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# Enforcement

The following are reports on new and concluded Commission actions in the courts, settlements involving court enforceable undertakings (s. 87B) and major mergers considered by the Commission. Other matters still before the court are reported in appendix 1. Section 87B undertakings accepted by the Commission and non-confidential mergers considered by the Commission are listed in appendix 2.

## Anti-competitive agreements (Part IV)

### **Associated Water Equipment Pty Ltd**

*Price fixing and market sharing (s. 45A, s. 45)*

On 6 March the Federal Court, Brisbane ordered Associated Water Equipment Pty Ltd to pay penalties of \$1 million for anti-competitive behaviour. It was the second penalty order made in the matter, the first being against Tubemakers of Australia Ltd and its former subsidiary, Coastline Foundry (QLD) Pty Ltd for their role in price fixing, tender rigging and market sharing in the supply of fittings and valves for use with ductile iron cement lined pipe.

The court accepted a joint submission on injunctions and penalties after Associated Water Equipment, a wholly owned subsidiary of Crevet Ltd, admitted it had entered into the arrangement with its major competitors. The conduct occurred between December 1993 and May 1995.

The penalties related to Mr Patrick McAuliffe, former general manager of Associated Water Equipment, who admitted meeting competitors to set up the price-fixing arrangements.

The court issued injunctions restraining the company for three years from engaging in

similar conduct. Since then, Crevet Ltd has implemented a trade practices compliance program.

### **J McPhee & Son (Australia) Pty Ltd**

*Price fixing (s. 45A)*

On 12 April 2000 the Federal Court dismissed appeals by J McPhee & Son (Australia) Pty Ltd and company executives against convictions for breaches of the Trade Practices Act but it did allow appeals against the level of penalties imposed by the trial judge.

The Commission had alleged the company had attempted price-fixing arrangements in relation to transport services.

Proceedings were instituted in the Federal Court Melbourne on 20.12.95. On 2 February 1998 the Federal Court found that J McPhee & Son (Australia) Pty Ltd and three of its employees had attempted to have a competitor enter into a collusive agreement in tendering express freight services to a McPhee client. It also found that the company had entered into a price-fixing arrangement with a competitor in relation to prices quoted to another McPhee customer. The court imposed penalties of \$4 million on J McPhee & Son and four executives for price fixing. The respondents appealed the decision but the full Federal Court upheld the conviction. The court, however, reduced the original penalties on the basis that the trial judge had erred in deciding the level of penalties. The penalties were reduced from \$4 million in total to \$2.7 million.

### **Back to Basics Worldwide Education Aids Systems Pty Ltd and Hartwich Pty Ltd**

*Misleading representations about business earnings (s. 59(2)), a representation as to future matter, without reasonable grounds (s. 51A)*

The Commission has filed criminal proceedings in the Federal Court in Adelaide against Queensland companies, Back to Basics Worldwide Education Aids Systems Pty Ltd and Hartwich Pty Ltd, and the companies' directors John Moon (aka John Robert Croke) and Wayne Baker.

Through advertisements in daily newspapers such as *The Age*, *The Sydney Morning Herald* and *The Advertiser*, they invited people to invest up to \$65 000 to become distributors in a business known as Back to Basics selling educational aids such as wristwatches, posters and wall charts. At least seven distributors, mainly couples, were recruited.

The false and misleading representations included the claims that other distributors had achieved high sales returns, and incomes of up to \$150 000 could be comfortably earned.

The Commission, through the Director of Public Prosecutions, will seek refunds and repeal of contracts, as well as penalties.

### **Queensland fire protection cartel**

*Price fixing and market sharing (s. 45A)*

On 22 March 2000 the Federal Court, Brisbane imposed penalties and costs of over \$1 million on a further 12 companies and individuals involved in the Queensland fire protection cartel.

The court found Impact Fire Protection Pty Ltd, Enterprise Fire Protection Pty Ltd, Enterprise Fire Protection Electrics Pty Ltd and Associated Fire Systems Pty Ltd had engaged in price fixing and market sharing in the installation of fire sprinkler systems throughout Queensland, and fire alarm systems in Brisbane.

Previously the Federal Court had penalised 11 other companies and individuals over \$5 million as part of the same legal action by the Commission.

The court also ordered injunctions against the respondents, prohibiting them from engaging in similar conduct for three years. The companies have also agreed to implement or upgrade trade practices compliance programs.

### **Maritime Union of Australia**

*Primary boycotts (s. 45DB(1)), harassment and coercion (s. 60)*

On 17 April the Commission instituted legal proceedings against the Maritime Union of Australia and three senior MUA officials. It had alleged the union had unlawfully hindered and prevented vessels sailing from various Australian ports unless the ship owner agreed to use MUA labour to clean the hold of the vessel.

The Commission had previously written to John Coombs, National Secretary of the MUA, raising concerns about hold cleaning in accordance with the Alternative Dispute Resolution Procedure established by the Commission and the MUA in 1998. (Mr Coombs is not one of the three union officials against whom proceedings have been instituted.)

After early discussions, the MUA rejected the Commission's settlement proposal. The Commission then believed it had no option but to start legal proceedings under ss 45DB and 60 of the Act. Section 45DB prohibits people from hindering or preventing the movement of goods between Australia and elsewhere, and s. 60 prohibits the use of physical force or undue harassment or coercion in supplying goods or services to a consumer.

