
Appendix 1 Continuing matters

Enforcement

The following is a list of enforcement matters before the courts — in addition to the new and recently concluded matters reported in the enforcement chapter.

Anti-competitive practices

IMB Group Pty Ltd, Logan Lions Ltd & ors, ss. 47(6), 52. Alleged third line forcing and misleading or deceptive conduct in relation to financial planning and property development.

Interlocutory proceedings commenced 6.9.93. Proceedings withdrawn 17.9.93. Proceedings recommenced 20.9.93.

The Federal Court consolidated this and *ACCC v National Mutual Life Association of Australasia Ltd* (QG No. 77 of 1994) on 12.3.96.

National Mutual admitted that certain conduct alleged in the statement of claim contravened s. 52 of the Act and that it was indirectly involved in the conduct through its agent. National Mutual and the Commission agreed to a settlement. The Commission discontinued proceedings against National Mutual on 3.6.96.

Action against the agents, IMB Group Pty Ltd, and against Logan Lions Ltd and certain individuals continues. Trial in this matter began 7.9.98 and was adjourned on 24.9.98. Trial recommenced on 22.2.99 and was further adjourned on 24.3.99 to resume on 13.9.99. Directions hearing held on 16.6.99 to hear argument on the number and relevance of witnesses called by the respondents, and on the application of s. 51A.

On 17.6.99 Drummond J declared that in this particular case the Commission (applicant) had the persuasive burden of proof in regard to representations made by the respondents about future events. On 24.6.99 the Commission filed and served a notice of motion to appeal this decision. A date for a directions hearing on the notice of motion is pending.

The trial resumed on 13.9.99. The Commission provided its closing submissions on 18.10.99.

On 14.1.00 the respondents filed their written submissions, and on 24.1.00 the Commission filed

applicants' submissions in reply. Judgment is pending.

Australian Safeway Stores Pty Ltd (trading as Safeway) and George Weston Foods Limited (trading as Tip Top Bakeries), ss. 45, 45A, 46, 47, 48. Alleged price fixing, misuse of market power and resale price maintenance in relation to the sale of bread in Victoria.

Proceedings instituted on 23.12.96. The Commission sought penalties and injunctions. On 30.5.97 the Federal Court imposed a penalty of \$1.25m on George Weston Foods Limited, which admitted the contraventions. The trial against Safeway began in February 1999 and finished on 20.10.99.

On 21 December 2001 Goldberg J handed down his decision. He found that the Commission had not proved its case. The decision is complex (370 pages) but in part he found the price fixing was not proved as the Commission had not proved a 'meeting of minds' between identifiable employees. He also found that Safeway's deletion policy was pro-competitive. However, on two occasions, while finding that Safeway had market power and also had a proscribed purpose, he found the company had not invoked its market power to engage in the behaviour.

The court gave the parties until 18.2.02 to lodge any appeals.

Boral Ltd and Boral Masonry Ltd (formerly Boral Besser Masonry Ltd), s. 46. Alleged predatory pricing and misuse of market power in relation to the supply of concrete masonry products.

Proceedings instituted on 6.3.98. The Commission sought a penalty, declarations, injunctions and findings of fact. Trial commenced on 6.7.99. First instance judgment handed down on 22.9.99 holding that Boral Ltd and Boral Masonry Ltd had not contravened s. 46. The Commission appealed to the Full Court of the Federal Court. Appeal heard from 7–10.2.00. Appeal judgment handed down on 27.2.01 unanimously holding that Boral Masonry Ltd's pricing below manufacturing costs contravened s. 46 but dismissing the appeal against Boral Ltd. Special leave to appeal to the High Court of Australia was granted on 14.12.01 and the appeal has been listed for hearing on 21–22.5.02.

Visy Paper Pty Ltd s. 45. Alleged attempt by Visy Paper to induce another business (Northern Pacific Paper) to enter into a market sharing agreement in relation to the collection of recyclable waste paper.

Proceedings instituted 18.11.98. The Commission sought orders against Visy Paper including declarations, injunctions, orders requiring the institution of a trade practices compliance program and costs. It also sought penalties against Visy Paper and two senior employees. Matter was heard 16–18.8.00 and 10–12.10.00 before Sackville J. 20.11.00 Sackville J dismissed the Commission's application with costs. 29.11.00 the Commission appealed. Appeal heard 17–18.5.01 before Hill, North, Conti JJ. On 10.8.01 the Full Federal Court upheld the Commission's appeal. The court found by a 2:1 majority (Hill & North JJ, Conti J dissenting) Visy had breached s. 45, and remitted the matter to the trial judge (Sackville J) to consider what, if any, pecuniary penalty should be imposed (*ACCC v Visy Paper Pty Ltd [2001] FCA 1075*). Visy is seeking special leave to appeal to the High Court.

SIP Australia Pty Limited and Baker Bros (Aust) Pty Ltd, ss. 45(2), 45A, 48. Alleged primary boycott, price fixing and resale price maintenance in relation to the supply of ABAC compressors.

Proceedings instituted on 23.4.99 against Baker Bros and two directors, Andrew Baker and Guy Baker. At 5.5.99 directions hearing Baker Bros admitted to the conduct. At 7.5.99 penalty hearing Baker Bros and Commission presented joint submission seeking injunctions, penalties and a compliance program. On 29.6.99 the court accepted a joint submission and imposed penalties totalling \$60 000 on Baker Bros and two directors. Baker Bros also provided an s. 87B undertaking to implement a trade practices compliance program and pay part of the Commission's costs.

SIP Australia filed its defence on 30.6.99. Trial held on 16–18.10.00 and recommenced on 13.11.00 with final submissions being heard on 14.11.00. Judgment is pending.

Rural Press Limited and ors, ss. 45, 46. Misuse of market power and anti-competitive agreement in relation to the withdrawal of *The River News* regional newspaper from the Mannum area in South Australia.

Proceedings instituted 14.7.99 against Rural Press Limited and its subsidiary, Bridge Printing Office Pty Ltd. in respect of ss. 45 and 46, and its employees Ian Law and Trevor McAuliffe for being knowingly

concerned. Also instituted against Waikerie Printing House Pty Ltd in respect of s. 45 and its directors, Paul and Darnley Taylor, for being knowingly concerned.

On 1.3.01 judgment was handed down in the Federal Court, Adelaide. Rural Press Limited and its subsidiary, Bridge Printing Office Pty Ltd were found to have misused their market power in the market for the provision of regional newspapers in the Murray bridge area in contravention of s. 46. Law and McAuliffe were found to have been knowingly concerned in that contravention. Rural Press, Bridge Printing Office and Waikerie printing House were found to have entered into and given effect to an anti-competitive agreement concerning the circulation of *The River News* in contravention of s. 45. Law, McAuliffe, Paul and Darnley Taylor were found to have been knowingly concerned in that contravention.

On 7.8.01 the Federal Court, Adelaide, imposed penalties of \$600 000 against Rural Press Limited for misusing its market power and for making and giving effect to a market sharing agreement contrary to the Trade Practices Act. Mansfield J also imposed individual penalties of \$70 000 against the general manager of Rural Press' Regional Publishing Division, Mr Ian Law, and its South Australian state manager, Mr Trevor McAuliffe, for being knowingly concerned in the contraventions. Waikerie Printing House and its director, Mr Paul Taylor, were penalised \$75 000 for entering into the market sharing arrangement with Rural Press.

The Rural Press respondents are appealing the court's decision that they contravened ss. 45 and 46 of the Act. The ACCC is appealing the court's decision on penalties. The appeals were to be heard by the Full Federal Court on 4–5.3.02.

ABB Power Transmission, Alstom Australia Limited, Wilson Transformer Company & ors (power transformer proceedings), ss. 45, 45A, 4D. Alleged agreements lessening competition, price fixing agreements, primary boycotts.

Proceedings instituted on 1.10.99. The Commission is seeking various relief including pecuniary penalties and injunctions. Judgment on Alstom Australia Limited and some associated individual respondents was handed down on 6.4.01.

Submissions on pecuniary penalties and other relief were heard for Wilson Transformer Company and some individual respondents 30.7.01–1.8.01. Decision reserved.

The matter continues against ABB Power Transmission and some individual respondents.

