

Appendix 2 Public information

This appendix contains lists of:

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

Speeches

Commission Chairman Allan Fels

Efficiency in delivering health care: The professions, competition and the ACCC. Centre for Health Program Evaluation, Monash University. 8 November 2001.

The ACCC, airports and aviation: current regulatory and competition issues. Airports and Aviation Outlook 2001 Conference. 12 November 2001.

E-commerce: meaningful regulation and the information economy. ACCC E-commerce conference. 19 November 2001.

Efficient energy markets: The ACCC, competition and regulatory issues. Inaugural Conference of Energy Users' Association of Australia. 19 November 2001.

Launch of the Telecommunications Law Centre's second edition of Australian Telecommunications Regulation. 6 December 2001.

Commissioner David Cousins

Online competition. ACCC E-commerce conference. 20 November 2001.

Commissioner John Martin

Monitoring rail access and competition arrangements. Rail Access and Competition Conference 2001. 12 December 2001.

Commercial unconscionability and the Trade Practices Act. Leasing Technical Conference of the Australian Equipment Lessors Association. 15 November 2001.

Commissioner Rod Shogren

Completing the national electricity market. Distribution 2001. 12 November 2001.

For copies of speeches please contact
Chas Savage on (02) 6243 1136

Media releases

- 273/01 Federal Court finds that Canberra real estate agency engaged in misleading conduct. 2.11.01
- 274/01 ACCC gives green light to north-west Victoria gas tender. 2.11.01
- 275/01 ACCC alleges misleading conduct by NRMA Health, SGIC Insurance, SGIO Insurance and Saatchi & Saatchi Australia. 6.11.01
- 276/01 ACCC not to intervene in the proposed acquisition of Linencare by the Spotless group. 8.11.01
- 277/01 Health sector among professions scrutiny. 8.11.02
- 278/01 Domaine Homes refunds \$1.9 million GST to 260 new home buyers after ACCC legal action. 9.11.01
- 279/01 ACCC hosts e-commerce conference. 9.11.01
- 280/01 Extraordinary year in Australian aviation: ACCC. 11.11.01
- 281/01 Improved services, facilities at Sydney airport. 12.11.01
- 282/01 Tasmania set to enter national electricity market. 15.11.01
- 283/01 ACCC Powerlink decision supports future of Qld electricity. 19.11.01
- 284/01 Harvey Norman investigation. 19.11.01
- 285/01 Ad Post: ACCC seeks submissions. 20.11.01
- 286/01 ACCC smooths way for financial services reform. 20.11.01
- 287/01 Court imposes penalties and costs of \$210 000 for breach of secondary boycott provisions of Trade Practices Act on MUA. 21.11.01