The Commission will be seeking injunctions, declarations, findings of fact, the implementation of a trade practices compliance program, penalties and costs.

### **Qantas**

*Misuse of market power (s. 46)*

The Commission has been questioning Qantas about recent large increases in its capacity on the Newcastle-Melbourne and Newcastle-Brisbane routes following complaints from Impulse Airlines.

Impulse had complained about an increase in seating capacity by Qantas and had alleged anti-competitive behaviour. The increase in capacity by Qantas on these routes appears to be substantially in excess of current demand.

The Commission has requested further detailed information from Qantas in order to assess Impulse's allegations.

## Mergers (Part IV)

### IAMA Limited and Ruralco

*Mergers (s. 50)*

On 3 March 2000 the Commission announced it would not intervene in IAMA Limited's acquisition of Ruralco's rural merchandising business.

Although the merger combines two large wholesalers and distributors of rural merchandise, there are other strong competitors in the industry, with healthy price competition and product innovation.

The Commission's market inquiries found barriers to entry into the industry are relatively low and, in fact, new entrants had recently started trading.

### Air New Zealand Ltd and Ansett Holdings Ltd

*Mergers (s. 50)*

On 29 March 2000 the Commission announced it would not intervene in Air New Zealand's proposed acquisition of Ansett Holdings. While the Commission will continue to monitor the aviation industry, it did not believe the acquisition would substantially lessen competition.

### McCafferty's Holdings Limited and Greyhound Pioneer

*Mergers (s. 50)*

On 30 March 2000 the Commission announced it would not intervene in the proposed merger between McCafferty's Holdings Limited and Greyhound Pioneer.

Although the merger combines the only two national coach operators, there is enough scope for smaller operators in specific regions to enter the interstate coach market. Competition in the industry also comes from other modes of transport, such as train, that offer consumers an alternative.

## Fair Trading (Part V)

### Auslinx Pty Ltd

*Misleading or deceptive conduct (ss 52, 53(a), 53(c), 55)*

On 2 March 2000 Auslinx Pty Ltd a, manufacturer of modems, provided the Commission with a court enforceable undertaking to recall a potentially dangerous modem.

The modem, which was labelled as an ABC V.90 56K External modem was supplied by Auslinx to wholesalers and retailers throughout Australia between November 1998 and September 1999.

The modem could expose the user to danger as a result of a power surge while using it. Using the modem could also damage the network infrastructure and a user's computer.

The Commission considered that the packaging of the modem misrepresented that the modem was suitable for connection to the Australian telecommunications network.

The company agreed to cease supplying the modem and to place corrective advertisements in major daily newspapers alerting consumers to the problem and offering purchasers a full refund or a suitable replacement.

### Goldseal Australia Pty Ltd

*Misleading or deceptive conduct (s. 52), misrepresentation (s. 53(d))*

On 13 March 2000 consent orders were made against a Townsville company, Goldseal Australia Pty Ltd, and its director, Mr Norman English, for falsely representing to franchisees that he had invented and developed a waterproofing product.

Goldseal had also claimed it had obtained sponsorship for the product, known by various names including Goldseal Polyshield SS-100, and that it had passed a Standards Australia assessment.

Mr English and Goldseal admitted they had breached the Act and agreed to not make such

representation in the future. Mr English also agreed to contribute towards the Commission's legal costs.

The franchisees may, if they choose, take further action themselves against Goldseal and Mr English.

### **Australian Billboard Connections Pty Ltd**

*Misleading or deceptive conduct (s. 52), misleading representations about business earnings (s. 59(2)), representations as to future matters (s. 51A)*

In March 2000 Australian Billboard Connections was ordered to pay almost \$250 000 in the Federal Court in Adelaide to settle a matter originally brought by the Commission in June last year.

The company, its Managing Director, Michael Hollingsworth, and its National Sales Manager, Kevin Hall, had allegedly made false representations to three small business operators who eventually bought franchises as a result.

Each of the franchisees received refunds of the initial purchases price, as well as compensation for interest they had to pay in borrowing their start-up capital. The company also paid \$35 000 towards the Commission's investigation and legal costs.

### **Optus Mobile Pty Ltd**

*Misleading or deceptive conduct (ss 52, 53(c))*

On 22 March 2000, the Commission announced that Optus Mobile Pty Ltd had provided a court-enforceable undertaking regarding claims made in advertising in a Cairns newspaper in October last year.

The advertisement stated the analogue mobile phone network would shut down on 1 January 2000, but, in fact, it was not due to shut down in Cairns until after that time.

Optus Mobile agreed its advertising may have been misleading and said it would make sure it didn't make such representations in future without reasonable grounds; it would take specific regional circumstances into account in

future ads; and amend its existing trade practices compliance program to reflect this.

### **Apology**

In Journal 25, a photograph of the premises of Canberra Toyota was published near an article on an enforcement action against QPR Auto Group. Canberra Toyota is not associated in any way with QPR Auto Group and the photograph was intended only as a generic one for the car retailing industry. We apologise to Canberra Toyota for any embarrassment the photograph may have caused them.