
Appendix 1 Continuing matters

Enforcement

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

Anti-competitive practices

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

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 Proceedings withdrawn 17.9.93.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

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

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

Action against the agents, IMB Group Pty Ltd, and against Logan Lions Ltd and certain individuals continues. Trial in this matter began 7.9.98 and was adjourned on 24.9.98. Trial recommenced on 22.2.99 and was further adjourned on 24.3.99 to resume on 13.9.99. A directions hearing was 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.

On 5.4.02 Drummond J handed down his decision. He found that the ACCC had proved its case against the respondents for breaches of s. 52 of the Act, but that the allegations of conduct in contravention of s. 47(6) had not been proved. He found that the term 'services' in ss. 47(6) & (7), with respect to the acquisition of shares and membership, should be construed as being limited to services and/or benefits that the tying corporation is able to supply or be able to supply in the future.

An appeal was lodged by the ACCC on 26.4.02 and this was heard by the Full Court 12–15.11.02. 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. The hearing is expected to take place early in 2003.

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. Special leave to appeal to the High Court of Australia was granted on 14.12.01. The High Court appeal was heard on 21–22.5.02. Currently awaiting judgment from High Court of Australia.

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 has obtained special leave to appeal to the High Court and the matter was set down for hearing on 3.12.02.

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.

For SIP Australia, a trial was held on 16–18.10.00 with final submissions being heard on 14.11.00. In his judgment of 28.6.02, Goldberg J of the Federal Court found that, in 1994, SIP Australia and its director, Mr Ippaso, entered into an agreement with Baker Bros to fix the prices of ABAC compressors and parts. The court found the agreement also involved SIP and Baker Bros agreeing to divide up the market for certain compressors and parts, with each agreeing which customers each would supply. The court also found that between November 1997 and February 1998, SIP Australia and Mr Ippaso attempted to reach a market sharing agreement with Baker Bros.

At the directions hearing of 10.7.02, because SIP Australia had been placed in liquidation on 4.10.01, the ACCC requested, and was granted, leave to proceed against SIP Australia in respect of penalty. A penalty hearing before Goldberg J for remedies against SIP Australia and Mr Ippaso was held on 28.8.02 and a decision 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 appealed the court's decision that they contravened ss. 45 and 46 of the Act. The ACCC appealed the court's decision on penalties. The appeals were heard by the Full Federal Court on 4-5.3.02. On 16.7.02 the Full Federal Court decided that the arrangement between Rural Press, Bridge Printing and Waikerie Printing House did not contain an exclusionary provision but did have the purpose or effect of substantially lessening competition in the Murray Bridge market for regional newspapers in breach of s. 45 of the Act. It also decided that Rural Press and Bridge Printing did not misuse their market power in breach of s. 46 of the Act.

On 13.8.02 the ACCC filed an application for special leave to appeal to the High Court from the 16.7.02 decision of the Full Federal Court. The appeal relates to the decision that Rural Press and Bridge Printing did not breach ss. 45 (exclusionary provision) and 46 of the Act.

The Rural Press respondents also filed an application for special leave to appeal to the High Court in relation to the Full Federal Court's decision that the parties had entered into and given effect to an arrangement with the purpose or effect of substantially lessening competition in the market in breach of s. 45 of the Act.

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

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

respondents was handed down on 6.4.01.

Penalties totalling approximately \$15m were ordered against Schneider Electric, Wilson Transformer Company and A W Tyree Transformers and their managing directors on 3.5.02. Schneider has appealed its penalty of \$7m.

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

AMA (WA) and Mayne Nickless Limited, ss. 45, 45A. Alleged agreements lessening competition and price fixing.

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

A penalty hearing to consider joint submissions and proposed consent orders from the ACCC and the AMA (WA), its executive director, Mr Paul Boyatzis, and its former president, Dr David Roberts, was held on 7.8.01.

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

The ACCC's trial against the Mayne Group, Mr Martin Day former general manager (Western Australia and Asia) of Health Care of Australia (a division of the Mayne Group), and Mr Ian MacDonald former Joondalup Health Campus chief executive, who are defending the action, has been listed for 17.3.03-2.5.03.

Medibank Private Limited, ss. 12DA, 12DB, 12DF of the ASIC Act (equivalent to ss. 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 was heard on 13.3.01. Judgment handed down on 21.3.02 refusing Medibank's strike out application. Medibank sought leave to appeal this decision on 10.4.02 and leave application was heard on 14.8.02. On 13.9.02 judgment was handed down upholding Medibank's appeal and striking out paragraphs 10–12 of the Commission's further amended application. On 10.10.02 the ACCC filed a special leave application in the High Court.¹

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.

¹ 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 11.3.02 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.

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 trial began on 12.8.02 in the Federal Court, Darwin, and judgment is pending.

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 7.11.01 Gaudron J of the High Court of Australia granted interim injunctions, effective up to and including 15.2.02, 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 was heard before the High Court on 18.6.02 and on 7.11.02 the court unanimously allowed an appeal by Daniels Corporation International Pty Ltd. The High Court also decided that for the reasons stated in the Daniels case, the outcome for the Woolworths/ Coles/Liquorland case should be the same.

