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# 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

### VENcorp

*Rule changes to the market and system operations rules (MSOR) (A90646–8)*

15.3.99–12.11.99 Applications for variation of the authorisation to cover MSOR changes made during 1999.

30.6.99 Variation of the interim authorisation.

4.10.99 Interim authorisation ceased to have effect and principal authorisation came into force.

15.3.00 Variation of the authorisation.

## Determinations

### National Electricity Code Administrator (NECA)

*In relation to amendments to the National Electricity Code (A90708, A90709 and A90710)*

- Draft determination issued 16 December 1999.

- Final determination issued 2 February 2000.

On 10 September 1999 the Commission received applications for authorisation of amendments to the National Electricity Code from NECA. Amendments to the applications were received on 23 September and 15 October 1999. The proposed amendments to the code dealt with:

- trading credit limits for market participants;
- funding of compensation to generators for system security directions;
- settlement by estimates; and
- intra-regional loss factors for new generation and transmission customers.

In making its determination the Commission was satisfied that the changes did not present any substantial anti-competitive detriments and had a number of public benefits including:

- reduced risk for market participants by providing increased certainty of cash flows during market failures;
- improved market efficiency by ensuring that the beneficiary pays rather than smearing the cost across the entire market;
- decreased barriers to entry leading to increased participation, greater liquidity and therefore efficiency in the market; and
- increased market certainty.

The Commission granted authorisation to the applications until 31 December 2010.

### South Australian Government

*In relation to electricity vesting contracts between Optima Energy, Flinders Power, Synergen and ETSA Power (A90692–7)*

- Draft determination issued 20 October 1999.
- Final determination issued 22 December 1999.

On 25 June 1999 the Commission received applications for authorisation from the Treasurer of South Australia, the three state-owned generators (Optima Energy, Flinders Power and Synergen) and ETSA Power, the franchise retailer.

The vesting contracts and associated agreements dealt with the setting of prices and quantities of electricity supplied by the generators to ETSA Power for supply to franchise customers and grace period customers.

In its final determination, the Commission imposed two conditions on its authorisation of the contracts:

- The average price outcome (based on the estimated value of the contract prices, pool prices and capacity payments) for the acquisition of electricity for franchise and grace period customers should be \$40 MWh or below from 1 February 2000 for the remaining life of the vesting contracts.
- From 1 January 2001 ETSA Power must have the option of terminating contracts A, A3, B, C, D and E but only all of them at the same time. ETSA Power must give a month's notice of its decision to exercise its option on the contracts.

To the extent applicable, the counter-party generators must have an option to renegotiate any affected contracts and/or terminate any related insurance contracts, should ETSA Power exercise its option.

The Commission granted authorisation until 31 December 2002, subject to the earlier termination of any contracts as a result of condition 2.

### **South Australian Government**

*In relation to amendments to the National Electricity Code (A90719-21)*

- Draft determination issued 23 December 1999.
- Final determination issued 25 January 2000.

On 28 October 1999 the Commission received applications for authorisation of amendments to the National Electricity Code from NECA on behalf of the South Australian Government.

The proposed derogations deal with the obligations of network service providers and generators to register as code participants and are a consequence of the leasing structure adopted by the South Australian Government. The changes are designed to remove the obligation of the relevant lessor corporations, as the owner of the leased network and generation assets, to register as code participants.

The Commission was concerned whether or not the entity which truly controls the asset would be the same entity required to register as a code participant and therefore also be subject to the access code. However, based on the information supplied by the applicants (which included an examination of the distribution network lease), the Commission was satisfied that the lessor (i.e. the South Australian Government) has little to no control over the operation of the assets.

The Commission granted authorisation to the applications until 31 December 2010.

### **NECA and NEMMCO**

*In relation to the amended National Electricity Code (A90671-3)*

- Draft determination issued 8 October 1999.
- Final determination issued 22 December 1999.

On 28 August 1998 NECA and NEMMCO (National Electricity Market Management Company) lodged applications for authorisation of the amended National Electricity Code. They were amended on 26 September, 22 September, 2 October, 6 October, 20 October, 26 October, 5 November, 20 November 1998 and 7 June 1999.

The determination pertains to the code in its entirety, but much of the analysis has been limited to proposed amendments to the code and any further issues raised by interested parties.

Among the issues discussed in the determination are:

- amendments to the code relating to market arrangements, including changes to the prudential requirements and transitional ancillary services arrangements;
- changes to reflect variations contained in the National Electricity Market Access Code;

- transitional derogations from South Australia, Queensland and New South Wales; and
- demand-side participation in the NEM.

The determination grants conditional authorisation to the amended code. The conditions of authorisation deal mainly with the transitional arrangements, such as the South Australian system planning and network pricing derogations, some elements of the market rules and administrative provisions.

The Commission also argued that end users should have an effective voice to participate in NEC developments. The Commission imposed conditions to encourage more end user involvement in code decision-making.

## Notifications

### Notifications finalised

The following have been allowed to stand.

**Toyota Motor Corporation Australia Ltd** (N90724) Offer of discounts to purchasers of certain Toyota vehicles to customers who are members of the Housing Industry Association (third line forcing).

**Toyota Motor Sales Australia** (N90755) Offer of discounts on certain motor vehicles to customers who are members of the Housing Industry Association (third line forcing).

**Optus Vision, Optus Networks Pty Ltd** (N90757, N90758) Offer of products by one Optus member at a discount on condition a customer purchases products from the other Optus member (third line forcing).

