
Appendix 2 Public information

This appendix contains:

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

Speeches

Commission Chairman Professor Allan Fels

Options to improve the coherence between trade and competition policies — a presentation of OECD work on options. OECD Conference on Trade and Competition — 29–30 June 1999

The role of competition principles in intellectual property. Intellectual Property Society of Australia and New Zealand — 22 July 1999

Launch of 'Safetrac' online compliance program. Minter Ellison — 27 July 1999

Retaining the competitive environment amid the growth in mergers and acquisitions. IIR Merger and Acquisition Strategy Conference — 27 July 1999

Commission Deputy Chairman Allan Asher

Making gas and electricity regulation work. Energy Users Group Networks '99 — 30 June 1999

Launch of National Complaints Culture Survey. Customer Service Institute of Australia — 8 July 1999

The new regulatory regime in the privatised state — charters and codes of conduct. Consumer Law Centre of Victoria Ltd, Participation and Protection in the Privatised State Conference — 30 July 1999

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

Media releases

113/99 'McMatch and Win' under ACCC scrutiny — 1.7.99

114/99 Freedom Furniture corrects refunds policy — 2.7.99

115/99 ACCC concludes W.A. Construction Forestry Mining Energy Union proceedings — 2.7.99

116/99 ACCC files against Y2K franchisor — 2.7.99

117/99 Free PCs may come at a cost, warns ACCC — 2.7.99

118/99 Gold Coast businessman to stay in prison for contempt of court — 2.7.99

119/99 Telecommunications access dispute — 6.7.99

120/99 ACCC alleges misleading conduct by franchisor — 7.7.99

121/99 Doomed firms ignore customer complaints — 8.7.99

122/99 Fair game or fair go? — 9.7.99

123/99 Petrol station dispute resolved — 9.7.99

124/99 ACCC says questions to be answered on McDonald's — 9.7.99

125/99 ACCC/ATO move against scheme spreading GST confusion — 12.7.99

127/99 ACCC alleges market sharing agreement between regional newspapers result of misuse of market power — 16.7.99

128/99 NSW Health Care Complaints Commission/ACCC MOU — 20.7.99

129/99 2DU changes advertising restriction after ACCC action — 22.7.99

130/98 ACCC opens up Telstra's local network: lower prices and new high-speed services — 22.7.99

131/99 PC Resq to offer refunds to consumers misled on Y2K compliance — 23.7.99

132/99 ACCC accepts undertaking from rural business — 27.7.99

133/99 Price reductions expected tomorrow — 28.7.99

134/99 ACCC investigates Coca-Cola Amatil — 28.7.99

135/99 ACCC reaffirms its concerns on ASX bid for SFE — 29.7.99

136/99 Consumers benefit from wholesale sales tax reductions — 30.7.99

137/99 Franchisees awarded over \$400 000 in snack food case — 3.8.99

138/99 ACCC not to oppose Mobil/Exxon merger — 5.8.99

139/99 BOC Gases: misleading 'environmentally friendly' claims — 5.8.99

140/99 ACCC issues new competition notice guidelines and information paper for telecommunications — 5.8.99

141/99 National Foods Ltd — country of origin claims — 6.8.99

142/99 ACCC institutes against promoters of health devices — 6.8.99

145/99 Misleading fat content representations resolved — 10.8.99

146/99 ACCC and ASX bid for SFE — 13.8.99

147/99 Y2K bug franchisor restrained — 20.8.99

148/99 ACCC ends Pauls, Dairy Farmers alleged price fixing investigation — 20.8.99

149/99 ACCC conditionally authorises ADMA Code of Practice — 20.8.99

150B/99 Radiator franchisees misled — refunds ordered — 20.8.99

151/99 No opposition to BP Amoco/Caltex Australia lubricants joint venture — 20.8.99

152/99 Mobile long-distance services draft report — 23.8.99

153/99 ACCC rejects Telstra's undertakings for mobile services — 23.8.99

154/99 ACCC not to oppose merger of NRMA/RACV insurance — 23.8.99

155/99 ACCC secures refunds from liquidator of Blue Book Directories companies (in liquidation) — 23.8.99