288/01	Airlines investigation update. 22.11.01	307/01	ACCC levels playing field for mobile regulation. 10.12.01
289/01	European Commission fines vitamin cartels — Australian implications. 22.11.01	308/01	IPMG/PMP merger: no ACCC decision. 12.12.01
290/01	Interstate rail reform on the right track: ACCC. 22.11.01	309/01	ACCC stops misleading mobile phone advertisements. 13.12.01
291/01	Don't bag the standard. 23.11.01	310/01	ACCC gives final approval to collective bargaining arrangements by Qld Dairy Farmers. 14.12.01
292/01	ACCC not to intervene in the global merger of Avery Dennison Corporation and Jacksteadt Holdings GMBH. 23.11.01	311/01	ACCC and Boral. 14.12.01
293/01	Two-tier marketers face ACCC action. 29.11.01	312/01	ACCC welcomes Reserve Bank consultation document on proposals to reform credit card schemes. 14.12.01
294/01	ACCC not to oppose SPC/Ardmona merger. 29.11.01	313/01	Panel beaters found to have fixed prices. 14.12.01
295/01	7-Eleven Stores Pty Ltd reduces, freezes prices on grocery items after ACCC concerns. 30.11.01	314/01	Federal Court finds Warner Music, Universal Music had misused their market power, engaged in exclusive dealing to prevent parallel imports of CDs. 14.12.01
296/01	ACCC moves to protect consumers from unlawful GST charges. 30.11.01	315/01	ACCC asks whistleblower to call in. 15.12.01
297/01	Telstra's wholesale ADSL prices falling, but ACCC to maintain watch over competition for high speed Internet services. 30.11.01	316/01	Christmas gifts that don't live up to expectations. 17.12.01
298/01	Epic Energy given extension to provide revised access arrangement for MAPS. 3.12.01	317/01	ACCC watching the Internet over Christmas/New Year. 17.12.01
299/01	National electricity market — rebidding code changes: ACCC strategy, work plan. 3.12.01	318/01	Joint promotions during Franklins sell-down allowed. 17.12.01
300/01	Average price of container stevedoring movements lowest since monitoring. 4.12.01	319/01	'Australian owned' claims declared misleading. 17.12.01
301/01	Code of ethics and practice models of Recruitment and Consulting Services Association Ltd undergo ACCC scrutiny. 4.12.01	320/01	ACCC institutes against Yellow Pages service. 19.12.01
302/01	ACCC updates guide for franchisees. 7.12.01	321/01	ACCC to review proposed price increases for harbour towage services. 19.12.01
303/01	ACCC institutes against Dell Computer Pty Ltd over computer advertising. 7.12.01	322/01	ACCC crackdown on cellulite claims. 21.12.01
304/01	ACCC alleges resale price maintenance, unconscionable and misleading and deceptive conduct against Chaste Corporation Pty Ltd. 9.12.01	323/01	ACCC gives draft approval to showmen's code of conduct. 21.12.01
305/01	Allegations of unlawful conduct in art markets. 8.12.01	324/01	ACCC welcomes release of PC report. 21.12.01
306/01	A Man's Toyshop amends pricing display. 10.12.01	325/01	ACCC not to oppose acquisition of National Rail Corporation and Freightcorp. 21.12.01
		326/01	Court orders Telstra to refund ex-One.Tel customers misled into signing mobile phone contracts. 20.12.01

- 327/01 ACCC and Safeway. 21.12.01
- 328/01 \$40 000 to neo-natal unit after ACCC intervenes in bread promotion. 21.12.01
- 329/01 ACCC allows changes to ad post discounts. 21.12.01
- 330/01 ACCC grants authorisation to WA real estate arrangements. 23.12.01
- 331/01 ACCC advises caution on purchase of some CDs. 22.12.01
- 332/01 Federal Court imposes penalties, costs of \$285 000 on AMA (WA), executive officers for price fixing, primary boycott. 24.12.01

Media releases are available from the Director Public Relations, Ms Lin Enright on (02) 6243 1108, and from the Commission's Internet website at <<http://www.accc.gov.au>>.

Public registers

The Commission is required to create and maintain public registers under the legislation it administers: the *Trade Practices Act 1974* and the *Prices Surveillance Act 1983*.

The Commission also maintains a number of voluntary public registers because it considers the information they contain should be available to the public. One of these registers covers the delegated section of the *Australian Securities & Investments Commission Act 1989*.

Through these registers the Commission remains transparent and accountable in its decision making.

Currently there are more than 20 statutory and voluntary public registers. The information they contain can vary from a few sentences giving a decision only, through to a comprehensive file of many pages.

Indexes and electronic versions are progressively being made available at the Commission's website <<http://www.accc.gov.au/pubreg/pubreg.htm>>.

Mergers examined under s. 50

The following is a list of mergers examined by the Commission during the reporting period. The list of non-confidential mergers examined by the Commission is periodically updated on a public register held at the Commission.

Ensign Services (Aust) Pty Ltd/HealthCare Linen Pty Ltd — market for hiring and/or laundering of flat linen in Perth.

On 6 November 2001 the Commission decided that it would not oppose Ensign's proposed acquisition of HealthCare Linen.

