
Appendix 2 Public information

This appendix contains lists of:

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

Speeches

Commission Chairman Allan Fels

Recent developments in work of ACCC. Finance and Treasury Association. 15 March 2002.

Cultural protection and competition policy—the case of children's television. The Australian Children's Television Foundation's 20th Anniversary Symposium. 20 March 2002.

The Trade Practices Act: are we becoming a branch office economy? The 2002 Melbourne Institute Economic and Social Outlook Conference, Towards opportunity and prosperity. 4 April 2002.

Advertising and trade practices law: a perspective of the Commission. Advertising Federation of Australia. 11 April 2002.

Storecharter and Indigenous consumer protection issues. Indigenous Consumer Protection Workshop. 22 April 2002.

Commissioner Sitesh Bhojani

Competition and efficiency in health care delivery—role of ACCC. National Health Summit 2002. 25 March 2002.

Commissioner Ross Jones

ACCC agenda and priorities. Centre for Corporate Public Affairs. 21 March 2002.

Challenges to completing a deal. Centre for Corporate Law and Securities Regulation—University of Melbourne. 26 March 2002.

Bank mergers and the Trade Practices Act. Melbourne Business School Current Issues Conference. 12 April 2002.

Overview of four pillars—implications of Trade Practices Act. Melbourne Business School. 12 April 2002.

Mergers—a funny thing happened on the way to Canberra. Melbourne AAR. 15 April 2002.

Overcoming roadblocks to a deal. Centre for Corporate Law and Securities Regulation. 18 April 2002.

What will Australian audiences want? Australian Broadcasting Authority. 30 April 2002.

Commissioner John Martin

Review of unconscionable conduct provisions. Australian Retailers Association Tenancy Forum. 19–20 March 2002.

Commissioner Rod Shogren

Overall, has deregulation worked? Australian perspective. ESAA Conference, Melbourne. 12 March 2002.

Is telecommunication regulation working as effectively as possible? IIR National Competition Policy. 14 March 2002. 19–20 March 2002.

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

Media releases

- 35/02 Small business in focus: ACCC publication. 1.3.02
- 36/02 Qantas comments: Business Sunday. 3.3.02
- 37/02 Release of Foxtel channels by Optus and Telstra. 5.3.02
- 38/02 Federal Court declares lessor acted unconscionably towards lessee market gardeners. 5.3.02
- 39/02 Threats to CD supplies cost record companies \$1m. 6.3.02
- 40/02 ACCC maintains price rises for harbour towage not justified. 7.3.02
- 41/02 ACCC proposes to allow Sydney councils to collectively bargain with recycling facilities. 7.3.02
- 42/02 Roller shutter company ordered to refund franchisees \$77 594. 7.3.02

