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# Appendix 1 Continuing matters

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## 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 Proceedings withdrawn 17.9.93.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.

An appeal was lodged by the ACCC on 18.2.02.

**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. Boral Masonry Ltd applied for special leave to appeal to the High Court of Australia. That was granted on 14.12.01. Completion of interlocutory processes and the fixing of a hearing date for the High Court proceedings are pending.

**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 heard by the Full Federal Court on 4–5.3.02. The court has reserved its decision.

**ABB Power Transmission, Alstom Australia Limited, Wilson Transformer Company & ors (power transformer proceedings)**, ss. 4D, 45, 45A. 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.

**Medibank Private Limited**, ss. 12BB, 12DA, 12DB, 12DF of the ASIC Act (equivalent to ss. 51A, 52, 53 and 55A of the TPA). 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. Interlocutory processes continuing with a further directions hearing listed for 23.4.02.

**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. An application to change the venue was heard on 4.2.02. O'Loughlin J found that Darwin was the proper place for the matter to be heard because the 'litigation raises important questions of public interest for the Darwin Community in particular and the territory community in general'. The application for an order for the trial of the proceedings to be held in Brisbane was adjourned with liberty for any party to bring the matter back for further consideration. The next directions hearing was set down for 29.4.02.

**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 those documents 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, effective up to and including 15 February 2002, 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.

On 15.2.02 the matter was back before the High Court. The court ordered that the matter is to proceed by way of stated case and is to be heard together with the Daniels case. The undertakings and interim injunctions are to continue. The matter is listed for hearing before the High Court on 18.6.02.

## 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 the 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 was set down for trial for 22–26.4.02.

**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.

**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 telemarketing 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 section 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. On 13.3.02 Marshall J in the Federal Court, Melbourne, ordered injunctions restraining Benchmark and Axxess from engaging in a range of misleading or deceptive conduct and the companies provided the ACCC with a s. 87B undertaking. (This case will be reported in detail in *ACCC Journal* no. 39.)

**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 alleges that the refusal arose from a franchising dispute unrelated to the tenancy.

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; and 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 directions hearing was set down for 3.5.02.

**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.

Directions hearings were held in the Federal Court, Adelaide, on 12.10.01 and 20.2.02. Court-ordered mediation was tentatively listed for 29.4.02.

**Chaste Corporation Pty Ltd**, ss. 48, 51AC, 51AD, 52, 53(g). Alleged resale price maintenance, commercial unconscionable conduct, contravention of industry codes, misleading or deceptive conduct, misrepresentation of warranties.

Proceedings instituted 26.11.01 with the Commission seeking penalties and a full refund of all monies paid by area managers for purchase of a distributorship. It is also seeking injunctions requiring:

- Chaste Corporation to provide all area managers with disclosure documents and the option for area managers to rescind their agreements within 30 days after receiving that document
- injunctions restraining Chaste Corporation from repeating the alleged conduct
- the implementation of a compliance program by Chaste Corporation
- costs.

The director of the company, Mr Braddon Webb, has been joined to the proceedings as being allegedly involved in the alleged contraventions.

Chaste Corporation Pty Ltd has given undertakings to the Commission that it will:

- not enforce the alleged resale price maintenance provisions of the agreement nor enter into agreements containing the alleged resale price maintenance provision
- not suspend or terminate, or threaten to suspend or terminate, area managers if they meet, or attempt to meet, to discuss Chaste Corporation
- write to all area managers advising them of this.

A directions hearing was held on 14.12.01. Mr Webb filed a defence on 18.1.02, a further directions hearing was held on 15.3.02 and another has been listed for 7.6.02.

**Dataline.net.au Pty Ltd & ors**, ss. 45, 48, 51AA, 51AC, 52, 53(a), 53(aa), 53(c), 53(d), 53(g), 55A, 60. Alleged unconscionable conduct, misleading or deceptive conduct, false representations, resale price maintenance, price fixing, undue harassment.

Proceedings were instituted on 21.12.01 in the Federal Court, Brisbane. The Commission is taking action against Dataline.net.au Pty Ltd, Australis Internet Pty Ltd, World Publishing Systems Pty Ltd, the managing director of Dataline and CEO of Australis, John Lynden Russell, and senior staff.

The Commission has alleged unconscionable conduct, misleading or deceptive conduct, false representations, undue harassment, and resale price maintenance in connection with the supply of Internet related services to small businesses and consumers throughout Australia.

The Commission also alleges that Dataline, Australis and WPS made, or allowed to be made, in their favour debits to consumers' credit card accounts without any authority.