Ensign currently operates a commercial laundry business in Western Australia operating under two trading names, Spotless Linen and Ensign. HealthCare Linen, trading under the name Linencare, is a major supplier of the linen and laundry services to the Western Australian public healthcare sector and the hospitality industry.

As part of its investigation into the proposed acquisition, the Commission conducted extensive market inquiries with submissions sought from both competitors and customers.

Although the proposed acquisition will create a merged entity with a substantial market share, the Commission formed the view that the acquisition was unlikely to substantially lessen competition.

The major area of competitive overlap between Ensign and Linencare is in the provision of linen and laundering services to the healthcare sector, particularly in regard to the major public hospitals. The Commission believes that the combined government healthcare sector has significant negotiating strength with the capacity to exercise countervailing power against the merged entity.

The Commission also noted the presence of a number of other competitors aside from the merged entity with the capacity to service other healthcare providers and the hospitality sector.

SPC/Ardmona — market for canned fruits and tomatoes.

On 10 September 2001, SPC Limited and Ardmona Foods Limited announced to the Australian Stock Exchange that they intended to merge their canned fruit processing and retailing activities.

The Commission was of the view that there was an overlap in the national market for the:

- 1) supply of deciduous canning fruit;
- 2) supply of canning tomatoes;
- 3) manufacture, wholesale and retail of processed fruits;
- 4) manufacture, wholesale and retail of processed tomato produce.

On 13 November 2001 the Commission determined that the merger was unlikely to result in a substantial lessening of competition in the second, third and fourth markets because:

- the level of imports (or the ability to import) was significant and would serve as a constraint upon the merged entity;
- there is strong countervailing power of supermarkets and other retailers; and
- it is unlikely that the merged firm could significantly and sustainably increase prices or profits.

The Commission concluded that the merger was likely to result in a substantial lessening of competition in the first market because:

- the effective reduction in available customers (canners) for the supply of deciduous fruit from fruit growers from 2 to 1;
- the significant sunk costs, long lead times and difficulty in exiting the market for the supply of fruit to the canners; and
- the presently high countervailing power possessed by the canners.

The Commission recommended that these problems could only be overcome by an undertaking which addressed these concerns, and decided that it would agree not to intervene in the proposed merger only after the signing of such an undertaking.

The undertaking significantly boosts the countervailing power of the growers through the formation of a consultative committee of grower and merged-entity representatives. It will have the power to discuss matters such as seasonal conditions, improvements in productivity, increases and decreases in grower costs, and financial profitability indicators of the merged entity. This consultation process with growers will help canners make pricing decisions and growers to understand the canner's decision-making processes. The undertaking also guarantees the growers' specified quantities of peach and pear fruit supply.

The undertaking began on 1 January 2002 and will expire on 31 December 2004.

Unipoly SA/Fenner Plc — national market for the manufacture and distribution of heavyweight conveyor belting.

On 22 October 2001 an announcement was made to the London Stock Exchange of the proposed

acquisition of the belting division of Unipoly SA, UniPoly Enerka, by Fenner Plc. Both companies manufacture and distribute conveyor belting and have manufacturing facilities in Australia and overseas. Fenner Plc is to pay a consideration equivalent to the net assets of Unipoly Enerka at completion of the transaction (approximately £47.5 million).

The Commission invited comments on the proposed acquisition from competitors and customers of the entities.

While the merged entity will hold a significant market share, the Commission noted that the market was characterised by features that should constrain the merged firm's ability to raise prices. In particular, imports account for 30 per cent or more of the market, and, in addition to the sourcing of belts from other domestic and overseas suppliers, the repair and refurbishment of heavyweight belting can provide a cost-effective alternative to new heavyweight belts. Furthermore, the large, infrequent purchasing patterns of customers affords them with some capacity to exert countervailing power against the merged entity. The Commission considered that the combination of these factors would place significant pressure on the merged entity to maintain competitive levels of pricing and quality.

Therefore on 18 December 2001 the Commission determined it would not oppose the proposed acquisition.

