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# Adjudication

## Authorisations

*The Commission has the function, through the authorisation process, of adjudicating on proposed mergers and certain anti-competitive practices that would otherwise breach the Trade Practices Act.*

*Authorisation provides immunity from court action and is granted if the Commission is satisfied that the practice delivers offsetting public benefits.*

## Determinations

The full reports of the following determinations can be obtained from the ACCC website at:  
<<http://www.accc.gov.au/electric/fs-elec.htm>>.

### Amendments to the National Electricity Code

*In relation to network and distributed resources (A90773–5)*

- Draft determination issued 20 August 2001.
- Final determination issued 13 February 2002.

In December 2000 the National Electricity Code Administrator (NECA) lodged applications for authorisation of amendments to the National Electricity Code with the Commission. The proposed amendments deal with the planning and approval provisions for new transmission network augmentations.

The Commission decided to grant authorisation, conditional upon a number of amendments to the proposed code changes being made. It considered that, subject to the conditions imposed, the code changes are an improvement on the existing network planning and approval arrangements as they provide a clearer, more streamlined assessment framework within which new investment is able to occur.

### National Electricity Code Administrator

*In relation to alternative dispute management systems (A90792–4)*

- Draft determination issued on 5 December 2001.
- Final determination issued 13 March 2002.

On 26 July 2001 the Commission received applications for authorisation from NECA to incorporate alternative dispute resolution arrangements.

As required by the code, NECA commissioned a review of the existing dispute resolution arrangements. The key recommendations of the report are for the code to incorporate:

- a clearer delineation of the existing dispute resolution arrangements to provide, in the first instance, an opportunity for consensual resolution—if consensual resolution is not achieved, the dispute should move quickly to a more formal and predominantly adjudicative process administered by the Adviser and determined by a dispute resolution panel (DRP) established under the code
- revisions to the confidentiality provisions governing disputes to bring them more into line with common law and establish a presumption in favour of disclosure of both the existence of a dispute and the matters under dispute, subject to appropriate protection of commercially sensitive information
- structured arrangements for third parties who are likely to be affected to join a dispute and to bind them to the decisions of the DRP
- proposals to reduce the time and costs involved in disputes including to restrict the role of legal advisers, and to clarify the role and function of the Adviser
- publication of a DRP's final report.

NECA's application covers changes to the code to give effect to the recommendations contained in the final report by Resolve Advisers.

The Commission considers that public benefits may arise from the proposed code changes through

reduced cost, improved cost allocation and reduced time spent resolving disputes under the proposed dispute resolution arrangements.

The Commission also believes that the proposed code changes provide clarification of the code dispute resolution arrangements. Such clarification gives participants a better understanding of their roles, rights and requirements within the code dispute resolution arrangements, enabling participants to:

- resolve disputes in the shortest possible time, without costly interruption to the operation of the participant's business
- have a reduced need for legal advice and representation in the event of a dispute.

The Commission proposes to authorise the code changes subject to conditions addressing issues raised in the consultation process.

The Commission proposes to authorise the code changes until 31 December 2010.

## National Electricity Code Administrator

*Authorisation of amendments to the National Electricity code—New South Wales derogations (A90801–3)*

- Draft determination issued on 23 December 2001.
- Final determination issued on January 2002.

The changes to the New South Wales derogations were:

- introducing transitional arrangements for metering services in the wholesale electricity market
- providing the Local Network Service Providers (LNSPs) with a monopoly for the provision of metering services.

The Commission considers it important to have in place an operating environment conducive to customers being able to decide their retailer of choice for the full benefits of full retail competition to be realised. The Commission also considers that allowing LNSPs to have temporary exclusivity in meter provision would simplify the process for customers who choose to switch retailers, and will minimise disruption to the metering data systems.

The implication of the decision is that all metering services, including meter ownership and installation, meter reading, and metering data agency will become contestable at the end of the derogation,

unless the jurisdictional review determines otherwise for meter ownership.

The period of the authorisation is limited to 31 December 2010. This is the period set down by the Commission in the 10 December 1997 determination for authorisation of the existing National Electricity Code.