156/99 ACCC concerned about 'advertorial' practices — 24.8.99

157/99 Clint's withdraws dangerous phone — 24.8.99

158/99 ACCC not to intervene in Bartter/Steggles poultry acquisition — 24.8.99

159/99 ACCC broadcasting inquiry submission — 25.8.99

160/99 \$90 000 fines for faulty bicycles — 26.8.99

161/99 Court finds against Giraffe World and its health mat — 26.8.99

162/99 ACCC confirms access to cable for pay television — 30.8.99

163/99 ACCC welcomes retail inquiry report — 30.8.99

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.

APN News & Media/Gympie Times Pty Limited — the markets for news and newspaper dissemination, the printing of newspapers and the purchase of advertising in newspapers in the local areas of Gympie, Rockhampton, Noosa, Nambour, Sunshine Coast and Ipswich.

On 1 July 1999 the Commission was notified that APN News & Media Limited, through its wholly owned subsidiary, Sunshine Coast Newspaper Company Pty Ltd, was entering into a share sale agreement with Queensland Community Newspapers Pty Limited for the

acquisition by SCN of Gympie Times Pty Limited. At the same time as entering into the agreement, SCN and certain other APN subsidiaries were entering into a sale of business agreement for the acquisition by those companies of certain small-circulation free regional newspaper businesses of QCN.

On 3 August 1999 the Commission decided not to oppose the proposed acquisition because, while the acquisition may result in an increase in concentration in some markets, any concern it may have was mitigated by the presence of other competitors and the level of new entry that has been observed in the markets. Therefore, it is unlikely that the acquisition will result in a substantial lessening of competition.

Pacific Waste Management Pty Ltd/SITA BFI Waste Services Pty Limited — State markets for the collection and disposal of domestic and commercial waste.

The Commission received a confidential submission on 20 April 1999 outlining the proposed acquisition by Pacific of the Australian waste collection and disposal operations of SITA BFI. On 30 June 1999 the proposed acquisition was announced publicly.

The Commission decided on 4 August 1999 not to oppose the acquisition as it resulted in a relatively small increase in market share in each of each of the Victorian, South Australian and Western Australian markets. In the NSW market, there would remain a number of significant competitors to the merged firm post acquisition, including Cleanaway, Collex and JJ Richards. Also, there was no geographic overlap between Pacific and SITA BFI in the operation of landfills.

Nuplex Resins (Australia) Pty Limited/polyester resin business of Orica Australia Pty Ltd — national markets for the supply of UPR and vinyl ester resins for fibreglass manufacture and supply of UPR gel coats, vinyl ester coats and paints.

The Commission received a confidential submission on 4 June 1999 outlining the proposed acquisition by Nuplex of Orica's resin business. On 8 July 1999 the proposed acquisition was announced publicly.

The Commission decided on 28 July 1999 not to oppose the proposed acquisition due to the existence of significant overcapacity in the resin manufacturing industry and also the level of import competition which was between 10 to 12 per cent of total demand. The Commission also concluded that the barriers to entry to the supply of UPR gel coats, vinyl ester coats and paints were likely to be low.

Garban/Intercapital — markets for the supply of broking services in relation to interest rate swaps, forward foreign exchange and fixed income bonds in Australia.

On 12 July 1999 the Commission received a submission outlining the proposed merger. On 11 August 1999 it decided not to oppose the proposed merger based on:

- competition from alternate local brokers;
- low barriers to entry or expansion by other money market brokers. The principal requirement is personnel with expertise and client contacts — in this regard, there is a history of firms poaching money market teams from other broking firms; and
- the significant countervailing power of the banks, based on their ability to conduct money market transactions through direct inter-bank trading.

Santos Limited/Kipper gas field — wholesale gas market.

It was reported in the press on 17 March 1999 that Santos had acquired a minority interest in the Kipper gas field in the Bass Strait. Further acquisitions were made during June 1999.