The Commission is seeking final relief in the form of:

- declarations, pecuniary penalties, permanent injunctions, findings of fact, and orders for compensation for affected small businesses and refunds for affected consumers
- corrective advertising
- implementation of a trade practices compliance program
- attendance at a trade practices compliance program
- costs.

On 8.2.02 the Commission's application for interlocutory relief was heard before Drummond J who ordered:

- an injunction restraining Dataline, Australis and WPS from debiting the credit card of any person in connection with their business, without first having received a written authorisation for such a debit bearing a handwritten signature by the apparent credit card holder
- by consent, Dataline and Australis to undertake not to take any step in the proceedings in the District Courts of Queensland and Western Australia against small businesses to have such proceedings set down or entered for trial, or allocated trial dates, or summarily determined, until the conclusion of the Commission's proceedings.

The Commission is awaiting the respondents' defence and the next directions hearing was set down for 3.5.02.

## 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. A directions hearing was held on 18.3.02 and a further one listed for 8.7.02.

**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 (BMR) located in Ireland, as a cross respondent to the action and to serve notice outside of Australia and in Ireland. The respondents have joined BMR as a cross respondent. A directions hearing was held on 4.4.02 on whether to hear the cross claim issue together with or separate to the main action. The decision has been reserved.

**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.

Judgment was handed down on 18.3.02 with orders made against the respondent. (The court's findings will be reported in the Enforcement chapter of *ACCC Journal* no. 39.)

**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 and then to 15.4.02–19.4.02 during which it was completed. Judgment pending.

**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 held 15–19.4.02 and adjourned until 11.6.02.

**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.

**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 & 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 date is to be held 3–5.6.02.

**Signature Security Group Pty Limited**, ss. 52, 53(c), 53(e), 53(d), 53(g). Alleged misleading or deceptive conduct, cash prices 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 under 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 heard 2–3.4.02 and judgment is pending.

**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 these civil proceedings were stayed until completion of separate criminal proceedings instituted by the Commission against the parties on 26.9.01. Directions hearings were held on those proceedings on 26.10.01 and 20.3.02. A trial date is set down for 15–19.7.02 in the Federal Court, Melbourne.

**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 will be held on a date to be fixed after April 2002.

**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. The trial has been set down for 24–28.6.02.

**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.

**The Buyers Group Pty Ltd**, ss. 52, 53(c). Misleading or deceptive conduct, misrepresentations about the performance characteristics of goods.

On 27.7.01 the Commission filed an application in the Federal Court, Brisbane, against the promoters of a health and fitness industry product known as the Feminique Slimming System.

On 10.8.01 Dowset J in the Federal Court, Brisbane, granted interim injunctions against The Buyers Group. The injunctions, gained by consent, restrain The Buyers Group, its sole director Josephus Schoonenberg, and employees Marianne Schoonenberg and David Simons from representing that the Feminique, or any other muscle stimulation product can, among other things: exercise, tone, firm or pull back into shape any part of the user's body without effort by the user; burn up fat; and flatten the user's stomach without any effort by the user. The Commission is awaiting a trial date.

**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, 3.12.01 and 4.3.02 and a further one listed for 22.4.02.

**GIA Pty Ltd t/a Tamar Knitting Mills**, ss. 53(eb), 155(5). Alleged misrepresentations as to place of origin of goods.

Criminal proceedings instituted 2.9.01 in the Federal Court, Hobart, against the company and its managing director, Eric Ian Thompson. It is alleged that the company changed the labelling of Chinese-made shirts, substituting tags representing the shirts were 'Tasmanian' or 'Made in Tasmania by Tamar Knitting Mills' before offering them for sale to the public. It is also alleged the company furnished false information to the Commission in response to a statutory notice.

Directions hearings were held on 8.10.01 and 10.10.01. A trial is set down for 29.7-2.8.02.

**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 25.4.02.

**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 21.9.01 with the Commission alleging that Mitre 10's '15 per cent OFF STOREWIDE' and '15 per cent 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. Directions hearings were held on 7.12.01, 8.2.02, 8.3.02 and 5.4.02. The parties are currently facilitating discovery.

**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
- 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
- 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 Federal Court Registry to answer financial questions regarding the company.

The trial of the contempt proceedings was set down for 22–24.4.02 and 30.4.02.

**NRMA Health Pty Limited, SGIC Insurance Limited, SGIO Limited and Saatchi & Saatchi Australia Pty Ltd**, s. 52. Alleged misleading or deceptive conduct.