Appendix 2

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| <p>43/02 Federal Court orders following ACCC action assists small businesses regarding Internet registration. 8.3.02</p> <p>44/02 Westfield alleged to have engaged in unconscionable, misleading and deceptive conduct. 8.3.02</p> <p>45/02 Regulators cooperate to improve privacy compliance. 12.3.02</p> <p>46/02 ACCC confirms draft decision to allow dairy farmers to collectively negotiate. 13.3.02</p> <p>47/02 ACCC not to intervene in the proposed merger between Hewlett-Packard and Compaq. 13.3.02</p> <p>48/02 N.T. Gas waiver proves gas code flexibility: ACCC. 15.3.02</p> <p>49/02 ACCC pursues trustee to enforce Federal Court ruling. 19.3.02</p> <p>50/02 ACCC points spotlight on regional Australia. 19.3.02</p> <p>51/02 ACCC runs out of patience with Telstra's wholesale broadband delays. 21.3.02</p> <p>52/02 ACCC stops 'business opportunity' rip-off. 21.3.02</p> <p>53/02 No inherent conflict between competition policy and legitimate cultural assistance: ACCC. 21.3.02</p> <p>54/02 Federal Court finds Crowded Planet misled consumers over contraceptives. 22.3.02</p> <p>55/02 ACCC improves national electricity code dispute resolution processes. 22.3.02</p> <p>56/02 ACCC institutes against Arnolds Ribs and Pizza Australia Pty Ltd for alleged misleading promotion of franchise system. 22.3.02</p> <p>57/02 ACCC views on Easter petrol prices. 22.3.02</p> <p>58/02 Court agrees that door-to-door sellers illegally 'slammed' telephone customers. 24.3.02</p> <p>59/02 Internet access charge details issued by ACCC. 25.3.02</p> <p>60/02 Consumers need clear insurance information: ACCC. 26.3.02</p> <p>61/02 ACCC takes court action against Cadbury Schweppes over Cottee's cordial labelling. 26.3.02</p> | <p>62/02 Federal Court denies Medibank Private's motion to strike out ACCC case. 26.3.02</p> <p>63/02 ACCC proposes to allow collective negotiation in the NSW chicken industry. 26.3.02</p> <p>64/02 ACCC institutes against Waterman Collections Pty Ltd for alleged misleading and deceptive conduct. 27.3.02</p> <p>65/02 Easter petrol prices. 28.3.02</p> <p>66/02 Further call to whistleblower. 31.3.02</p> <p>67/02 Better dispute resolution for 'e-consumers' needed: ACCC. 3.4.02</p> <p>68/02 ACCC issues discussion paper on interconnection. 4.4.02</p> <p>69/02 ACCC issues views of efficient telecommunications access prices. 5.4.02</p> <p>70/02 International consumer protection network goes after health scams to protect the health of global consumers. 8.4.02</p> <p>71/02 Company offers undertaking for supplying non-compliant vehicle jack. 10.4.02</p> <p>72/02 Advertising agents warned of risks of breaching Trade Practices Act. 11.4.02</p> <p>73/02 Federal Court fines Internet trader for contempt. 11.4.02</p> <p>74/02 No shopfront—no excuse for sloppy net traders. 11.4.02</p> <p>75/02 Victorian taxi operators get choice on cameras. 11.4.02</p> <p>76/02 Tobacco decision: ACCC investigates. 12.4.02</p> <p>77/02 ACCC tidies up mobile regulation. 12.4.02</p> <p>78/02 ACCC alleges anti-competitive boycott arrangement by regional obstetricians to stop 'no-gap' billing. 17.4.02</p> <p>79/02 ACCC to oppose API/Sigma merger. 17.4.02</p> <p>80/02 Regulators push for greater consistency. 18.4.02</p> <p>81/02 ACCC alleges misleading conduct by Internet name group. 18.4.02</p> <p>82/02 ACCC leans toward intervention on line sharing, tells Telstra to get on with it. 19.4.02</p> |
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- 83/02 Federal Court declares debt collection agency misled consumers about debts owed to insurance company. 19.4.02
- 84/02 ACCC calls for closer agency cooperation on Indigenous consumer issues. 22.4.02
- 85/02 ACCC takes court action against Advanced Medical Institute alleging misleading male impotency treatment claims. 22.4.02
- 86/02 Storecharter—a new approach to customer service. 22.4.02
- 87/02 ACCC builds on new regional focus. 23.4.02
- 88/02 Issues paper reviews Victorian gas access arrangements. 23.4.02
- 89/02 ACCC's interim decision allows collective negotiation of new contracts for SA chicken growers. 23.4.02
- 90/02 ACCC enters oil company sites. 24.4.02
- 91/02 ACCC welcomes government proposals on telecommunications competition reform. 24.4.02
- 92/02 ACCC puts the brakes on misleading car ads. 26.4.02
- 93/02 ACCC points spotlight on regional Australia. 26.4.02
- 94/02 ACCC to assess Australia Post's proposed price increases. 26.4.02
- 95/02 US light cigarette case under close scrutiny. 30.4.02
- 96/02 ACCC seeks comment on telecommunications dispute resolution processes. 30.4.02
- 97/02 ACCC obtains Federal Court orders against Autobarn for promotion and sale of unsafe car ramp. 30.4.02
- 98/02 ACCC and Fiji Commerce Commission: MOU promotes cooperation. 30.4.02

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.

Black Cabs Combined Ltd/North Suburban Taxis Ltd—Melbourne metropolitan area markets for pre-booked taxi services to the public, radio booking services to taxi operators, and taxi depot services.

On 6 March 2002 the Commission decided it would not oppose the proposed merger between Black Cabs Combined Limited and North Suburban Taxis Limited.

Both parties have taxi depots in metropolitan Melbourne, North Suburban taxis primarily servicing the northern suburbs of Melbourne, Black Cabs the south-eastern suburbs of Melbourne. Black Cabs provides radio network services to North Suburban affiliated drivers under a bureau services agreement arrangement.