Mayne Nickless Ltd, ss. 45, 45A. Alleged agreements lessening competition and price fixing.

On 21.7.00 the Commission instituted proceedings in the Federal Court, Perth, against the West Australian branch of the Australian Medical Association (AMA) and Mayne Nickless Limited when it became aware that the AMA (WA) had, on behalf of visiting medical practitioners at Joondalup Health Campus, entered into negotiations with Mayne Nickless to determine terms and conditions under which the medical practitioners would provide their services for the care of public patients at the Joondalup Health Campus.

In his judgement handed down on 19.10.01 Carr J stated that he was satisfied that the AMA (WA) had engaged in price fixing and primary boycott conduct in breach of the Trade Practices Act 1974 and that Mr Boyatzis and Dr Roberts were each knowingly concerned in the AMA (WA)'s contraventions. On 12.12.01, the Carr J formally ordered the AMA (WA) to pay a pecuniary penalty of \$240 000 and Mr Boyatzis and Dr Roberts each to pay a pecuniary penalty of \$10 000. The court also made orders, by consent, restraining the AMA (WA), Mr Boyatzis and Dr Roberts from engaging in similar conduct in the future and requiring the AMA (WA) to institute and maintain a trade practices compliance program and make a contribution of \$25 000 towards the ACCC's legal costs.

The ACCC's proceedings against the Mayne Nickless Limited group of respondents: Mayne Nickless Limited; former General Manager (Western Australia and Asia) of Health Care of Australia (a division of Mayne Nickless), Mr Martin Day, and former Joondalup Chief Executive, Mr Ian MacDonald, continue with a directions hearing listed for 3.5.02.

Medibank Private Limited, ss. 12BB, 12DA, 12DB, 12DF of the ASIC Act (equivalent to ss. 51A, 52, 53 and 55A of the Trade Practices Act). Alleged false, misleading or deceptive advertising of the price and benefits of health insurance products.

Proceedings instituted on 26.10.00. Directions hearing on 4.12.00. Strike out application heard on 13.3.01. Judgment reserved.

Until recently health insurance, as it fell within the definition of financial product, has been regulated through the ASIC Act but ASIC formally delegated all consumer protection aspects of it to the ACCC. From 11 March 2002 health insurance, provided as

part of a health insurance business, is specifically excluded from the new definition of 'financial product' in the ASIC Act and Corporations Act. The Financial Services Reform Act made these amendments to ensure that health insurance is regulated by the ACCC rather than ASIC.

ABB Transmission and Distribution Limited, ABB Power Transmission, Alstom Australia Limited, Wilson Transformer Company, Schneider Electric (Australia), AW Tyree Transformers & ors (distribution transformer proceedings), ss. 45, 45A, 4D. Alleged agreements lessening competition, price fixing agreements, primary boycotts.

Proceedings instituted on 6.11.00. The Commission is seeking various relief including pecuniary penalties and injunctions. Judgment on Alstom Australia Limited and some associated individual respondents was handed down on 6.4.01.

Submissions on pecuniary penalty and other relief were heard for Wilson Transformer Company, Schneider Electric (Australia), AW Tyree Transformers and some individual respondents 30.7.01–1.8.01. Decision reserved.

The matter continues against ABB Transmission and Distribution Limited, ABB Power Transmission and some individual respondents.

Colgate-Palmolive Pty Ltd, s. 48. Alleged resale price maintenance between 1994 and 1998 to stop Tasmanian retailer Chickenfeed from advertising Colgate lines at cheap prices.

Proceedings instituted on 15.11.00 with the Commission seeking penalty and injunctions. Directions hearings were held on 13.12.00 and 24.7.01 with a further hearing on a date to be fixed in February 2002.

Pauls Limited, Malanda Dairyfoods Ltd and Australian Cooperative Foods Ltd, s. 45. Alleged agreements lessening competition.

Proceedings instituted on 15.8.01. It is alleged that a long-standing price fixing agreement had the purpose and likely effect of controlling or maintaining the price for Pauls and Malanda milk products at the wholesale level in the Northern Territory, and unprocessed milk in the Northern Territory.

It is further alleged that, in the course of negotiations which led to the agreement, Pauls, Malanda and ACF made an arrangement whereby ACF and Malanda would supply to Pauls all the unprocessed milk for the production of Pauls,

Malanda and ACF milk products at an agreed price, and Pauls would process and package it.

Individuals alleged to be knowingly concerned in the conduct were Mr Barry Jardine the corporate secretary of Pauls, Mr Alan McCray the former general manager international of Pauls, Mr Sydney Morgan the general manager, planning and development of ACF and Mr Richard See the former chief executive officer of Malanda.

The ACCC is seeking orders against Pauls, Malanda, ACF and the senior executives including declarations, injunctions, compliance programs, penalties and costs. A directions hearing was held on 18.9.01. A directions hearing regarding an application to change the venue is set down for 4.2.02 and a further directions hearing was set down for 29.2.02.

Woolworths Limited, Coles Myer Ltd, Liquorland (Australia) Pty Ltd, ss. 45(2)(a)(i) and (ii), 45(2)(b)(i) and (ii). Alleged exclusionary provisions and provisions which substantially lessen competition.

On 16.8.01 the Commission issued notices under ss. 155(1)(a) and 155(1)(b) to Woolworths, Coles and Liquorland. These companies declined to provide some documents required under the notices on the basis that they were the subject of legal professional privilege.

On 11.10.01 Woolworths instituted legal proceedings in the High Court against the Commission, by summons, seeking final relief by way of declarations that the words of s. 155 of the Trade Practices Act do not abrogate legal professional privilege; and injunctions to restrain the Commission from taking steps under the s. 155 notices to require the production of documents to which legal professional privilege attaches and from taking any action against Woolworths as a result of the non-production of privileged documents. Woolworths also sought injunctive relief to the same effect as the final injunctive relief sought.

On 19.10.01 Coles and Liquorland instituted legal proceedings in the High Court, by summons, seeking the same interim and final relief as Woolworths in its summons.

On 7 November 2001 Gaudron J of the High Court of Australia granted interim injunctions to Woolworths, Coles and Liquorland which restrain the Commission and the Chairman from taking any steps or doing anything to the extent that the Commission purports to require provision of documents to which legal professional privilege

attaches. Woolworths, Coles and Liquorland provided to the court the usual undertakings as to damages. They also provided a further undertaking that, in the event the proceedings were dismissed, they will not rely on any delay caused by the grant of the interlocutory injunction either for the purpose of any defence in any proceedings brought by the Commission or any other person which relates to any of the allegations described in schedule 2 of the notices; or for the purpose of resisting any relief which may be sought in any such proceedings taken by the Commission or any other person.

The interim injunctions are effective up to and including 15.2.02 on which date the special leave application in Daniels (*ACCC v Daniels Corporation Pty Ltd* (2001) FCA 936 (28 June 2001)) is to be heard by the court.

Unconscionable conduct

CG Berbatis Holdings t/a Farrington Fayre Shopping Centre, s. 51AA. Alleged unconscionable conduct in relation to leasing arrangements.

Proceedings instituted 6.4.98 and the trial was held on 31.1.00 to 3.2.00. French J handed down his decision on 26.9.00 that the conduct of the owners and their representatives, in one of the pleaded cases, was unconscionable.

The owners subsequently appealed and the Commission cross-appealed. A hearing was held on 31.5.01 and judgment handed down on 27.6.01 upholding the appeal and dismissing the Commission's cross-appeal.

On 29.8.01 the Commission sought leave to file an appeal with the High Court.

Samton Holdings Pty Limited, s. 51AA. Alleged unconscionable conduct by a company towards one of its tenants.

Proceedings instituted on 26.2.99. On 29.11.00 Carr J dismissed the Commission's application against Samton Holdings and the six individual landlords. A notice of appeal was filed on 20.12.00 and a hearing held on 28.5.01. The decision was reserved.

Lux Pty Ltd, ss. 51AB, 60. Alleged unconscionable conduct with accompanying harassment and coercion by a company towards an intellectually impaired couple to secure the sale of a Lux vacuum cleaner.

Proceedings instituted on 27.7.00. A directions hearing was held on 19.12.01. Matter to be listed for trial on a date to be confirmed.