CVC Capital Partners Limited/Aventis Animal Nutrition Pty Ltd — national market for the manufacture, marketing and distribution of vitamins, amino acids and enzymes for animal feed.

The parties contacted the Commission on 26 November 2001 and advised of a takeover bid by CVC Capital Partners Limited (CVC) to acquire the animal nutrition business of Aventis SA (Aventis).

On 18 December 2001 the Commission determined that no substantial lessening of competition will result from the merger because it appears there is no competitive overlap in the business activities of CVC and AAN Australia.

SGS Societe Generale de Surveillance Holdings SA/Scientific Services Limited — markets for the provision of analytical testing services for minerals, precious metals, and environmental purposes.

On 11 December 2001 the Commission decided it would not oppose the acquisition of Scientific

Services Limited (SSL) by SGS Societe Generale de Surveillance Holdings SA (SGS).

On 22 October 2001 SGS announced it had made a public offer to acquire 100 per cent of the shares of SSL.

The main areas of competitive overlap between the two was in the provision of analytical testing services for minerals, precious metals and environmental purposes.

The proposed acquisition will not cross any of the Commission's concentration thresholds for the exercise of market power. On this basis, the proposed acquisition is unlikely to result in a substantial lessening of competition.

Australian Unity Building Society Limited/IMB Limited — market for the provision of financial services in Victoria, New South Wales and Queensland.

On 27 November 2001 the Commission decided that it would not oppose the proposed merger between the Australian Unity Building Society and IMB.

On 15 November 2001 the Australian Prudential Regulation Authority informed the Commission of the transfer of the entire business of the Australian Unity Building Society to IMB.

The Australian Unity Building Society is a Victorian-based building society and formerly owned by the mutual company Australian Unity Limited. IMB is a NSW-based building society that operates in the Sydney metropolitan area, southern NSW, the ACT and the Gold Coast.

Building societies offer a broad range of financial services and products similar to those of banks and credit unions.

The proposed merger will not cross the Commission's concentration thresholds for either the exercise of unilateral market power or combined market power for the provision of financial services, and therefore a substantial lessening of competition is unlikely.

Abacus International Pte Ltd/Sabre Pacific Pty Ltd — national market for global distribution system (GDS) services to travel agents.

On 30 October 2001 the Commission decided it would not oppose the proposed acquisition of a 49 per cent equity stake in Sabre Pacific Pty Ltd (Sabre Pacific) by Abacus International Pte Ltd (Abacus International).

The Commission received a submission from Abacus International on the proposed transaction on 10 September 2001. Under the terms of the transaction, Abacus International will have a continuing option to acquire up to a 100 per cent equity stake in Sabre Pacific at sometime in the future.

Both Abacus International and Sabre Pacific are distributors of a GDS to travel agents. A GDS enables travel agents to obtain information and make airline and other travel reservations, including rental car and hotel reservations.

The proposed transaction could create a merged entity that will cross the Commission's concentration thresholds for the exercise of combined market power and unilateral market power. However, the Commission found that the availability of close substitutes to the GDS services provided by travel agents represents a significant competitive constraint on the conduct of the parties with the Internet becoming the fastest growing distribution channel for travel services.

On this basis, the Commission concluded that the proposed acquisition was unlikely to result in a substantial lessening of competition.

Section 87B undertakings

A 1992 amendment to the Trade Practices Act conferred extensive powers on the Federal Court under s. 87B to enforce undertakings concerning future conduct given by a person to the Commission following a Commission investigation. The Commission keeps a public register of such undertakings.

The Journal lists s. 87B matters placed on the public register in the reporting period.

Recruitment & Consulting Services Association Ltd, ss. 4D, 45. Exclusionary provisions.

The members of RCSA are recruitment agencies, private employment agencies and labour hire firms throughout Australia and New Zealand. The RCSA has produced a code of ethics and practice models which are designed to articulate and encourage ethical standards of behaviour among members.