The Commission sought the views of interested parties regarding the potential competitive effects of these acquisitions during this period. On 10 August 1999 it decided not to oppose the acquisition as it appeared from inquiries that the acquisition was unlikely to result in a substantial lessening of competition.

Mobil/Exxon Global Merger — natural gas market and petroleum market.

Mobil and Exxon announced in December 1998 that they proposed to merge their Australian interests.

The Commission took the view that the merger of Exxon and Mobil's gas interests was unlikely to have a substantial effect on competition in any Australian market. It noted that the merger would result in only a small increase in the combined interests of Mobil and Exxon in the PNG Gas to Queensland project. Neither party is directly involved in the proposed marketing of PNG gas in Australia.

The Commission also considered the merger's likely competitive impact on the petroleum retail and refinery markets in Australia. Since Exxon ceased all petroleum refinery and retailing operations in Australia in 1990 it has not competed against Mobil in these markets. The Commission concluded that the merger was unlikely to substantially lessen competition in these markets.

On 5 August 1999 the Commission announced it would not oppose the merger.

Southcorp Wines Pty Ltd/Cuppa Cup Vineyards Ltd — the Australian market for the wholesale production and sale of wine.

On 28 June 1999 Southcorp informed the Commission of its proposal to acquire shares in Cuppa Cup Vineyards. On 14 July 1999 the Commission informed Southcorp that it would not intervene in this matter since the acquisition was unlikely to result in a substantial lessening of competition in the market.

Weir Engineering Pty Limited/Warman International Group — national market for the manufacture and distribution of slurry pumps and spare parts.

The Commission received a submission on 6 July 1999 outlining the proposed global acquisition of Warman International Ltd and Group companies by The Weir Group plc. The slurry pumps manufactured by the parties are used predominantly by mining companies.

The Commission decided on 11 August 1999 not to oppose the merger proposal on the basis that customers had said they had effective alternatives to the merged company as a source of slurry pumps. Users of slurry pumps were not concerned about the acquisition's effect on competition.

Nuplex Resins (Aust) Pty Limited/National Starch and Chemicals Pty Ltd — national market for the manufacture and supply of aqueous dispersions.

The Commission received a confidential submission on 2 August 1999 outlining the proposed acquisition by Nuplex of the merchant aqueous dispersion business of National Starch and Chemicals.

On 16 August 1999 the proposed acquisition was announced publicly.

The Commission decided on 18 August 1999 not to oppose the acquisition as it represented a relatively small increment in market share, and a large number of significant competitors, including Rohm and Haas, BASF and Dow Chemicals, remained in the market. The Commission also noted that, in terms of the supply of aqueous dispersions to the paint industry, the customer base was highly concentrated with three major customers, namely Dulux, Taubmans and Wattyl.

BP Amoco and Caltex Australia — lubricants

BP Amoco and Caltex Australia announced in August 1999 that they had signed a memorandum of understanding for a joint venture for the blending, packaging and warehousing of lubricants in Australia.

The Commission noted that, aside from the major oil companies, there were a number of other lubricant manufacturers that had achieved strong brand recognition amongst consumers and captured a substantial market share.

It also took into account that BP Amoco and Caltex Australia will continue to separately market lubricant products under their own brand names.

The Commission concluded the joint venture was unlikely to lead to any substantial lessening of competition. On 20 August 1999 it announced it would not oppose the joint venture.

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. (The register was first listed in the Trade Practices Commission *Bulletin 74*, February 1994.)

British American Tobacco PLC and Rothmans International BV, s. 50

On 2 June 1999 the Commission accepted a court-enforceable undertaking for divestiture of cigarette and roll-your-own tobacco brands to Imperial Tobacco Group PLC to address the ACCC's concerns about the effect on Australian competition of the world-wide merger between British American Tobacco PLC and Rothmans International BV.

The divestiture undertaking follows the ACCC's decision in March 1999 that the proposed merger was likely to breach s. 50 of the Trade Practices Act by substantially lessening competition in the Australian cigarettes market.

The divestiture will maintain three competitors in the cigarette market and means the merged group will have a market share of 44 per cent, rather than 61 per cent if the merger had proceeded without the ACCC's intervention.