Quality Bakers Australia Limited (Buttercup), s. 52. Misleading or deceptive conduct.

Proceedings instituted on 8.3.01 in relation to Buttercup's promotion 'Help Buttercup to Help Our Babies' which ran from 17.3.01 until 01.6.01. On 21.11.01 Finn J in the Federal Court, Canberra, made orders against Quality Bakers Australia Limited.

The Federal Court noted that Buttercup had engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s. 52 of the Act, undertaken corrective advertising, and paid an amount of \$40 000 dollars to the Canberra Hospital. The court also ordered that Buttercup use best endeavours to address compliance through its trade practices compliance program.

Esanda Finance Corporation Ltd and ors, ss. 51AB, 60. Alleged unconscionable conduct with accompanying harassment and coercion.

On 12.4.01 the Commission instituted proceedings in the Federal Court against Esanda Finance Corporation Ltd, Capalaba Pty Ltd trading as Nationwide Mercantile Services, and a number of individuals alleging the use of physical force, undue harassment and coercion, and unconscionable conduct in connection with the supply and payment for services by a consumer. The Commission has also alleged some individuals breached s. 23 of the *WA Fair Trading Act 1987* (which mirrors s. 60 of the Trade Practices Act).

Matter to be listed for trial on a date to be confirmed.

Avanti Investments Pty Ltd and Dr Giuseppe Barbaro (ss. 51AA, 51AC, 52, 53A). Alleged unconscionable conduct, undue harassment or coercion in connection with land, misleading or deceptive conduct, false or misleading representations about land.

Proceedings instituted on 27.4.01. The Commission is also taking action against Dr Giuseppe Barbaro, a former director and representative of Avanti Investments, for allegedly aiding or abetting or being knowingly concerned in the breaches.

The Commission is seeking injunctions, declarations, findings of fact, and orders to vary the market gardeners' agreements so they are no longer responsible for the cost of excess water and so that the rent returns to \$600 per acre per year. It is also

seeking refunds of the excess rent paid by the farmers since the 1994 lease was terminated.

The trial started on 22.10.01 and on 26.10.01 it was adjourned to a date to be fixed. The remainder of the hearing will begin on 25.2.02.

Axxess Australia Pty Ltd, ss. 51AB, 52, 53(c), 53(d), 53(f)). Alleged unconscionable conduct, misleading or deceptive conduct, misrepresentation of sponsorship, approval or benefits of the service, misrepresentation of corporation's sponsorship, approval or affiliation, false or misleading representations concerning the need for the service.

Proceedings instituted 25.5.01 in the Federal Court, Melbourne. The Commission has alleged that the respondent engaged in misleading or deceptive conduct and unconscionable conduct when door-knocking and making unsolicited telephone calls to consumers while selling and marketing residential telephone services.

On 10.8.01 the Commission amended its statement of claim when new allegations of misleading or deceptive conduct came to its attention. These additional allegations are that Axxess and its door-to-door and tele-marketing agents illegally obtained signatures from consumers.

The Commission is seeking injunctions restraining Axxess and a related sales company, Benchmark Sales Pty Ltd, and its door-to-door and tele-marketing selling agents from engaging in or being otherwise involved in similar conduct; declarations that Axxess and Benchmark Sales breached ss. 51AB, 52 and 53 of the Act, and s. 87B undertakings to the Commission that Axxess and Benchmark Sales each undertake an independent review of their trade practices compliance programs, adopt a number of ACA registered ACIF telecommunications industry codes, and costs. The next directions hearing has been set for 21.2.02 before Justice Marshall in the Federal Court, Melbourne.

Suffolke Parke Pty Ltd and Gregory George Bradshaw, ss. 51AC, 51AD. Alleged commercial unconscionable conduct and breach of franchising code.

Proceedings instituted 18.9.01 with the Commission alleging that the landlord, Suffolke Parke Pty Ltd, and a director, Gregory George Bradshaw, refused permission in October 2000 for its tenant, who also happens to be a Cheesecake Shop sub-franchisee, to sublet a separate part of shop premises at Glenelg that it leases from Suffolke Parke Pty Ltd when on two previous occasions it had not objected to such sub-leasing.

The Commission is seeking injunctions restraining the company and Mr Bradshaw from engaging in conduct that contravenes ss. 51AC and 51AD of the Act, damages for the sub-franchisee/tenant, orders directing the company to implement a trade practices compliance program and to maintain it for not less than three years, and costs. A directions hearing was held on 21.12.01 and a further one is listed for 3.4.02.

Consumer protection

Top Snack Foods Pty Limited, ss. 52, 59.

Alleged misleading conduct in relation to selling franchises for the distribution of confectionery.

On 23.9.96 proceedings were instituted in the Federal Court, Sydney, against Top Snack Foods Pty Limited, one of its directors and two of its employees. The court granted leave to the ACCC on 7.11.97 to join two further parties to the action, Nick Kritharas Holdings Pty Limited and Adway Holdings Pty Limited. It also granted the ACCC a *mareva* injunction against Gatsios Holdings Pty Limited, which held all the company assets as trustee of a family trust, and which prevented either party from dealing with or removing certain property from the jurisdiction without first giving the ACCC 14 days notice in writing. A hearing was held on 15–26.3.99.

On 4.6.99 Tamberlin J found that Top Snack Foods had engaged in misleading or deceptive conduct and that George Manera, a director and manager of Top Snack Foods, and Nick Kritharas, general manager, were knowingly concerned. Damages of over \$400 000 were awarded to the ACCC for franchisees of Top Snack Foods. On 29.2.00 and 9.3.00 a liquidator was appointed to Adway Holdings Pty Limited, Top Snack Foods Pty Limited and Nick Kritharas Holdings Pty Limited. George Manera was declared bankrupt on 4.1.00 and on 31.10.00 Nick Kritharas was declared bankrupt. In July 2000 an application was made to the Equity division of the NSW Supreme Court by the liquidator of Nick Kritharas Holdings Pty Limited (funded by the ACCC as creditor) for a declaration that Nick Kritharas Holdings Pty Limited was entitled to be indemnified out of the assets of the family trust in respect of the ACCC's judgment debt, over and above the beneficiaries of the trust. Hamilton J made the above declaration on 25.5.01 and granted a stay of execution until 22.6.01. Assets of the trust will therefore pass to the liquidator of Nick Kritharas Holdings Pty Limited for the benefit of the ACCC as creditor in respect of the more than \$400 000 debt. The ACCC has been notified an appeal is being lodged.

Giraffe World Australia, ss. 52, 57, 61. Referral selling and pyramid selling.

Proceedings instituted on 6.5.98. Undertakings given by Giraffe World on 23.4.99 not to represent that the 'negative ion' mat it marketed produced negative ions, relieved health ailments or promoted health. On 29.6.99 the court found that Giraffe World had breached that undertaking. 26.8.99 Lindgren J found in the Federal Court that Giraffe World Australia Pty Ltd (in liquidation) had engaged in misleading or deceptive conduct, promoted a pyramid selling scheme and engaged in referral selling. Lindgren J also found that Mr Akihiko Misuma, founder and director of Giraffe World and Mr Robin Han, its president and chief executive officer until November 1998, were knowingly concerned in, and a party to, the contraventions by Giraffe World.

In November 1999 the Commission commenced a representative action under the Act on behalf of those persons who suffered a loss as a result of the contravening conduct of Giraffe World and its representatives. The representative action was adjourned in February 2000 pending the outcome of the liquidator's recovery action against the directors.

Billbusters Pty Limited, s. 53. Alleged misrepresentations in relation to the supply of telephone bill-paying services.

Proceedings instituted on 13.11.98. Commission obtained interim restraining orders against Billbusters Pty Limited and its director Miles Kendrick-Smith on 23.11.98, restraining them from making certain representations and dealing with their assets. Those orders were discharged 8.11.99. A directions hearing was held on 11.4.01 and the date for a further hearing is to be advised by the court.

The Australasian Institute, ss. 52, 53(c), 55A. Alleged misleading representations in relation to the promotion and teaching of Internet-delivered degrees.