22.10.01 undertaking that acknowledges that the relevant determination and the suggested imposition of sanctions would potentially have breached the Trade Practices Act; rescinds the suspect principles of the code of ethics and practice models; withdraws

disciplinary action against any member for alleged breach of the code of ethics and practice models; provides compensation to members who have been subject to disciplinary proceedings within the past three years; and implements a trade practices compliance program.

Freedom Group Ltd, s. 65C. Product safety standards and unsafe goods.

4.11.01 undertakings to cease supplying any bean bags, bean bag covers or bean bag beans that do not comply with the mandatory consumer product safety standard; recall the 'Sable Ottoman' bean bag cover, offering refunds or modifications to consumers; implement a compliance program; and to cause to have independently audited both the recall and the compliance program.

Pierre Fabre Australia Pty Ltd, ss. 52, 53(aa), 53(c). Misleading or deceptive conduct, misleading representations about the standard, quality, value, grade, composition, style, model, or history of goods or services, misrepresentations about the performance characteristics of goods.

20.12.01 undertakings to cease making representations about the effect of elancyl Cellu-stop on cellulite; to provide refunds to any consumer who subsequently complains regarding Cellu-stop's effect on cellulite; to replace packaging and container so as to remove any representations about cellulite; and undertake a compliance program.

Flipstock Pty Ltd t/a A Man's Toyshop, Mr Ross Mylrea and Mr Arthur Clarke, ss. 52, 53(e), 53C. Misleading or deceptive conduct, false or misleading representations about the price of goods or services, cash price to be stated in certain circumstances.

5.12.01 undertakings to ensure prices are displayed/quoted inclusive of GST in-store and at agricultural field days; placement of corrective notices in-store advising customers that prices are now GST inclusive; issue letters to VIP Club members advising all prices will be displayed/quoted inclusive of GST; ensure all future advertising placed with newspapers, radio stations or via catalogues and brochures states GST-inclusive pricing; remove GST-exclusive pricing displays from its website; and conduct trade practices compliance training.

Subsection 51(1) exceptions to the Trade Practices Act

Under s. 51(1) of the Trade Practices Act, statutory exception to certain prohibitions is available for conduct that is specifically authorised or approved by a Commonwealth or State Act, or a Territory law, or any regulation under such Act, which expressly refers to the Trade Practices Act. Exceptions made by regulation are limited to two years. As part of the competition policy reform program the Commission is required to provide a cumulative list of such legislation in its annual report.

The *ACCC Journal* progressively updates this list throughout the year.

Commonwealth

Wheat Marketing Act 1989

Trade Practices Amendment (Country of Origin Representations) Act 1998, Item 1, Schedule 3

Trade Practices Amendment (International Liner Cargo Shipping) Act 2000

New South Wales

Registered Clubs Act 1976

Liquor Act 1982

Marketing of Primary Products Act 1983

Sydney Organising Committee for the Olympic Games Act 1993*

Competition Policy Reform (NSW) Regulation 1996

Farm Produce (Repeal) Act 1996

Totalizer Act 1997

Olympic Roads and Transport Authority Act 1998*

Olympics Arrangements Act 2000*

Coal Industry Act 2001

Industrial Relations Amendment (Public Vehicles and Carriers) Act 2001

Industrial Relations (Ethical Clothing Trades) Act 2001

Queensland

Forestry Act 1959

Chicken Meat Industry Committee Act 1976

Sugar Industry Act 1999

Year 2000 Information Disclosure Act 1999*
Competition Policy Reform (Queensland) Public
Passenger Service Authorisations Regulation 2000

Victoria

Gas Industry Act 1994
Gas Industry Act 2001

Tasmania

Electricity Supply Industry Act 1995
Electricity Supply Industry Restructuring (Savings
and Transitional Provisions) Act 1995*

Western Australia

North West Gas Development (Woodside)
Agreement Act 1979

South Australia

Barley Marketing Act 1993
Authorised Betting Operations Act 2000

Northern Territory

Year 2000 Information Disclosure Act 1999*
Electricity Reform Act 2000

*Subsection 51(1) exceptions no longer current.