Proceedings instituted on 5.11.01 alleging misleading and deceptive advertising of health insurance products.

The Commission alleges the companies, using print advertisements that depicted a woman nursing a new born baby, made representations guaranteeing ‘free delivery’ ‘no matter how advanced your pregnancy is’ to entice consumers to transfer or join their health insurance funds. The Commission is seeking court orders including declarations that the companies contravened the relevant provisions of the *Australian Securities and Investment Commission Act 1989*. (The proceedings have been instituted under ss. 12DA, 12DB(1)(c), 12DB(1)(e), 12DB(1)(g), 12DF of the ASIC Act as opposed to the Trade Practices Act. Health insurance as it falls within the definition of a financial product is regulated through the ASIC Act. However, ASIC has, since December 1998, formally delegated the regulation of all consumer protection aspects of health insurance to the Commission through the use of nominated Commission officers as delegates.)

It is also seeking orders for the health insurance funds to honour the representations that appeared in the advertisements, publication of corrective advertisements, undertakings not to make similar misrepresentations in the future; and an order requiring the companies to review their compliance

programs. Further orders are being sought from the advertising agency, Saatchi & Saatchi, who are co-respondents preventing them from engaging in misleading and deceptive conduct and to implement a trade practices compliance program.

Directions hearings were held on 30.11.01, 18.3.02, 4.4.02 and a further one listed for 29.5.02.

**Oceana Commercial Pty Ltd & ors**, ss. 51A, 51AA, 51AC, 52, 53(a), 53A, 53(c), 53(e). Alleged representations as to future events without reasonable grounds, unconscionable conduct, misleading or deceptive conduct, misleading representations about the standard, quality, value, grade, composition, style, model, or history of goods or services, false or misleading representations in relation to the sale of land, misrepresentations about the performance characteristics of goods, false or misleading representations about the price of goods and services.

Proceedings instituted on 14.11.01 in the Federal Court, Brisbane, against the following respondents, alleging they had been involved in two-tier marketing on the Gold Coast:

- marketer: Oceana Commercial Pty Ltd (at the relevant time named Coral Reef Group Pty Ltd) and its director Christopher Bilborough
- finance consultant: Markfair Pty Ltd (at the relevant time trading as Investlend (Aust)), its manager Dudley James Quinlivan and alleged agent, Shane Andrews
- developer: Advanced Commercial Developments Pty Ltd (at the relevant time named Redwind Pty Ltd) and its directors Dean Cornish and John Grounds
- the Commonwealth Bank of Australia
- lawyers: Gregory Pointon and Rodney Johanson.

The Commission alleges that Oceana Commercial entered into a marketing arrangement with a developer, Advanced Commercial Developments Pty Ltd, for a unit complex on the Gold Coast and then engaged National Asset Planning Corporation (NAPC) (in liquidation) to use two-tier marketing to sell the units. Alleged agents of NAPC Michael Byrom and Peter Eggenhuizen have also been joined in the proceedings.

Solicitors Gregory Pointon from Perrin Pointon Solicitors (who acted for the purchasers) and Rodney Johanson from Short Punch & Grotorix (who acted for the developer) have also been joined in this action. It is alleged that both Mr Pointon and Mr Johanson, when acting for purchasers who had

been referred to their firms by NAPC, failed to tell their clients of the marketing fees and inflated prices. It is further alleged that Mr Pointon did this when acting for the couple from Cairns.

The Commission is seeking court orders including compensation for the purchasers, findings of fact, a declaration that the parties have breached the relevant provisions of the Act; restraining injunctions, implementation by the parties of a trade practices compliance program, and costs.

Directions hearings were held on 3.12.01, 8.2.02 and 20.3.02 and a further directions hearing listed for 7.6.02. The trial is expected to be held in the three weeks beginning 7.10.02.

**Dell Computer Pty Ltd**, ss. 52, 53(e), 53C. Alleged misleading or deceptive conduct, false or misleading representations about the price of goods or services, failure to state cash price.

Proceedings instituted 6.12.01 alleging misleading advertising by Dell over its failure to include a compulsory delivery charge in its advertised prices for computers in magazines, newspapers and on the Internet.

The Commission is seeking court orders including declarations that Dell breached the relevant provisions of the Act, injunctions restraining Dell from advertising in the same way in the future, corrective advertisements, refunds, community service orders, and costs.

Directions hearings were held on 7.2.02 and 19.3.02 and a trial date has been set for 19–20.6.02.

**Pacific Access Pty Ltd**, ss. 52, 53(aa). Alleged misleading or deceptive conduct, misleading representations about the standard, quality, value, grade, composition, style, model or history of goods or services.