Proceedings instituted on 21.5.99. On 27.5.99 the Australasian Institute undertook, for the present, to stop promoting the Global Master of Business Administration degree, and to provide the Commission with the names and addresses of students currently enrolled in the course. On 18.6.99 court ordered that mediation take place between the parties. Mediation took place on 19.10.99 and short minutes were agreed to settle the matter. They provided for declarations that the Australasian Institute had engaged in conduct in breach of ss. 52, 53(c) and 55A of the Act and orders that the institute display a corrective notice on its website for six months, provide refunds to certain students and

contribute \$24 000 to the Commission's costs. On 15.3.01 a liquidator of the company was appointed.

Pacific Dunlop Limited (PDL), ss. 52, 75AD. Alleged misleading or deceptive conduct, liability for defective goods causing injuries — loss by injured individual.

Proceedings instituted on 21.1.00. The proceedings were brought under the representative action and product liability provisions of the Act. The Commission is seeking compensation for a consumer who has allegedly developed a serious form of latex (rubber) allergy through the frequent and consistent use of PDL's Ansell brand of household rubber gloves. On 10.10.00 court-ordered mediation was undertaken by the parties, but a settlement was not reached. On 18.6.01 the Federal Court granted leave for the Commission to amend its current application and amended statement of claim to include an action under the misleading or deceptive provisions of the Act (s. 52). On 12.12.01 a further court-ordered mediation was undertaken by the parties. The next directions hearing is scheduled for 18.3.02.

Back to Basics Worldwide Education Aids Systems Pty Ltd, s. 59(2). Alleged misrepresentation in relation to profitability of a business.

On 17.5.00 the Commission filed criminal proceedings in the Federal Court in Adelaide against Queensland based Back to Basics Worldwide Education Aids Systems Pty Ltd, Hartwich Pty Ltd, and company directors John Moon (aka John Croke) and Wayne Baker.

A trial was set down for 30.3.01 to 5.4.01. On 30.3.01 the defendants pleaded guilty and penalty submissions were made. Spender J reserved judgment.

Rod Turner Consulting Pty Ltd, ss. 52, 53(e), 53(d). Alleged misleading or deceptive conduct, misrepresenting prices in relation to the New Tax System and misrepresenting a corporation as having approval or affiliation.

Proceedings instituted on 3.7.00 in the Federal Court, Melbourne, against an accountancy firm and its principal, Mr Rod Turner, over representations about how the New Tax System will affect residential rents and water rates.

The Commission is seeking declarations that the conduct is unlawful, injunctions restraining the respondents from making similar statements and orders that the respondents take corrective action and apologise to the affected tenant.

Emerald Ocean Distributors Pty Ltd, Slendertone Health and Beauty Pty Ltd, ss. 51A, 52, 53(c). Alleged false and misleading representations by a firm about the benefits of electronic muscle stimulation products.

Proceedings instituted on 19.7.00. A directions hearing was held on 18.12.01. Leave was granted to the respondents to seek to join the parent company, Bio Medical Research Ltd located in Ireland, as a cross respondent to the action and to serve notice outside of Australia and in Ireland. Orders were made that the cross-claim be listed for programming orders and for determination on whether the cross-claim be heard together with the trial of the action. Orders were also made that the respondents provide further and better discovery of documents related to the design, placement of and/or payment of advertisements in the 'women's health' and 'ultrafit magazine', the pamphlet and the website.

A directions hearing was held on 28.2.02.

Australian Industries Group Pty Ltd t/a Half Price Shutters, ss. 51AC, 51AD, 52, 59(2). Alleged misleading or deceptive conduct, unconscionable conduct and contravention of the mandatory industry codes by Australian Industries Group t/a Half Price Shutters, Tony Gullotti (national manager) and Robert Keirle (a former director).

Proceedings were instituted on 4.8.00 and a directions hearing held on 8.2.02.

David Zero Population Growth Hughes t/a Crowded Planet, ss. 52, 53(c) and 53(d). Alleged misleading or deceptive conduct, misrepresentations about the performance characteristics of goods and about sponsorship.

Proceedings were instituted against Mr Hughes on 30.8.00. The Commission alleged he had engaged in misleading or deceptive conduct in that he had represented on his Internet site that the Commission had approved Crowded Planet's operations. The Commission does not give approval to individual businesses.

Subsequent to this the Commission became aware that Crowded Planet was supplying Schedule 4 oral contraceptives over the Internet. Because of the health risks associated with oral contraceptives, it is illegal to supply them without a prescription in Australia.

On 9.11.00 the Federal Court made interlocutory orders against Mr Hughes, restraining him from supplying oral contraceptives to consumers within Australia. On 22.11.00 the Commission instituted

contempt of court proceedings against Mr Hughes and a final hearing was held on 14.12.00. On 2.2.01 judgment was handed down in the contempt proceedings. Mr Hughes was found to be in contempt of court and was sentenced to two weeks imprisonment. The warrant lay in the registry for 30 days to allow him further time to comply with the court's order. On 9.3.01 this warrant was executed and Mr Hughes was sent to prison for two weeks.

The final hearing for this matter was held over 2-3.8.01. The matter is currently awaiting judgment.

Michigan Group Pty Ltd, Immobiliare (trading as the Queensland Juice Company), Yeppoon Pty Ltd and ors, ss. 52, 53(a), 53(bb), 53(c), 53(d), 58 and 59. Alleged misleading or deceptive conduct and misrepresentations in relation to the promotion, sale and distribution of commercial orange juice machines.

On 6.10.00 the Commission instituted proceedings in the Federal Court, Brisbane.

The Commission is seeking court orders, including declarations and injunctions. The trial started on 10.12.01 and on 14.12.01 it was adjourned to 18.2.02 for one day and then to 15.4.02-19.4.02.

Commercial and General Publications Pty Ltd, ss. 58, 64(2A). Alleged asserting of a right to payment for unsolicited services without reasonable cause to believe that there was a right. Alleged acceptance of payments for such services without being able to supply.

Proceedings commenced 17.1.01 against Commercial and General Publications and its director, Anthony Robert Hassett, in the Federal Court, Hobart. Directions hearings were held on 8.6.01 and 21.8.01. Proceedings reinstated 28.9.01 against Commercial and General Publications and Mr Hassett incorporating a further 32 charges against each party. Directions hearings were held on 8.10.01 and 23.10.01. Trial set down for 15-19.4.02.

Signature Security Group Pty Limited, ss. 52, 53(c), 53(e), 53(d), 53(g). Alleged misleading or deceptive conduct, cash price to be stated in certain circumstances, false or misleading representations, alleged breach of s. 87B undertakings.

Proceedings instituted on 19.3.01. The Commission is seeking court orders including injunctions restraining Signature from making similar misrepresentations in the future; declarations that Signature has contravened the relevant provisions of the Act; orders that Signature publish and broadcast

corrective advertisements in newspapers and on the same radio stations as the original advertisements appeared; compensation for affected consumers, one requiring Signature to comply with its undertaking given pursuant to s. 87B of the Act, and one requiring Signature to implement a compliance program at its own expense.

Directions hearings were held on 11.4.01, 15.6.01, 3.8.01 and 2.10.01. Matter listed for hearing 2-3.4.02.

Info4pc.com Pty Ltd, ss. 52, 56, 58. Alleged misleading or deceptive conduct, bait advertising and accepting payment not intending to supply.

Proceedings instituted on 23.1.01 when the Commission asked for an interim injunction in the Federal Court, Adelaide. A hearing on 24.1.01 removed the matter to the WA Federal Court. An ex parte interim injunction restrains the company from, among other things, advertising and accepting orders for computers and/or upgrades, and freezes the company's business bank account.

Two motions for contempt of court have been heard and the Commission is waiting for judgment.

Will Writers Guild Pty Ltd, ss. 51AD, 52, 53(g). Alleged failure to comply with mandatory franchising code of conduct, false or misleading representations.

Proceedings instituted on 26.3.01 in the Federal Court, Hobart, against WWG and its director, Sidney Murray. Directions hearings were held on 5.6.01 and 21.8.01. At a directions hearing on 18.10.01 the proceedings were stayed until completion of separate criminal proceedings instituted by the Commission against the parties on 26.9.01. A directions hearing was held on those proceedings on 26.10.01. A trial date in 2002 is yet to be set.