## National Electricity Code Administrator

*In relation to prudential amendments (A90805–7)*

- Draft determination issued 19 December 2001.
- Final determination issued 6 February 2002.

The National Electricity Market Management Company (NEMMCO) uses the prudential supervision provision of the National Electricity Code to manage risk associated with the guarantee of payments from market participants. Previously, to satisfy the requirements of the prudential arrangements, market participants needed a bank guarantee from an entity that satisfied the credit criteria as set out in the code.

More recently, it had become acceptable for market participants to lodge cash as a security deposit. This became especially viable for short-term periods of high prices, as it would allow participants to call on cash deposits rather than more costly bank guarantees. It was considered that because of the increasing use of the facility, and sums on deposit, it was prudent to formalise the arrangements. Therefore, the code changes spell out rights and responsibilities of NEMMCO and market participants under the code changes.

In releasing its determination, the Commission considered that the code changes may contribute to enhancing competition in the market, through facilitating more flexible credit support arrangements.

## Notifications finalised

*The following notifications have been allowed to stand.*

**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).

**Hallas Trading Pty Ltd (N90899)** Proposing to require salon owners, distributors and franchisees to supply only Ella Bache products for skin and sun care.

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

**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.

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

**Sustainable Energy Development Authority of NSW** (N90952) Building owners, managers and/or tenants seeking a rating for their building under the Australian Building Greenhouse Rating Scheme (ABGRS) are required to engage the services of an ABGRS accredited assessor. The Sustainable Energy Development Authority of NSW, the Sustainable Energy Authority of Victoria and the Queensland Environmental Protection Agency will administer the accreditation of ABGRS assessors.

**Australian Unity General Insurance Limited** (N90961) Accident insurance for family pets (cats and dogs) for up to six months for claims totalling up to \$4000 per year.

**Vintage Developments Pty Ltd** (N90957) Supply of residential lots on condition the purchaser will acquire membership of Vintage Golf Club.

**AMP Bank Limited** (N90963) Offers conditional on customers acquiring goods or services from another AMP group company.

**RAMS Home Loans Pty Limited** (N90958)  
Various home loan products and conveyancing services offered to RAMS customers.

**Australian Stock Exchange** (N90875–6)  
Proposed Options Clearing House, Futures Clearing House and ASX Futures Exchange P/L business rules.

**Teac Australia Pty Ltd** (N40467) Teac proposes that retailers to which it supplies the TVMate set-top box require consumers purchasing a TVMate to also acquire ISP services from TVMate Australia Pty Ltd.

**Greater Union** (N70252–76) Acquisition of goods or services upon presentation of a Greater Union cinema ticket with appropriate advertising.

**Imperial Tobacco Group PLC** (N70276) Offer to its Australian employees of two share matching schemes. They will be required to open an individual brokerage account with Salomon Smith Barney for the operation of their share transactions.

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

**AlintaGas Sales Pty Ltd** (N70277) AlintaGas customers who purchase a specific evaporative cooling and/or ducted heating system from Mouritz will receive additional outlets. Offer to cease 16 March 2002.

**Caltex Australia Petroleum Pty Ltd** (N31126)  
Caltex will provide rebates to LeasePlan Australia Ltd in return for Caltex Fuel Cards being issued to employees and clients of LeasePlan.

**Delfin Holroyd Pty Ltd** (N90956–67)  
Development and marketing of residential land and improvements at Walpole Street, Merrylands NSW.

**Pacific Access Pty Ltd** (N40469) Will supply advertisements and listings as a package called Yellow Pages @ SmartStart to business or government agencies at a discount. The discount is not available if the various components of the SmartStart package are bought individually.

**Pacific Internet (Australia) Pty Ltd** (N90969)  
Promotion of PacNet Group services. Discount offered in relation to these services. Arrangements between PacNet and various unnamed entities.

**Australian Independent Retailers and Woolworths** (N90959–60) Offer of discounted petrol and other fuels on condition proof of purchase of goods from Australian Safeway Stores P/L, Woolworths Victoria P/L, Woolworths Qld P/L or Woolworths SA P/L.

**Northbridge Pty Limited** (N40468) Offer of house and land packages in particular housing developments requiring the purchaser to enter into separate agreements with particular providers for land purchase and construction.