**Westpac Financial Services Ltd** (N30874) Supply of self-managed superannuation fund services on condition customers acquire accounting compliance and administration services from third parties (third line forcing).

**Optus Internet** (N90761) Offer of Internet services on a discount on condition customers acquire hardware products from Southmark Solutions (third line forcing).

**Westpac Financial Services Ltd** (N90736) Offer of margin facility by WFS on condition customers open a bank account with Westpac (third line forcing).

**Optus Networks** (N90762) Offer of a discount on telephony services on condition customers acquire other products from members of the Optus group (third line forcing).

**Starwood Pacific Hotels** (N30884) Supply of hotel management services on condition the hotel owner acquires certain services from companies related to the applicant (third line forcing).

**RACQ GIO Insurance Ltd** (N90763) Offer of insurance premiums discounts to long-term members (third line forcing).

**Norwich Union Navigator Ltd** (N90764) Offer of administration services on condition investor acquires CMT services from Macquarie and stockbroking services from the Broker (third line forcing).

**Ing Honorius Rachmantio** (N70165) Agreement that land purchasers enter into building contract with Bob O'Brien (third line forcing).

**Autodesk Australia Pty Ltd** (N30885) Requires dealers to acquire goods from specialised suppliers (third line forcing).

**Group Training Australia Victoria Incorporated** (N90766) Provides training programs and workshops for the GTCs and brokering small training programs on behalf of the GTCs (third line forcing).

**South State Fuels Pty Ltd, Vee Jay Distribution Pty Ltd, Chippen Holdings Pty Ltd** (N40370-2) Offer of a discount on petrol to customers who purchase \$30 or more worth of goods from any Coles or Myer supermarkets (third line forcing).

**Black Swan Theatre Company, Dickson Family Trust, Wayell, Bliznou Holdings, Ryszard Leslaw Kijak** (N70138-42) Offer of discounts to RAC members under rewards and recognition program (third line forcing).

**Toatal Eden Watering Systems, Gairoh Holdings, Woonings, Family Trust**

(N70143-46) Offer of discounts to RAC members under the rewards and recognition program (third line forcing).

**Darrell Newton, Darlene K Newton, CJ Borrett and VM Borrett, Hia Pty Ltd, Lekron, Willem Grove**

(N70147-50) Offer of discounts to RAC members under the rewards and recognition program (third line forcing).

**Total Designs and Development, Vinciullo, Trigold Holdings, James Maxwell Cassady, Cervantes Pinnaci**

(N70151-5) Offer of discounts to RAC members under the rewards and recognition program (third line forcing).

**Fallston, Ashlin, Vinang, Marjoram, Jetrio, Golden Outback, Classic Choice, Hospitality Pty Ltd**

(N70156-63) Offer of discounts to RAC members under the rewards and recognition program (third line forcing).

**Commonwealth Securities Ltd**

(N30886) Proposal to supply its Internet stockbroking services at a certain price to customers who use a Commonwealth Direct Investment Account from the CBA (third line forcing).

**National Australia Bank**

(N40369) Proposal to offer mobile banking services to Optus customers (third line forcing).

**Austraclear Limited**

(N90765) Requirement that Austraclear members use the services of participating banks to clear and settle transactions on Austraclear's market (third line forcing).

**National Australia Trustees Ltd, National Online Trading Ltd**

(N40360-1) Supply of National Online Trading Services to customers on condition they open a cash management account with National Australia Trustees (third line forcing).

**HSBC Investdirect Australia Ltd**

(N40357) Offer of broking services for the trading of securities on the Australian Stock Exchange (third line forcing).

**Village Life Ltd**

(N90742) Offer to investors in retirement village developments by Village Life with construction undertaken by Lend Lease and with Village Life to provide tenants and management of villages (third line forcing).

**Perth RJV Pty Ltd** (N70166) Titan Ford RAC rewards and loyalty recognition program (third line forcing).

**National Australia Bank Ltd, AMEX**

(N40383-4) Offer of AMEX products to AMEX merchants on condition that AMEX merchants also acquire one or more National products from the National (third line forcing).

**Wishlist.com.au Pty Ltd**

(N40385) Offer to supply email gift voucher for use at the wishlist website to customers who register with the National Australia Bank Ltd and acquire a National product (third line forcing).

**Kingstream Steel Limited**

(N70164) Proposes labour supply arrangements for Mid West Iron and Steel product.

**ASA and ABRI**

(N30888) Provision of group breed plan services in the Angus Cattle Market (third line forcing).

**Ergon Energy — notification in relation to the Gunpowder Connection and access agreement**

(N50115) Ergon lodged an application for notification of the Gunpowder Connection and access agreement (third line forcing).

**RACV Financial Services Ltd**

(N40386) Offer of a discount on the first annual premium of an RACV life insurance policy to persons taking out an RACV Finance Ltd home loan funded by the Bank of Western Australia Ltd (third line forcing).

**Cable and Wireless Global Card Services, Optus Mobile Ltd**

(N90767-8) Offer to customers of a credit on the condition they acquire mobile services from GCS and/or long-distance services from Optus Networks (third line forcing).

**ASX**

(N30889) Provision of access to SEATS for RIOTS on condition they clear trades through equities clearing participants (third line forcing).

**Urban Land Corporation**

(N90769) Proposes an arrangement of rebates to customers who purchase land from ULC and engage certain participating builders to construct their house (third line forcing).