The Commission invited comments on the proposed acquisition from a number of industry participants, including taxi operators affiliated with North Suburban, competing taxi companies, the Victorian

Taxi Directorate, the Victorian Taxi Association and some major customers of North Suburban.

The market concentration for providing radio booking services to taxi operators is unchanged as Black Cabs provides radio booking services for North Suburban under a bureau services agreement. While the Commission's competition thresholds will be crossed for the provision of pre-booked services to the public in the Melbourne metropolitan area, the Commission noted that the parties competed only to a limited extent. Furthermore, the Commission considered that the level of regulation applying to the taxi industry—both on fare prices and quality standards—and the considerable market share held by the largest competitor would act as competitive constraints preventing the merged firm from increasing prices or reducing the quality of its services.

Dai Ichi Kangyo Bank Ltd and Fuji Bank Ltd consolidate under the umbrella of Mizuho Holdings Corporate Bank—financial institutions

The Commission was informed on 21 February 2002 of the pending merger of DKB and Fuji Bank. On 12 March 2002 the Commission decided it would not oppose the proposal.

The transfer of business involves the Sydney branches of the two banks. It results directly from a global merger between these financial institutions and the Industrial Bank of Japan, to form the Mizuho Holdings Corporate Bank.

In Australia, DKB provides corporate banking services, project finance and business advice to companies wishing to enter the Japanese market to establish representative offices and branches or identify joint venture partners or acquisition targets. Fuji Bank established Australian operations in December 2001.

The Commission concluded there appears to be no competitive overlap between DKB and Fuji Bank and therefore a substantial lessening of competition is unlikely.

Hewlett-Packard/Compaq—market for computing products and services.

On 12 March 2002 the Commission decided it would not intervene in the proposed merger between Hewlett-Packard and Compaq.

After conducting extensive market inquiries and consulting with competing suppliers, retailers and consumers it concluded that the proposed merger would not substantially lessen competition.

The Commission noted that the merged entity would continue to face competition from established suppliers such as IBM, Sun and Dell and that the information technology industry is dynamic and characterised by technological innovation and convergence.

ING and ANZ—market for retail and wholesale investment funds.

On 4 March 2002 the Commission was informed that ING and ANZ propose to enter into a joint venture agreement in respect of their funds management, life insurance and distribution operations in Australia and New Zealand.

On 19 March 2002 the Commission decided not to oppose the joint venture.

In reaching its determination the Commission considered that the broad product categories relevant to the joint venture proposal were:

- the Australian market for retail investment funds management
- the Australian market for wholesale funds management.

In reaching its determination the Commission noted that:

- post-acquisition the entity is expected to account for around 9 per cent of the Australian retail investment funds management market with a corresponding CR4 (four-firm concentration ratio) of 49.75
- post-acquisition the entity is expected to account for around 5 per cent of the Australian wholesale funds management market with a corresponding CR4 of 38.31.

The Commission concluded that the proposal is unlikely to result in a substantial lessening of competition.

Pace Farms Pty Limited acquisition of Barter Enterprises Pty Limited's egg business—market for eggs and egg products.

On 19 March 2002 the Commission decided not to oppose the proposed acquisition of Barter Enterprises Pty Limited's egg business by Pace Farms Pty Limited.

After conducting extensive market inquiries, the Commission concluded that the proposed merger was unlikely to result in a substantial lessening of competition. In reaching this decision it noted Barter's position in the market and the fact that

post transaction the firm will continue to face competition from other significant competitors in the market.

Société des Produits Nestlé acquisition of Ski yoghurt brand—market for processing, production and distribution of yoghurt and dairy desserts in Australia.

On 28 March 2002 the Commission decided not to oppose the acquisition of Eden Vale (Australia) Pty Ltd and the Ski brand and trademark by Société des Produits Nestlé. The acquisition was part of an acquisition in the United Kingdom whereby the UK Nestlé Group acquired certain assets from Northern Foods Plc.

Ski is currently produced and distributed in Australia under licence by Dairy Farmers Co-operative Ltd. The licence, held by Eden Vale, was recently renewed and is for a further ten-year period. Dairy Farmers and Nestlé are the second and third largest, by market share, suppliers of yoghurt and dairy desserts in Australia, with National Foods as the current market leader.