Mr Stephen Henry Wayt, ss. 52, 53. Alleged misleading or deceptive conduct, false or misleading representations.

Proceedings instituted on 5.4.01. The Commission is alleging that a fax sent by Mr Wayt was likely to mislead or deceive recipients into believing that COM.AU.REGISTER was responsible for registering Internet domain address registration and that it had dealt with those businesses and organisations previously.

The Commission is seeking court orders including declarations that Mr Wayt breached the Act, injunctions to prevent Mr Wayt from making similar representations in the future and to implement a trade practices compliance program in any future

business of which he has managerial control. The Commission is also seeking an order for costs. COM.AU.REGISTER has closed down its website and advised the Commission that all money paid to COM.AU.REGISTER has been refunded to customers.

Directions hearings were held on 12.4.01, 17.8.01 and 12.10.01. In the absence of settlement the matter is set down for a hearing in the Federal Court, Brisbane, on 29.4.01 and 30.4.02.

Guardian Finance, ss. 57, 61. Alleged referral selling scheme and pyramid selling scheme.

Proceedings instituted on 5.4.01. The Commission is alleging that Guardian Finance and Insurance Consultants Pty Ltd promoted a scheme that amounted to an illegal pyramid selling scheme or referral selling scheme. The Commission is also alleging that its sole director, Mr Peter Martin James (also known as Peter St James) was knowingly concerned in the alleged conduct.

At an interlocutory hearing on 12.4.01 in the Federal Court, Brisbane, the Commission sought interlocutory injunctions to prevent Guardian Finance and Insurance Consultants from contravening the pyramid selling provisions of the Act by promoting the scheme in its current form.

At the final hearing the Commission is seeking declarations that Guardian Finance and Insurance Consultants and Mr James breached the Act, injunctions to prevent a repeat of this conduct in future, refunds for affected consumers, the implementation of a trade practices compliance program and costs.

A directions hearing was held on 30.7.01, a case management conference on 23.11.01 and a further directions hearing on 14.12.01.

Greenstar Cooperative Ltd, ss. 52, 53, 57, 58, 59 and 61. Alleged pyramid and referral selling in the promotion of an organic fertiliser product and transaction card, and alleged misleading or deceptive conduct and false representations regarding the transaction card.

The Commission instituted proceedings in the Federal Court on 5.6.01. On 14.6.01 it sought and obtained interim injunctions preventing the promotion of the Greenstar scheme until the matter is determined at trial or earlier order. On 31.7.01 the Commission obtained a mareva injunction freezing the assets of Greenstar and Mr Smith.

On 19.10.01 the 6th, 7th and 9th respondents instituted a motion to have the ACCC statement of

claim struck out as it did not plead direct contravention of the Act by the 6th, 7th and 9th respondents. This motion was withdrawn following the ACCC filing submissions opposing the motion.

On 11.12.01 Nicholson J made various programming orders for the matter to proceed towards trial.

Medical Benefits Fund of Australia Ltd (MBF) and John Bevins Pty Ltd, ss. 52, 51A, 53(c), 53(g), 55A. Alleged misleading or deceptive conduct, representations as to future matters, misrepresentation of performance characteristics, accessories, uses or benefits, misrepresentation of warranties, conditions, guarantee, right or representation of warranties, conditions, guarantee, right or remedy, certain misleading conditions in relation to an MBF print and television advertising campaign, conducted by John Bevins Pty Ltd.

Specifically, the Commission has alleged that MBF engaged in misleading or deceptive conduct and made false representations by advertising financial services in breach of ss. 12DA, 12DB and 12DF of the *Australian Securities and Investment Commission Act 1989*. It is alleged that John Bevins Pty Ltd, an advertising agency, was knowingly concerned in the alleged breaches.

Proceedings were instituted on 5.2.01 and discovery orders were made on 12.6.01. A hearing is to be held 3–5.6.02.

Solutions Software International Pty Ltd & ors, ss. 51AB and/or s. 51AC, 52, 53(c), 53(d), 53(e), 59(1). Alleged unconscionable conduct, misleading or deceptive conduct, misrepresentation of performance characteristics, uses or benefits, misrepresentation of approval or affiliation, misrepresentations concerning price, misleading statements about work-at-home schemes.

Proceedings instituted on 29.6.01 in the Federal Court, Brisbane, against Solutions Software International Pty Ltd and related companies, formerly known as Acepark Pty Ltd and Offtrack Investments Pty Ltd. Proceedings were also instituted against former directors, Robert James Price and William Greig Millar, and the former Offtrack Investments Sales Manager, Ronald James Curtin.

The Commission is seeking final relief in the form of declarations, permanent injunctions and orders for refunds of the purchase price of the software. It is also seeking corrective advertising, compliance with a s. 87B undertaking previously accepted from Acepark, implementation of a trade practices compliance program and costs.

At a hearing held on 21 September 2001 the Federal Court granted interlocutory injunctions, by consent, restraining the respondents and their servants and agents from being involved, directly or indirectly, with the making of false or misleading representations about the software and, in particular, that the software and any substantially similar software has an average strike rate of greater than 58 per cent in selecting successful place bets.

A trial date has been set down for 2.9.02.

Multigroup Distribution Services Pty Ltd & ors, ss. 51A, 52. Alleged representations as to future matters, false or misleading conduct.

Proceedings instituted on 11.7.01. Individuals alleged to be knowingly concerned in the conduct are Mr John O'Neile and Mr Malcolm Roberts.

The Commission alleges that between January and September 1999, Multigroup Distribution Services Pty Ltd misled or deceived, or were likely to mislead or deceive Mr Wayne Parker, a director of Parker Freight Express Pty Ltd about the provision of a transport contract in North Queensland to Parker Freight Express Pty Ltd.

The Commission is seeking declarations, injunctions, compensation for Parker Freight Express, orders to implement a trade practices compliance program and costs.

A directions hearing was held on 3.8.01. The matter was listed for directions at a date to be fixed after 22.10.01.

Berri Limited, ss. 52, 53(a), 53(eb), 55. Alleged misleading country of origin claims.

Proceedings were instituted on 13.8.01. It is alleged that between March 1999 and June 2000 Berri supplied Coles Supermarkets Australia Pty Ltd with Farmland brand orange juice concentrate that was labelled 'Made in Australia from Australian Fruit Juice'. It is alleged that the product contained imported juice.

The labelling on the Farmland brand orange juice concentrate product was changed around June 2000 to 'Made from a blend of quality Australian and Imported fruit juices depending on seasonal availability'. It is alleged this and similar labelling, which has also appeared at various times on apple and other juice varieties sold under the Farmland, Just Juice and Sunburst brands was misleading because Berri failed to use so far as available a majority of Australian produce in these products. It is alleged in some instances that several of the products contained no Australian juice.

The Commission is seeking declarations from the court that the labelling was misleading and injunctions restraining Berri from making similar representations in the future. It is also seeking court orders requiring Berri to publish corrective advertisements in national daily newspapers informing consumers of the misleading conduct; and requiring Berri to implement a corporate compliance program.

Directions hearings were held on 17.8.01, 17.9.01 and 3.12.01. A further directions hearing was listed for 4.3.01.

SkyBiz.Com Inc. (Skybiz), ss. 52, 57, 59, 61.

Alleged misleading or deceptive conduct, referral selling, misrepresentations about the profitability or risk of a home-based business, pyramid selling.

Proceedings instituted on 18.9.01. The court documents were served through the US court-appointed receiver for SkyBiz.Com Inc.

The Commission alleged that SkyBiz.Com Inc. breached the Act by operating and promoting the Skybiz home business scheme as a pyramid selling scheme. It is alleged participants in the scheme paid SkyBiz.Com Inc. US\$100 for a website and that SkyBiz.Com Inc. claimed participants could then earn a substantial income for introducing new consumers into the scheme.

A directions hearing was listed for 2.3.02.

Mitre 10 Australia Limited, ss. 52, 53(e). Alleged misleading or deceptive conduct, false or misleading representations about the price of goods and services.