Proceedings instituted 14.12.01 in the Federal Court, Melbourne, against Telstra-owned Pacific Access Pty Ltd in relation to the operation and promotion of its Yellow Pages Connect 12451 telephone service.

The Commission alleges that Pacific Access Pty Ltd will refer a priority advertiser ahead of and in preference to a non-priority advertiser even when the non-priority advertiser may be a better or closer match to the search criteria given by the consumer calling the service.

The Commission is seeking declarations from the court the advertisements for the service were misleading and injunctions preventing Pacific Access from making similar representations in future. It is also seeking a court order for corrective advertising,

an injunction requiring Pacific Access Pty Ltd to disclose that priority advertisers get preferential treatment and an order for Pacific Access Pty Ltd to implement a compliance program.

A directions hearing was held on 8.2.02 and a further directions hearing listed for 19.4.02.

**Daewoo Australia Pty Ltd, Mr Eui Hwan Kang and Daewoo Heavy Industries and Machinery Limited**, ss. 51AA or 51AC, 52. Alleged unconscionable conduct and misleading or deceptive conduct.

Proceedings instituted 17.12.01 in the Federal Court, Sydney. The proceedings concern allegations that the Daewoo companies engaged in unconscionable and misleading conduct in connection with the 1998 appointment by Daewoo Australia of Porter Crane Imports Pty Ltd, then trading as Betta Machinery Sales, as its Queensland dealer of Daewoo excavators and wheel loaders. It is further alleged that Mr Kang was knowingly concerned in that conduct.

The Commission is seeking declarations of unlawful conduct, findings of fact, permanent injunctions and costs. It is also asking for orders for the implementation of a trade practices compliance program by Daewoo Australia and for Mr Kang and relevant Daewoo representatives to undertake compliance training. A directions hearing was held on 4.2.02 and a further one was listed for 12.4.02.

**Furniture Direct Pty Ltd & ors**, ss. 52, 53(e). Alleged misleading or deceptive conduct, false or misleading representations.

Proceedings instituted 21.12.01 in the Federal Court, Brisbane, against Furniture Direct Pty Ltd, Furnelect Pty Ltd and the companies' director, Mr Monty Khoury, alleging false, misleading and deceptive conduct in relation to a 'Store Cost Plus \$1' advertising campaign for the Furniture Direct stores owned and operated by those companies.

The Commission is seeking court orders including declarations that the alleged conduct has breached the Act, injunctions restraining the respondents from similar advertising conduct in the future, refunds to affected consumers, implementation of a trade practices compliance program, and costs.

A directions hearing was held on 19.4.02.

## 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 Raizall 3 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 remedies against Dictomax Pty Ltd, Autobarn Pty Ltd and Autobarn Darwin including declarations, injunctions and findings of fact and costs.

Directions hearings were held on 10.10.01, 22.11.01 and 18.2.02. A further directions hearing was set down for 18.4.02.

## 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.

20.12.01 Draft determination issued.

**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.

**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.

7.3.02 Draft determination issued.

**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.

12.3.02 Final determination issued. (A summary of the determination will be in the Adjudication chapter of *ACCC Journal* no. 39.)

**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.

1.11.01 Interim authorisation granted.

20.3.02 Draft determination issued.

**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.

21.11.01 Interim authorisation denied.

**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.

21.3.02 Draft determination issued.

**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.

**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).

**Network Payment Solutions Pty Ltd** (N70202) Propose to operate electronic credit card and batch processing.

**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.

**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.

**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.

**James Cook University** (N90962) Condition of enrolment that students gain and maintain



membership of the James Cook University Student Association.

**Australian Automotive Network Exchange (AANX)** (N90971) Supply of virtual private network services on condition that subscribers obtain carriage services from a nominated service provider and a nominated brand security gateway device.

**Paul O'Connell The Buteyko Institute of Breathing and Health Inc.** (N92970) The Buteyko Institute of Breathing and Health Inc. will provide discounted services to members of Australian Unity.

**Caltex Australia Petroleum Pty Ltd** (N31127) Agreement with Mitre 10 Australia. Issue of Caltex fuel cards (StarCard).

**Water Corporation** (N70293) Tenderers for the provision of services to acquire shares in outgoing service provider's existing service company (third line forcing).

## Certification trade marks

### Completed

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

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

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

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

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

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

**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.

### 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.

**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.

**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.

**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.

**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.

**Prüfgemeinschaft 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 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.

**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.

**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.