Information was sought from customers and competitors of Dairy Farmers and Nestlé. In general very little concern was raised about the proposed acquisition, primarily because of the existence of the licence agreement held by Dairy Farmers. Nestlé has confirmed that the operation of the licence agreement is to remain unchanged after the acquisition.

Given the existence of the licence agreement and Nestlé's assurances that it will not be affected by the acquisition, the Commission considered that the market concentration for processing, production and distribution of yoghurt and dairy desserts in Australia is unchanged.

Mayne Group Ltd/Port Macquarie Medical Imaging—market for diagnostic imaging.

On 2 April 2002 the Commission decided it would not intervene in the proposed acquisition of Port Macquarie Medical Imaging's diagnostic imaging business by Mayne Group Ltd.

Port Macquarie Medical Imaging is the largest provider of diagnostic imaging services in the region. Mayne does not have a presence in diagnostic imaging in the mid-north coast region of New South Wales. Accordingly, the acquisition represents a change of ownership but not a change in the number of competitors.

The Commission further considered that vertical links between Mayne's private hospital activities and

diagnostic imaging did not significantly affect the overall market.

The Commission considered that the acquisition was unlikely to result in a substantial lessening of competition.

Dependable Credit Union Ltd/Members Australia Credit Union Ltd—market for the provision of financial services in New South Wales.

On 9 April 2002 the Commission decided it would not oppose the proposed merger between the Dependable Credit Union and the Members Australia Credit Union.

On 26 March 2002 the Australian Prudential Regulation Authority informed the Commission of the transfer of the entire business of the Dependable Credit Union to the Members Australia Credit Union.

The Dependable Credit Union has its operations based in Sydney. The Members Australia Credit Union has operations in Victoria, New South Wales, Queensland and the ACT.

Credit unions offer a broad range of financial services and a similar range of products to banks and building societies.

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 to occur.

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.

Easybuy.com.au Pty Ltd t/a Bikes Direct, ss. 53(e), 53(g), 65C. Misleading or deceptive conduct, false or misleading representations about the price of goods, consumers' rights and remedies, product safety standards and unsafe goods.

8.4.02 undertakings to issue a new manual to all purchasers, and to institute a recall of faulty bikes, a rectification program and a trade practices compliance program.

Monsanto Australia Limited and Nufarm Australia Limited, s. 50. Transfer of distribution rights.

2.5.02 undertakings from Nufarm Australia Limited and Monsanto Australia Limited to address the ACCC's competition concerns about the proposed appointment of Nufarm as Monsanto's exclusive distributor for Monsanto's Roundup range of glyphosate-based herbicides for agricultural uses.

The undertakings prevent Nufarm and Monsanto from applying for a review of the Minister for Customs' decision in February 2002 to not impose a dumping duty on glyphosate imported from China.

For the next three years Nufarm and Monsanto must also obtain an opinion from an independent adviser on the prospect of success of any proposed glyphosate anti-dumping application before lodging such an application. The undertakings also stipulate that the independent adviser must certify that the proposed anti-dumping application is made bona fide and not frivolously or vexatiously. The independent adviser must be approved by the ACCC and consult with the ACCC in forming their opinion.

Nufarm has additionally undertaken:

- not to supply Roundup or other glyphosate products on the condition that its customers not acquire glyphosate from Nufarm's competitors
- not to withhold supply of Roundup or other glyphosate products for the reason that its customers acquire glyphosate from Nufarm's competitors.

Monsanto has additionally undertaken:

- not to supply its Roundup Ready crop seeds, or allocate licences for their use on condition that customers acquire Roundup or other glyphosate supplied by Monsanto or Nufarm
- not to supply its Roundup Ready crop seeds, or allocate licences for their use on condition that customers not acquire glyphosate from a competitor of Monsanto or Nufarm
- not to withhold supply of its Roundup Ready crop seeds, or withhold allocation of licences for their use, on condition that customers did not acquire Roundup or other glyphosate supplied by Monsanto or Nufarm
- not to withhold supply of its Roundup Ready crop seeds, or withhold allocation of licences for their use, on condition that customers acquired glyphosate from a competitor of Monsanto or Nufarm.

Monsanto and Nufarm have also undertaken to train relevant sales, marketing and management staff on adherence to their respective undertakings.

Golden Sun Australia Pty Ltd, s. 65C. Product safety standards and unsafe goods.

