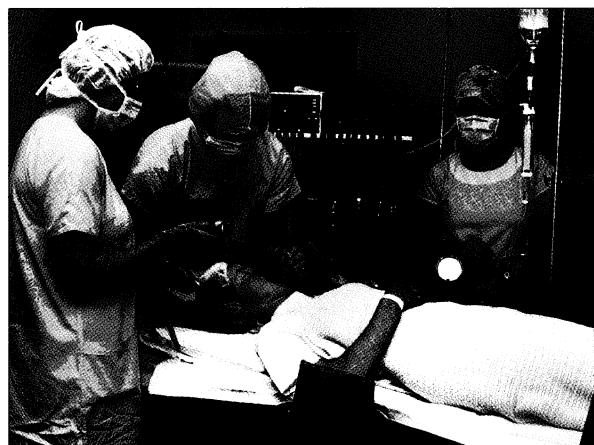
- the implementation of the agreement would not result in a substantial lessening of competition;
- the exchange of information (both fee and non-fee related) would enable the hospitals to improve both their efficiency and quality of services; and
- the use of a common agent to negotiate HPPAs would help to redress the imbalance of negotiating power between individual hospitals and health funds.

They also stated that each member hospital would implement a trade practices compliance program.

Opponents of the authorisation argued that the agreement was unnecessary because there are several industry databases available which would enable the applicant hospitals to benchmark their performance (although these relate to non-fee related information only); that there is no imbalance of negotiating power between hospitals and health funds; and that the exchange of price related information is contrary to the objectives of the legislative reforms put in place by the Minister for Health in 1995.

The Commission considered that the proposed agreement would not result in a substantial lessening of competition, for the following reasons.

- All together the applicant hospitals account for 16 per cent of available private bed days in Queensland, 14 per cent of admissions and 16 per cent of occupied bed days.
- For the most part they operate in separate geographical markets (St Andrew's War Memorial and Wesley hospitals excepted).
- For basic hospital services and common specialist services the geographic extent of the market is limited. Three of the five hospitals are located in rural Queensland and do not compete for the provision of these services. The two hospitals in the metropolitan Brisbane region provide the same services, but the Commission considered that there were sufficient other private hospitals to provide competition in the region.



For super-specialised services (e.g. radiation oncology, certain cardiac surgery) there are fewer suppliers and the geographic market is much wider. The Commission was most concerned about the provision of cardiac surgery, since two of the applicant hospitals dominate this market in Brisbane. But it noted that there are other suppliers either recently entered into, or about to enter, the market. It concluded that there was unlikely to be a substantial lessening of competition for the supply of these services as a result of the agreement.

The Commission concluded that in all circumstances the proposed conduct would be likely to result in a benefit to the public which would outweigh the detriment to the public constituted by any lessening of competition that would be likely to result from the conduct. It was concerned, however, that certain elements of the proposed agreement were relatively open ended. On 16 December 1998 it issued a draft determination proposing to grant authorisation subject to the following conditions.

- Clauses 3.2 to 3.4, permitting the addition of other hospitals to the network, are not authorised. If the network wishes to admit new members it may apply for a variation to the authorisation.
- The agreement is authorised for five years only.
- The safeguards relating to the exchange of information as expressed in the supporting submission to the application are to be included within the network agreement.
- Evidence of the implementation of the trade practices compliance program be provided to the Commission within six months of the date of authorisation.

Notifications

Notifications considered

JB Were Capital Markets Ltd (N90615) (Allowed to stand)

Third line forcing in relation to money held in trust until issue of deposit notes.

MBF (N30803) (Allowed to stand)

MBF will only have HPPAs with hospitals that give ACHS accreditation (exclusive dealing and third line forcing).

Vodafone Pty Ltd (N90611) (Allowed to stand)

Exclusive dealing for the supply of Motorola handsets on certain conditions.

Vodafone Pty Ltd (N90612) (Allowed to stand)

Application for exclusive dealing relating to Vodafone proposal to supply customers with a mobile handset, certain mobile telephony on certain conditions.

GE Capital Consumers Card Co (N90616) (Allowed to stand)

Offering to supply Shell Mastercard on condition customers also acquire goods and services from various retail outlets.

Paint Right Ltd (N40312) (Allowed to stand)

Paint Right members are required to carry a core range of Premium paints, private label paint and accessories from the nominated supplier (third line forcing).

Vodafone Pty Ltd (N30802) (Allowed to stand)

Third line forcing for supply of mobile telephony handsets to customers who acquire certain services and goods.

Redicall Pty Ltd, BDR Direct Communications, Intocom Pty Ltd, Bob Jane Telecommunications, CSM Rentafone Pty Ltd (N90618-22) (Allowed to stand)

Proposed supply of mobile handsets on condition customers acquire certain network services and ancillary goods from Vodafone Network (third line forcing).

**Cellular One Communications (N30825)
(Allowed to stand)**

Proposed supply of mobile handsets on condition customers acquire certain network services and ancillary goods from Vodafone Network (third line forcing).

**Freshwater Caravan Park Pty Ltd, C & A Pizzolato Pty Ltd, RG & RM Donald Pty Ltd, Yongala Holdings Pty Ltd, Trinity Petroleum Services Pty Ltd (N40314-8)
(Allowed to stand)**

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

State Bank of NSW, Legal & General Life, Colonial Investment Management, Colonial Investment Funds, Jacques Martin Administration, Colonial Financial Management, Colonial Financial Services Pty Ltd, Colonial Mutual Funds Ltd, Colonial Stockbroking, Jacques Martin Pty Ltd, First State Fund Managers, Colonial Mutual Superannuation Pty Ltd, Colonial Mutual Life Assurance Society Pty, HIH Casualty and General, CIC Insurance Ltd, Colonial Mutual General Insurance (N30826-41) (Allowed to stand)

Supply of product at a discount on condition that customers also acquire second product from member of the Colonial Group of the HIH Group or from Australian Unity (third line forcing).