Imperial Tobacco will have a 17 per cent share of the cigarette market. Imperial Tobacco is a major British-based tobacco company that sells its tobacco products in over 70 countries and has Virginia-blend brands in overseas markets which it may introduce to the Australian market. Imperial Tobacco will operate an independent telesales facility for receiving orders from customers and will employ an independent field sales force. Imperial Tobacco will also be implementing changes to the divested brands to ensure they remain competitive after the change to the per-stick excise system.

Western Broadcasters Pty Ltd, s. 46.

Misusing market power in refusing to accept advertisements from Tradesmen You Can Trust (TYCT).

14.7.99 undertaking to accept advertisements from TYCT subject to usual commercial considerations.

RNP Services Pty Ltd, ss 52, 53, 79. Collecting and opening mail for a Canadian company (TLC) operating a lottery subscription service and falsely advertising itself as international monetary funding.

14.7.99 undertaking to terminate its relationship with TLC; not enter any future contractual relationship with TLC; make diligent inquiry about any new business relationships.

PC Resq Pty Ltd, ss 52, 53(f). Giving misleading information on the lack of Y2K compliancy of new computers.

14.7.99 undertaking to cease making unqualified representations to consumers that imply they need an unnecessarily high compliance level; print corrective advertising; offer refunds to misled customers.

Remington White Australia Pty Ltd, s. 47(6). May have engaged in exclusive dealing in refusing database access to a non-member of REINT.

17.6.99 undertaking to give membership to Flagstaff and, for three years, not to refuse any organisation membership or access to its database for the reason that the organisation is not a member of REINT.

Lennock Phillip Pty Ltd, ss 52, 53(e). Misrepresenting used car prices likely to increase after the GST is introduced.

17.7.99 undertaking not to make the same or similar representations; place corrective advertising in *The Canberra Times*; implement a trade practices compliance program.

Toll Holdings Ltd, Toll Transport Pty Ltd, Geelong Port Pty Ltd, s. 50. Acquiring interests in Port of Geelong may result in significantly lessened competition.

21.7.99 undertaking not to hinder or prevent any business using the Port of Geelong for any purposes for which the Port is normally commercially used; not acquire ownership or interests in South Australia, Victoria or New South Wales ports/port facilities where turnover is above \$500 000 pa, or likely to be above \$500 000 in the first year, without advising the Commission; not oppose (and to permit on reasonable conditions) the

installation of one or more dry bulk unloaders at Port of Geelong; notify the Commission about proposals of others acquiring ownership interest in the Port or proposals to change the proportion of equity interest by a member of the consortium.

Toll Holdings Ltd, Toll Transport Pty Ltd, s. 50. Management of the business of the Port of Hastings by Toll Transport may significantly lessen competition.

21.7.99 undertaking not to prevent/hinder any business operator from using/proposing to use the Port of Hastings for usual commercial purposes; not acquire ownership or interests in South Australian, Victorian or New South Wales ports/port facilities where turnover is above \$500 000 pa, or likely to be above \$500 000 in the first year without advising the Commission; ensure than any related company it controls will comply with the undertaking.

Acepark Pty Ltd, ss 51AB, 52, 53(c), 53(d), 59(1). Misleading and unconscionable conduct about profitability of computer-betting software and work-at-home schemes.

27.7.99 undertaking to cease legal actions against customers to recover payment and release them from further claims; refund payments; compensate for proven losses; set up a structured complaints handling system.

Singapore Airlines Limited, s. 52. Misleading advertising of frequent flyer points system.

28.7.99 undertaking to place corrective advertising; arrange with Ansett to credit Ansett Global Reward Points to passengers induced by the advertisements to purchase tickets.

Freedom Furniture Ltd, ss 52, 53(g). Misleading consumers about their rights to refunds for unsatisfactory goods.

30.7.99 undertaking not to misrepresent consumer rights; inform its franchisees, servants and agents of these undertakings; not display the misleading refund policy; adopt and 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 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

Gas Industry Act 1994

Electricity Industry Act 1993

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)