4.4.02 undertakings to implement a trade practices compliance program to reduce the possibility and incidents similar to one in which hydraulic trolley jacks that did not comply with the mandatory product safety standard were imported. The imported jack lacked specific user instructions and safety warnings and carried an incorrect maximum weight lifting capacity.

After the ACCC raised its concerns with the company, it ceased further supply and recalled those it had supplied. The ACCC notes Golden Sun Pty Ltd had supplied only a small number of wholesale customers with the jack and none were supplied to consumers.

Axxess Australia Pty Ltd, Benchmark Sales Pty Ltd, ss. 51AB, 52, 53(c), 53(d) and 53(f). Unconscionable conduct, misleading or deceptive conduct, false or misleading representations.

4.4.02 undertakings by the companies and company directors, Peter Slaney and Steve McGovern, acknowledging that they had breached the Act. They also agreed to review their trade practices compliance procedures, adopt various ACA registered telecommunication industry codes of practice, contribute \$60 000 towards a public education campaign to educate consumers about their rights in relation to transferring telephone companies and pay the Commission's costs. (See Enforcement chapter for further details.)

Hotelcheque Pty Limited, Aussie Breaks Pty Limited, ss. 52, 53(aa), 53(e), 53(g), 53C.

Misleading or deceptive conduct, misleading representations about the standard, quality, value, grade, composition, style, model, or history of goods or services, cash prices to be stated in certain circumstances.

1.3.02 undertakings by the companies to cease their offending conduct, offer full refunds to all affected purchasers, publish a corrective advertisement, and for company management and staff to undertake a trade practices compliance program.

The companies offered for sale a product consisting of a book of hotel accommodation vouchers, each voucher entitling the purchaser to hotel accommodation for two people at the rate of approximately \$5 per person per night twin share.

The product was advertised in television 'editorials' and a radio advertisement. The Commission was concerned that the advertisements failed to adequately inform the audience of the condition that the purchaser and their companion must also buy breakfast and dinner at the hotel in order to qualify for the discounted room rate. This further amount would have been on average \$50.50 per person per day for breakfast and dinner.

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

Trade Practices Amendment (Country of Origin Representations) Act 1998 Item 1, Schedule 3
Wheat Marketing Legislation Amendment Act 1998
Australian Postal Corporation Act 1989
Year 2000 Information Disclosure Act 1999

New South Wales

Sydney Organising Committee for the Olympic Games Amendment Act 1996
Totalizator Legislation Amendment Act 1997 No. 151
Liquor and Registered Clubs Legislation Amendment (Community Partnership) Act 1998
Marketing of Primary Products Amendment (Rice Marketing Board) Act 1998
Marketing of Primary Products Amendment (Wine Grapes Marketing Board) Act 1997
Dairy Industry Amendment (Trade Practices Exemption) Act 1998
Farm Produce (Repeal) Act 1996
Competition Policy Reform (NSW) Amendment (Waste) Regulation 1998

Competition Policy Reform (NSW) Amendment (Grain Marketing) Regulation 1998
Competition Policy Reform (NSW) Amendment (SOCOG and SPOC) Regulation 1998
Competition Policy Reform (NSW) Amendment Regulation 2000
Liquor and Registered Clubs Legislation Further Amendment Act 1999
Olympic Roads and Transport Authority Act 1998
Coal Industry Act 2001
Industrial Relations Amendment (Public Vehicles and Carriers) Act 2001
Industrial Relations (Ethical Clothing Trades) Act 2001

Queensland

Competition Policy Reform (Queensland—Dairy Produce Exemptions) Regulation 1997 (as amended)
Competition Policy Reform (Queensland—Chicken Meat Industry Exemptions) Regulation 1998
Primary Industries Legislation Amendment Act 1999, amending the Chicken Meat Industry Committee Act 1976
Sugar Industry Act 1999
Competition Policy Reform (Queensland) Public Passenger Service Authorisations Regulation 2000

Victoria

Electricity Industry Act 1993
Gas Industry Act 1994

Tasmania

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

Western Australia

North West Gas Development (Woodside) Agreement Amendment Act 1996

South Australia

Authorised Betting Operations Act 2000

Australian Capital Territory

Milk Authority (Amendment) Act 1999 (No. 2 of 1999)

Northern Territory

Year 2000 Information Disclosure Act 1999