Proceedings instituted on 24.9.01 with the Commission alleging that Mitre 10's '15% OFF STOREWIDE' and '15% Off everything' advertising campaign run in connection with its sale held on 15, 16 and 17 June 2001 failed to disclose or to disclose adequately that the usual or marked price of everything at Mitre 10 outlets was not reduced by 15 per cent.

The Commission is seeking court orders, including findings of fact; a declaration that Mitre 10 breached the relevant provisions of the Act; injunctions restraining Mitre 10 from advertising in the same way in the future; orders that Mitre 10 publish notices on television and in newspapers advising of the conduct; an order requiring Mitre 10 to implement a trade practices compliance program; and costs. A directions hearing was held on 7.12.01.

4WD Systems Pty Ltd and 4WD Systems Australia Pty Ltd, ss. 51AC, 52. Alleged unconscionable conduct, misleading or deceptive conduct and failure to meet requirements of applicable industry code.

Proceedings instituted on 26.9.01 alleging unconscionable conduct and misleading or deceptive conduct affecting franchisees in the automotive industry. The proceedings also allege that the franchisors have breached the franchising code of conduct. The businesses allegedly affected by the conduct are located in Alice Springs NT, Rockhampton Qld, Canningvale WA, Traralgon Vic, Beresfield NSW and North Auburn NSW.

The Commission is seeking orders that the companies refund in full all monies paid by the franchisees and compensate the franchisees in full for other losses sustained as a result of the purchase of a franchise, injunctions restraining the companies from repeating the alleged conduct, implementation of a compliance program and costs.

Directors of the companies, Mr Raleigh Hoberg and Mr Thomas Hewitson, have been joined to the proceedings as being involved in the alleged contraventions.

A directions hearing was held in the Federal Court in Adelaide on 12.10.01. A further directions hearing has been set down for 20.2.02.

Woolworths Ltd, ss. 52, 53(eb). Alleged misleading or deceptive conduct, misleading representation concerning the place of origin of goods.

Proceedings instituted 29.10.01. Woolworths had run a 'beefing up the economy' advertising campaign which appeared in and distributed in the north-west and New England regions of New South Wales. The Commission alleged that advertisements run by Woolworths in rural newspapers including *The Land*, the *Tamworth Times* and the *Country Leader*:

- misled consumers about the place of origin of beef sold in Woolworths supermarkets in Armidale, Gunnedah, Inverell, Moree, Muswellbrook, Narrabri, Scone and Tamworth;
- misled consumers that the cattle suppliers used by Woolworths were only located in the north-west and New England regions of New South Wales; and
- misled consumers that all the cattle used by Woolworths were fed with grain from the local grain industry.

The Commission is seeking court orders including declarations that Woolworths Ltd had breached the relevant provisions of the Act; injunctions restraining Woolworths Ltd from advertising in the same way in the future; orders requiring Woolworths Ltd to publish corrective advertisements in the publications

in which the original advertisements appeared and to place corrective notices in each of the relevant supermarkets; and costs.

Directions hearings were held on 7.12.01, 14.12.01 and 11.2.02 and a further directions hearing listed for 3.4.02.

World Netsafe, Contempt proceedings.

On 1.11.01 the Commission instituted contempt proceedings against World Netsafe Pty Ltd and its sole director, Terence Butler. Spender J of the Federal Court, Brisbane, made extensive court orders on 8 December 2000 regarding the ATTM Card Scheme which was promoted and marketed by World Netsafe and its Mr Butler. Spender J found that World Netsafe and Mr Butler had breached the Trade Practices Act including ss. 52, 53(aa), 53(c), 53(d), 57, 58, 59 and 61.

During 2001, the Commission was inundated with communications from World Netsafe members who advised that they had not received a refund in accordance with the court orders.

The Commission continued its investigation into Mr Butler's alleged non-compliance with the court orders, and also issued subpoenas to various banks and obtained numerous affidavits from ex-employees and consumers within Australia, as well as some from New Zealand, Canada, United Kingdom, Hong Kong, Japan and Malaysia.

An urgent ex parte application was heard and Spender J ordered that until Friday, 2.11.01 Mr Butler was to be restrained from leaving Australia, was not to approach within 500 metres of any airport or port, and was to surrender all passports held by him to the Registrar of the Federal Court by 2.11.01.

On 2.11.01 consent orders were made on the basis of the following undertakings by Mr Butler:

- Mr Butler would not to leave Australia without first receiving the Commission's written consent;
- Mr Butler would deliver all of his passports to the Registrar of the Federal Court who would hold it or them unless authorised in writing by the Commission to release it or them to Mr Butler; and
- Mr Butler would not, before Friday 9 November 2001, sell or agree to sell his property situated at Brookfield, Brisbane.

On 9.11.01 through his legal representatives, Mr Butler undertook not to sell, dispose or further encumber or otherwise deal with his interest in his

Brookfield property without first giving the Commission five business days written notice of his intention to do so. Spender J also ordered by consent of all parties that Mr Butler:

- complete a statement of the financial position of World Netsafe and a personal statement of his own financial position by 26.11.01;
- deliver to the Registry of the Federal Court a list of documents on the financial position of him and the company on or before 26.11.01;
- attend before the Registrar of the Federal Court to give information and answer questions about his personal property and the property of World Netsafe on a date to be notified by the Registrar.

On 13.12.01 Mr Butler attended the Brisbane Registry to answer financial questions regarding the company. He is due to attend the registry on 7.2.02 to answer questions on his personal finances.

The matter has been listed for trial on 19–22.3.02.

Product safety

Autobarn Pty Ltd, Autobarn Darwin and Dictomax Pty Ltd, ss. 52, 53(a), 53(c), 65C. Alleged misleading or deceptive conduct, misleading representations about the standard, quality of goods, misleading representations about the approval and performance characteristics of goods, product safety standards and unsafe goods.

Proceedings instituted on 31.8.01 alleging that the Raizall3 in 1 Jackramp does not comply with the mandatory product safety standard for portable vehicle ramps. The Commission alleges that the companies engaged in misleading or deceptive conduct and made false representations by advertising that the Jackramp complied with the prescribed consumer product safety standard. The Commission also alleges that the retail outlet, Autobarn Darwin, and the manufacturer/wholesaler, Dictomax Pty Ltd, contravened the Trade Practices Act by supplying a product that allegedly did not meet the requirements of the safety standard.

It further alleged that the Jackramp was supplied with incomplete instructions for use and incorrect labelling, contrary to the requirements of the safety standard. In particular, that the Jackramp was missing several markings including the mandatory safety warning, 'WARNING: USE ONLY ON HARD LEVEL SURFACES' which must be permanently affixed to portable vehicle ramps.

The Commission is seeking a recall of the product by Dictomax. It is also seeking remedies against Autobarn Pty Ltd, Autobarn Darwin and Dictomax Pty Ltd including declarations, injunctions, findings of fact and costs.

Directions hearings were held on 10.10.01, 22.11.01 and 18.2.02.

GST compliance and enforcement

Commodore Homes (WA) Pty Ltd, ss. 51AB, 52. Alleged unconscionable conduct, misleading or deceptive conduct.

Proceedings instituted on 5.4.01. The Commission alleges that in the lead-up to the introduction of the GST, Commodore Homes represented to potential homebuyers that, if they signed up with them, their homes would be built by 1 July 2000 and they would avoid having to pay GST. The Commission is seeking declarations that Commodore Homes' conduct breached the Trade Practices Act, orders restraining Commodore Homes from engaging in such conduct in the future, for Commodore Homes to publish a corrective public notice and implement a trade practices compliance program, refunds of the GST money paid to Commodore Homes by those affected homebuyers, and costs.

The matter was adjourned by consent on 14.12.01. At a hearing on 12.2.02 the court made by consent various orders, declarations and injunctions (to be reported in *ACCC Journal* no. 38).

Adjudication

The following authorisation applications and notifications are under consideration by the Commission. New authorisation and notification matters are discussed in the Adjudication chapter.

Authorisation applications under consideration

Advertiser Newspapers Limited and others (A60020–1) Contracts and rules for the operation of SA newsagency system.

26.3.97 Interim authorisation extended to three months after the date on which the Commission's review of the NSW/ACT, Queensland and Victoria systems is completed.

