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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.*

## Determinations

### Golden Circle Ltd

*In relation to requiring members to supply a minimum quota according to number of shares held (A50022)*

- Interim determination issued 24 February 1999.
- Draft determination issued 13 March 1999.
- Final determination issued 17 May 2000.

On 16 February 1999 Golden Circle applied for authorisation to require its members (shareholders) to supply a minimum tonnage (a quota) of fruit to Golden Circle at least once every three years. The quota for each shareholder depends on the number of shares held by the shareholder and not the shareholder's total fruit production.

Golden Circle sought interim authorisation on the basis that it had been operating under the arrangements for some time and unless interim authorisation was granted its ability to operate effectively would be adversely affected.

The arrangement covers pineapples and a wide range of other fruit and vegetables. Golden Circle sells about 80 000 to 85 000 tonnes of canned pineapples each year. Some 20 000 to 25 000 tonnes of canned pineapples are imported and some 30 000 tonnes are sold fresh each year. Golden Circle sells a much smaller proportion of other fruit and vegetables.

The Commission concluded that the arrangement has the potential to adversely affect other processors, wholesalers and new entrants even though that potential is minimised by the ability of growers to increase production.

The Commission was satisfied the public would benefit as the arrangement would:

- provide a steady supply of fruit and vegetables to retail stores;
- allow Golden Circle to plan production schedules further ahead which would probably increase efficiency; and
- underpin the operation of growers by stabilising incomes.

Also, market disciplines imposed by large purchasers and imports would encourage efficiency at both production and processing levels.

On 13 March 2000 the Commission issued a draft determination proposing to grant authorisation for five years.

On 17 May 2000 the Commission issued a final determination and granted authorisation for five years.

**St Vincent's Private Hospital, Mater Misericordiae Private Hospital Ltd and Sydney Adventist Hospital**

*In relation to an arrangement to act together in negotiations with health insurance funds about reimbursement levels for members of health insurance funds (A90679)*

- Draft determination issued 3 December 1999.
- Pre-decision conference held on 24 February 2000.
- Final determination issued 28 June 2000.

St Vincent's Private Hospital, Mater Misericordiae Private Hospital Ltd and Sydney Adventist Hospital lodged an application for authorisation under s. 88(1) of the Act for authorisation to enter into an arrangement to act together in their negotiations with health insurance funds on reimbursement levels for health fund members.

The Commission decided not to authorise the arrangement because it believed the proposed arrangement would inevitably see the applicants achieve higher price levels in negotiations with health insurance funds, than otherwise even if the same prices were not agreed on for equivalent services. The Commission considers agreements or arrangements between competitors on prices to be among the most serious forms of anti-competitive conduct and highly likely to result in a lessening of competition.

The Commission considered the effect of the proposed agreement on the hospital-patient market and the private hospital-health fund market. It formed the view that the applicants compete for patients and that the proposed arrangement for negotiating with health funds, to the extent that it leads to 'fixing, controlling or maintaining' prices, would ultimately lead to a lessening of competition in the hospitals services-patient market. The proposed conduct would also result in an anti-competitive detriment in the private hospital-health insurance market through the impact of agreements on prices and increases in prices.

The detriment would in particular be reflected by:

- increased costs to health funds, potentially having an impact on health insurance premiums and membership levels; and
- the easing of competitive pressures on the applicants to improve the quality and efficiency of operations and services as a result of their being given an opportunity to pass on cost increases.

The applicants had claimed that public benefits would result from giving them countervailing power against the health funds. However, the applicants are three of the four largest private hospitals in the Sydney metropolitan area and already receive the highest reimbursement payments from health funds in NSW and a disproportionate share of fund benefit payments. The Commission did not believe that the viability and service levels of the applicants would be threatened, as claimed, unless they receive the higher reimbursement levels expected to flow from the proposed arrangement.

The applicants had also claimed that the viability of the hospitals was essential to minimise the burden on public hospitals and ensure the continuation of community services. However, the Commission was not convinced this was so. Further, the Commission was not persuaded that privately insured patients who were not able to be accepted for treatment by the applicants would necessarily seek treatment in the public hospital system. And the Commission found no evidence that if patients did choose to enter the public hospital system, as either private or public patients, that there would be a detriment to the public health system.

The Commission also found that any reduction in costs accruing from collective negotiation was likely to be minimal given that three contracts would still need to be negotiated and that the combined spending of the applicants on negotiations was a relatively small amount.

## Notifications

### Notifications finalised

*The following have been allowed to stand.*

**Jerry Skryplonek & Donuta Skryplonek, George Kowcun & Marta Kowcun, Inside Outside (Aust) Pty Ltd** (N70172-5) In relation to RAC rewards and recognition program (third line forcing).

**State Housing Commission (Homeswest)** (N40174) Proposed contract with buyers who would agree to construct their residence at the Coolamon Mews lots using either Dale Alcock Horne or Impressions the Home Builder (third line forcing).

**Equity Margins Ltd, MLAN Merrill Lynch, Merrill Lynch Mercury Asset Management Ltd** (N40401-3) Equity Margins EML providing financial accommodation to clients or guarantor who use the services of Merrill Lynch (Aust) Nominees Pty Ltd as nominee and as CHESSE sponsor (third line forcing).

**Bank of Queensland Ltd** (N90787) Providing a concessional offering to customers including interest rates below the banks standard interest rate and reduced or waived fees for the banking and financial products (third line forcing).