12.12.97 Commission's review completed.

Interim authorisation to date consistent with Tribunal's decision for arrangements in NSW/ACT, Queensland and Victoria.

Tribunal's authorisation for NSW/ACT, Queensland and Victoria expired 1.2.01.

Advertiser Newspapers Limited and others (A60022) Agreement regarding newsagency territories and termination of agreement to adopt newsagency administration rules.

TransGrid and other NSW applicants, VPX and other Victorian applicants (A90601–12) Proposed National Electricity Market Stage 1 (NEM1) arrangements (comprising the revised NSW code, the revised VicPool Rules, co-extensive rules, aligned provisions and enforcement agreement).

5.3.97 Interim authorisation granted until Stage 2.

10.11.97 VicPool Rules revoked — new interim authorisation granted for amended pool rules which incorporate the Victorian capacity support program.

19.12.97 Amendment to application received.

24.12.97 VicPool Rules revoked and regranted to accommodate new entrants to the Victorian market.

2.2.98 Revision to amendment to application.

25.2.98 Interim authorisation granted to amend NEM1 codes until either of NEM commencement or 1.7.98.

27.3.98 Amendment to application received.

9.4.98 Amendment to application received.

6.5.98 Interim authorisation granted to amended NEM1 codes until earlier of NEM commencement or 1.7.98.

1.12.98 Amendment to application received.

9.12.98 Interim authorisation granted to amend NEM1 codes until 180 days after NEM commences.

Interim authorisation has since lapsed.

Queensland vesting contracts (A90632–6) Queensland electricity vesting contracts between the three major generators and three main retailers from 1998–2001.

14.1.98 Interim authorisation granted until final determination.

Chevron Niugini Pty Ltd and others (A90667–9) Arrangements for marketing of PNG gas, terms of supply to customers.

5.8.98 Interim authorisation granted subject to certain conditions.

3.12.99 Interim authorisation revoked and new interim authorisation substituted — primarily to clarify reporting requirements.

Tarong Energy Corporation (A90677)

Coordination of generator output at times of involuntary load shedding in the Queensland electricity market.

2.12.99 Interim authorisation granted.

Agsafe (A90680–1) Accreditation scheme code of conduct and sanctions process.

30.3.99 Interim authorisation granted until final determination issued.

30.8.01 Draft determination issued.

Allgas Energy Ltd (A90691, A50024–5) Exclusive dealing for aggregation of gas supply from PNG.

The Commission granted interim authorisation to Allgas on 9.6.99 to negotiate contracts to supply PNG gas to Queensland customers. Allgas was not authorised to enter into or give effect to such contracts.

The Commission understands that it is Allgas's intention to bring any such proposed gas sales contracts to the Commission for authorisation and that any proposed gas sales contract would be conditional upon authorisation.

The Showmen's Guild of Australia (A90729) Application for authorisation of the guild's proposed code of conduct for sideshow entertainment at agricultural shows.

CSR Limited (A90734, A90769) Negotiation of cartage contracts for pre-mixed concrete carriers in the West Australian market.

23.11.00 Additional application for authorisation (A90769) lodged (rostering provisions which establish the system for the distribution of CSR's cartage work among its carriers).

20.6.00 Interim authorisation granted.

26.7.00 Draft determination issued.

Real Estate Institute of Western Australia (A70011) Application to authorise member's code of practice, multiple listing service by-laws and standard exclusive agency agreements.

20.7.01 Draft determination issued proposing to deny authorisation.

Chevron Overseas Petroleum Inc. (A40081)

Proposal to commercialise, discuss and establish terms and conditions for offering gas for sale in Australia.

13.10.00 Interim authorisation granted.

Basslink code changes (A90747–9) To facilitate consideration by the Inter-regional Planning Committee of the technical network issues associated with Basslink and to empower NEMMCO to impose any necessary technical requirements on its connection to the mainland grid.

6.12.00 Draft determination issued.

NSW Department of Health (A90754–5)

Authorisation for supply of pathology services to private inpatients in public hospitals.

National Electricity Code Administrator

(A90762–4) Extension of Schedule 9G and Clause 9.35.7 of the code jurisdictional derogations.

28.11.00 Interim authorisation granted.

8.8.01 Interim authorisation revoked and regranted.

Royal Australian College of Surgeons (A90765)

RACS processes for selecting trainees for all specialities in which it conducts training, and for its application processes and assessment guidelines for assessing overseas-trained doctors.

4.5.01 Interim authorisation granted.

Mater Misericordiae Hospital, St Vincent's Hospital and others (A90770–2)

Proposal to operate as a single economic entity following the acquisition of the Mater Hospital by St Vincent's.

20.12.00 Interim authorisation granted.

Southern Sydney Waste Board (SSWB) and Inner Sydney Waste Board (ISWB) (A30204–5)

Eleven councils joint venture. Contract with recycling contractor for provision of dry recyclable materials (DRM). Contracts to be managed by SSWB. Seven councils in the ISWB region, together with ISWB, make single contract with provider of DRM services. Contracts to be managed by ISWB.

Australian Dairy Farmers Federation Ltd

(A90782) Proposing to negotiate pricing and supply terms and conditions for agreements between dairy farmers and the dairy company to which they supply milk.

2.10.01 Draft determination issued.

8.11.01 Pre-decision conference.

Western Sydney Waste Board (A90789)

Proposing to enter into a contract with an operator in respect of the pre-treatment facility, to be known as the build own operate (BOO) contract.

3.9.01 Application withdrawn.

The Royal Australian College of General Practitioners (A90795)

Application for authorisation of a framework agreement to provide broad coverage for general practitioners and other medical practitioners.

24.9.01 Interim authorisation granted.

Adelaide Airport (A90796)

Application for authorisation of a Passenger Facilitation Charge (PFC) Between Adelaide Airport Ltd, Qantas Airways Ltd, Ansett Airways Ltd and Virgin Blue.

National Electricity Code (A90798) Generators bidding and rebidding strategies and their effect on prices.

Inghams Pty Ltd & Others (A90800) Collective negotiation regarding standard growing agreement or agreements in New South Wales.

NSW FRC (A90801–3) NSW Government is seeking authorisation of an amendment to chapter 9 of the NSW derogations of the National Electricity Code — full retail competition.

12.12.01 Draft determination issued.

Queensland Newsagents Federation Ltd (QNF)

(A90804) Proposing to collectively represent newsagent members in their negotiations with suppliers.

National Electricity Code — prudential

amendments (A90805–7) Amendments to the prudential arrangements in the Code to allow market participants facing a call to lodge a cash deposit rather than finding a further bank guarantee. The arrangements set up a security fund.

CSR Limited (A90808) Collective negotiations of owner/driver contracts in Queensland.

Hugo Boss Australia Pty Ltd (A90809) Hugo Boss will grant David Jones premium department store exclusivity for some products within the Hugo Boss Australia product range.

Health Purchasing Victoria (A90811–2)

Proposed calling and awarding of a tender by HPV for the exclusive acquisition of temporary agency nursing staff.

Drycleaning Institute of Australia (A90816–7)
Restriction of the sale of perchloroethylene solvent to accredited drycleaners only.

Notifications under consideration

Advertiser Newspapers Limited (N60023–5)
Arrangements for supply of newspapers published by Advertiser (exclusive dealing).

15.4.96 Consideration in abeyance pending review of authorisation of related conduct.

The Herald and Weekly Times, Advertiser Newspapers, Nationwide News Pty Ltd, Queensland Newspapers Pty Ltd, Advert (N40373–82) Transitional arrangements for distribution of newspapers and magazines.

National Australia Bank Ltd (N40420) Supply of discounted Corporate Express Services on condition that the customer uses a National card product to make the purchase (third line forcing).

The Herald and Weekly Times Ltd (N40421–3) Territorial distribution agreement — retail agency agreements — setting of maximum price for home delivery (third line forcing).

Queensland Newspapers Pty Ltd (N40424–6) Territorial distribution agreement — retail agency agreements — setting of maximum price for home delivery (third line forcing).

Adelaide Newspapers Ltd (N40427–9) Territorial distribution agreement — retail agency agreements (third line forcing).

Gold Coast Publications Pty Ltd (N40430–2) Territorial distribution agreement — retail agency agreements — setting of maximum price for home delivery (third line forcing).

Nationwide News Pty Limited (N40433–5) Territorial distribution agreement — setting of maximum price for home delivery — retail agency agreements (third line forcing).

AGL Electricity Limited, AGL South Australia Pty Limited, AGL Network Payment Solutions Pty Ltd (N70202) Propose to operate Electronic Credit Card & Batch Processing.

Australian Stock Exchange Ltd (N90875) Proposed Options Clearing House Futures Clearing Rules and ASX Futures Exchange Pty Ltd business rules.

AGL Retail Energy Limited, ACTEW Retail, AGL ACT Retail Investments Pty Ltd, AGL Electricity Limited, AGL Energy Sales & Marketing Limited, AGL South Australia, Dingo Blue (N30878–83) Offering discounted gas, electricity, ancillary or telecommunications services on condition that customers also acquire one or more additional services.

AusBulk Ltd (N90896) Proposing to restrict access to AusBulk weighbridge to shareholders of United Grower Holdings Ltd.

Officeworks Superstores Pty Ltd (N90900) Operation of retail stores and catalogue sales business throughout Australia and Internet retail business.

Hallas Trading Pty Ltd (N90889) Proposing to require salon owners, distributors and franchisees to supply only Ella Bache products for skin and sun care.

MC Franchise Systems Pty Ltd (N31121) Requirements for franchisees to use certain software and hardware.

Swinburne University of Technology (N40466) Offer of a Bachelor of Technology and a Diploma of Technology to students who fulfil the requisite entry requirements (third line forcing).

Zone Sport Ltd (N70220) Distribution and sale of sporting goods (third line forcing).

NRMA Insurance Limited (N31123) Provision of hire car services (Hertz) for NRMA and IMA policyholders.

ASX International Services Pty Ltd (N90951) Offering a package of services to brokers who wish to use ASX World Link (third line forcing).

Western Australia Tourism Commission (N70240–51) Proposing to regulate the supply of network entitlements to operators on condition that the tourism operators become members of their local visitor centre.

Amgen Inc. (N90954) Supplying biopharmaceutical products and services to businesses and consumers. Amgen will require Australian employees to use UBS Paine Webber exclusively to execute all cashless stock option exercises.

Greater Union (25 Notifications various) (N70252) Acquisition of goods or services upon presentation of a Greater Union cinema ticket with appropriate advertising.

AMP Bank Limited (N90963) Offers conditional on customers acquiring goods or services from another AMP group company as listed in Schedule 1 (attached see work file).

James Cook University (N90962) Condition of enrolment that students gain and maintain membership of the James Cook University Student Association.

Delfin Holroyd Pty Ltd (N90956, N90967) Development and marketing of residential land and improvements at Walpole Street Merrylands NSW.

Certification trade marks

Under consideration

Consorzio Per La Tutela Del Formaggio Grana Padano (CTM 732270-1) Italian cheeses.

Australian Registered Cattle Breeders Association and Beef Improvement Association of Australia Inc. (CTM 727387) Sale of beef cattle seedlot.

Victorian Conveyancers' Association (CTM 758563) Certification of conveyancing services.

Australian Vine Improvement Association (CTM 720347) Grapevines and cuttings/graftings/cultures of grapevines.

Craft Australia (CTM 746821) Certification of craft products, materials and techniques.

National Safety Council of Australia Ltd (CTM 725527) Certification of audit services of occupational health and safety activities.

The Bio-Dynamic Research Institute (CTM 704565, 709823) Clothing and other apparel made from horticultural crops.

Recording Industry Association of America (CTM 704384) Certification of enhanced CDs, musical sound recordings with accompanying text, graphics and audio-visual images with interactive capabilities.

Standards Association of Australia (CTM 743379) Certification of quality management systems under the 'StandardsMark'.

The Institute of Chartered Financial Analysts (CTM 680354) Financial advising services.

The Pharmacy Guild of Australia (CTM 761785) Quality of business management systems and customer service in pharmacies.

State of Victoria c/- Department of Infrastructure (CTM 769535) Accreditation of road transport passenger services.

Australian Wood Panels Association Inc. (CTM 785600) Wood panels of particleboard and medium density fibreboard.

Meat Research Corporation (CTM 762759) Classification of beef meat and meat products.

Tasmanian Quality Assured Inc. (CTM 795314) Quality assurance of Tasmanian agricultural, horticultural and other primary products.

Migration Institute of Australia Ltd (CTM 786309) Certification of migration advisory services.

National Indigenous Arts Advocacy Association (CTM 772566) Collaboration mark — certification of products carrying indigenous artwork licensed for amendments to the rules of authenticity label for indigenous art and cultural works.

Deer Industry Projects and Development Pty Ltd (CTM 796848) Certification of deer farms and transportation systems.

The Bio-Dynamic Research Institute (CTM 776347) Certification of persons using the application of bio-dynamic methods of agriculture and horticulture.

The Bio-Dynamic Research Institute (CTM 774682) Certification of clothing, headgear and footwear produced using methods approved under Bio-Dynamic guidelines.

Healthy Waterways (CTM 763115) Certification of a wide range of goods and services relating to the use of the Brisbane River and Moreton Bay waterways.

Deer Industry Projects and Development Pty Ltd (CTM 825966, 827816 and 828929) Certification of deer antler, deer meat and deer transportation systems.

Consorzio Del Prosciutto Di Parma (CTM 815585) Certification of 'Parma' ham products.

Cornelis Johaanes & Marcella Maria De Groot (CTM 798087) Certification of installers of a patented locking function for hinged doors or windows.

Prufgemeinschaft Mauerbohrer (CTM 795774) Certification of drills, bits and boring tools for use with machine tools.

Department of Agriculture, Western Australia (CTM 774429–30) Certification of food and beverage businesses involved in the production, processing, transport, storage, distribution and sale of agricultural, horticultural and forestry products.

Australian Pork Corporation (CTM 492376) Amendment to the rules and licence agreement.

Australian Lowline Cattle Association Inc. (CTM 813064) Certification of lowline cattle producers.

Wireless Ethernet Compatibility Alliance Inc. (CTM 492376) Certification of Wireless Local Area Networking (WLAN) equipment as interoperable with each other.

Community Child Care (CTM 836887) Certification of child care centres as being community owned.

International Standards Certification Pty Ltd (CTM 816463–4, 816838) Certification of quality management system.

National Office for the Information Economy (CTM 841106) Certification to provide users with the comfort that their digital signatures have been issued meeting stringent standards.

The Institute of Inspection, Cleaning and Restoration (CTM 789517) Certification of technicians and firms within the carpet and upholstery cleaning industry.

Deer Industry Projects and Development Pty Ltd (CTM 836187) Certification that processed deer antler is Australian in origin and has been farmed and removed in accordance with certain standards.

US Environmental Protection Agency (CTM 787534) Certification of Energy Star Program to promote the manufacturing and marketing of energy-efficient computer equipment.

Certified Financial Planning Board of Standards (CTM TM0097) Certification of financial planners as being trained, tested and disciplined to certain standards.

National Archives of Australia Standards (CTM 752089) Variation to rules governing CTM which certifies that paper and similar products are of archival quality.

Free Range Egg and Poultry Association of Victoria (CTM TM 0098) Approval of rules governing CTM application no. TM0098).

The Earthmark Institute (CTM 868315–7) Certification of marks designed to promote the marketing, sale and use of 'environmentally beneficial goods'.

Australian Institute of Risk Management (CTM 862543) Approval of accreditation scheme for risk management consultants.

AAA Tourism Pty Ltd (CTM 797184–797189) STARS accommodation classification scheme.

Australian Pilates Method Association (CTM 725018) Approval of accreditation system for Pilates Method instructors and practitioners

Gaming Laboratories International (CTM 832536 and 880902) Approval of scheme for certifying gaming equipment as meeting certain standards

Commonwealth Department of Industry Science and Resources (CTM 451318–9) Assignment of Australian Made Logo to Australian Made Campaign Ltd.

Australian Meat and Livestock Corporation (CTM 446910, 471181, 544019) Change of name.

Australian Environmental Labelling Association Inc. (CTM 890745) Rules for consideration.