**Tabcorp Manager Pty Ltd** (N90786) Offered to supply a TAB kiosk and related services or EBTs to agents on condition agents offered supply will acquire broadcasting services from Sky Channel Pty Ltd (third line forcing).

**Mayne Nickless Ltd** (N40404) Proposed that customers would acquire one or more National Card Products from the National Australia Banks and would use the card to purchase the services (third line forcing).

**Sta Travel** (N40400) Requirement for applicants participating in their work abroad program to purchase, with Sta Travel, an insurance policy provided by a specified provider (third line forcing).

**Dingo Blue Pty Ltd** (N90788) Offering a telecommunications and Internet service to customers in relation to the Dingo Blue customer loyalty program (third line forcing).

**Sun Microsystems Australia Pty Ltd** (N30897) Offer to supply computer hardware and software to dealer providing the dealer purchases their requirements for Sun products from Astom Australia Ltd (third line forcing).

**Virtual Communities Pty** (N30895) Provision of computer packages to members and associates of affiliate partners during the period 1 May 2000 to 1 May 2002 (third line forcing).

**BP Blacktown Pty Ltd** (N30896) Offering to supply an interest in land pursuant to a lease on condition the persons will acquire petrol from BP Australia Ltd (third line forcing).

**Mont Park Development Company Pty Ltd** (N40409) Offering to sell residential allotments to purchasers who require to build their house using the preferred builder allocated to the residential allotment chosen by the purchaser (third line forcing).

**Henley Arch Pty Ltd** (N40406) Offering to subsidise its customers home loan up to a three-year fixed annual interest rate at 7.3 per cent by Bank of Queensland providing its customers acquire home construction service from Henley (third line forcing).

**Breeders Rights International Pty Ltd** (N40408) Offering members marketing and management of new fruit or vegetable services on condition that members acquire the services of authorised marketers (third line forcing).

**RACV Finance Ltd** (N40410) An offering to customers who applied for RACV-branded home loans during June 2000 which are settled by 30 November 2000 to have one-year of their RACV home insurance premium reimbursed by RACV (third line forcing).

**Optus Networks, Source Integrated Networks, Optus Mobile, Optus Administration, Cable & Wireless Optus E** (N90789-93) Offering a discount to customers who subscribe for the package known as Business Communications (BCP or BCP Elite Package) (third line forcing).

**BP Mays Hill NSW** (N90794) Offering to supply an interest in land pursuant to a lease on condition that person will acquire petrol from BP (third line forcing).

**Integral Energy Australia, Australia Hotwater and Stove Service Pty Ltd** (N30898-9) Offering a rebate of \$150 to customers who purchase gas appliances or bottled gas connection services from either stores (third line forcing).

**Optus Internet Pty Ltd** (N90795) Offering a discount to customers who subscribe to Internet products by Optus or acquire computer hardware from Pinpoint (third line forcing).

**Westfield Internet Shoppingtown Pty Ltd** (N30900) Offering goods and services via Westfield's Internet Shopping Mall with delivery from central location (third line forcing).

**Colonial State Bank** (N30901) Offering the MLC Masterkey Investment Lending margin lending facility on condition the investor uses the money borrowed to purchase units in MLC MasterKey Unit Trust (third line forcing).

**JB Were & Son** (N90796-7) Offered to accept orders to buy and sell securities via the Internet on condition clients also have a Were securities cash trust account or a JB Were notes account (third line forcing).

**Perpetual Trustees Australia Ltd** (N30902) Offer by PTAL through Macquarie Mortgages as mortgage originator of residential home loan mortgages at a discount to borrowers on certain conditions (third line forcing).

**SOCOG** (N30887) Promotion and sale of tickets to customers of SOCOG by Internet or through the Olympic Call Centre who acquire the credit or debit services of VISA in Conjunction with box office sales (third line forcing).

**News Ltd** (N30894) Sale of Olympic games tickets via entry form/code published in News Ltd newspapers (third line forcing).

**Diners Club Pty Ltd** (N40411) Offer of a discount on charge card to persons who are members of the Members Australia Credit Union (MACU) and acquire services from MACU (third line forcing).

**The Royal Automobile Club of Queensland Ltd (RACQ)** (N40117-8) Offer to private members of RACQ who take out compulsory third party insurance with RACQ-GIO Insurance Ltd of a \$10 discount (third line forcing).

**Australian and New Zealand Banking Group Ltd (ANZ)** (N30903) Proposal to offer their employees the opportunity to enter into a lease agreement known as PCS@home (third line forcing).

**Myers Stores** (N40412) Offer of certain benefits and privileges for fly-buy card holders, current and prospective Myer customers or general public (third line forcing).

**PIVOT Ltd** (N40399) Strategic alliance agreement with Suncorp Metway Ltd.

**Suncorp Metway Ltd** (N40405) Strategic alliance agreement with PIVOT Ltd (third line forcing).

**National Australia Bank Ltd** (N40413) Proposal to offer exclusive benefits to existing members of the Retailers Association of QLD (RAQ) and their employees (third line forcing).

**Whitegum Petroleum Pty Ltd** (N70176) Proposal to supply discount fuel to customers who produce a check-out receipt from Newman Supermarkets (third line forcing).

**Ergon Energy Corporation Ltd** (N50116) In relation to the Century Connection and access agreement (third line forcing).