Warner Music and Universal Music, ss. 46, 47. Alleged misuse of market power, exclusive dealing.

On 14.12.01 the Federal Court of Australia determined that Warner Music Australia Pty Ltd and Universal Music Australia Pty Ltd had breached ss. 46 and 47 of the Act by threatening to withdraw trading benefits from CD retailers who stocked parallel imports. The conduct followed amendments to the Copyright Act 1968 to allow the parallel importation of CDs. Allegations of a breach of s. 45 of the Act were dismissed.

On 6.3.02 the court imposed penalties of \$450 000 on each of Universal and Warner, \$50 000 and \$45 000 on two former PolyGram (since taken over by Universal) executives and \$45 000 on two Warner executives. Permanent injunctions were also imposed on the companies. The companies have appealed the decision and the ACCC has appealed on the level of penalties. The appeal was set down for hearing from 25.11.02.

Mark Leyden, Paul P T Khoo Pty Ltd, Stephen Robson Medical Pty Ltd, Paul Khoo and Stephen Robson, ss. 45(2)(a)(i), 45(2)(b)(i), 76(1)(c) and 76(1)(e) of the Trade Practices Act and of the Queensland Competition Code. Alleged agreements lessening competition, primary boycotts.

Proceedings instituted on 16.4.02 against three specialist obstetricians, Drs Mark Leyden, Stephen Robson and Paul Khoo, alleging that in December 2000 and January 2001 they agreed to boycott

'No-Gap' billing arrangements offered by some private health insurance funds.

The Commission is seeking court orders including:

- declarations that the obstetricians contravened the Act and the Queensland Competition Code
- reimbursement of the expense incurred by patients in meeting the gap between the fee charged by the obstetrician and the reimbursement by the health fund
- the publication of information notices in the local media
- injunctions restraining each obstetrician from engaging in such conduct in the future
- findings of fact
- costs.

On 29.10.02 Keifel J made orders by consent finalising the ACCC's action against the obstetricians (full details will be reported in *ACCC Journal* no. 42).

Qantas Airways Limited, s. 46. Alleged misuse of market power.

Proceedings instituted 7.5.02 in the Federal Court, Sydney. The ACCC is seeking court orders including penalties, declarations, injunctions, a new or upgraded trade practices compliance program, costs and findings of fact.

The first directions hearing was held on 12.6.02 with further timetables being set for the preliminary stages of the proceedings.

Leahy Petroleum Pty Ltd & ors, s. 45. Alleged price fixing in relation to retail petrol prices in Ballarat, Victoria.

Proceedings instituted 21.5.02 in the Federal Court, Melbourne, against the following companies and individuals:

- Leahy Petroleum Pty Ltd, Leahy Petroleum-Retail Pty Ltd, and Mr Robin Palmer
- Triton 2001 Pty Ltd and Mr Anthony Rosenow
- Brumar (Vic) Pty Ltd and Mr Garry Dalton
- Justco Pty Ltd and Mr Justin Bentley
- Apco Service Stations Pty Ltd and Mr Peter Anderson
- J Chisholm Pty Ltd
- Mr John Gourley and Mr Robert Levick of Balgee Oil (externally administered) Pty Ltd.

The Commission is seeking penalties, injunctions, declarations, findings of fact, the implementation of a trade practices compliance program and costs.

Directions hearings were held on 14.6.02, 2.8.02, 13.9.02 and 1.11.02. A further directions hearing is listed for 7.2.03.

Leahy Petroleum Pty Ltd & anor, s. 48. Alleged resale price maintenance.

Proceedings instituted 21.5.02 in the Federal Court, Melbourne, against Leahy Petroleum Pty Ltd and its general manager, Mr Robin Palmer, in relation to the termination of supply to Mr Trevor Oliver. Mr Oliver, a Buangor service station owner, alleged that he had been telephoned by his supplier, Leahy Petroleum Pty Ltd, about a rise in retail petrol prices of about 10 cents at 10 am. that day. Several weeks after Mr Oliver made his allegations, Leahy Petroleum Pty Ltd ceased supplying his business.

The Commission is seeking penalties, injunctions, declarations, findings of fact, the implementation of a trade practices compliance program and costs.

Directions hearings were held on 14.6.02, 13.9.02 and 1.11.02. A further directions hearing is listed for 7.2.03.

Unconscionable conduct

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

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

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

On 29.8.01 the Commission sought leave to file an appeal with the High Court. The High Court granted the Commission's special leave application on 31.5.02. The matter was heard in the High Court on 21.10.02. Awaiting judgment.

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 were instituted on 27.7.00. Trial commenced on 22–26.4.02 and recommenced on 13–17.5.02. The matter has been partly heard with a number of arguments being put regarding the admissibility of evidence.

Nicholson J will provide a ruling on these issues with the trial to recommence on 7–11.4.03.

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.

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 adjourned to 14.8.02.

Westfield Shopping Centre Management Co. (Qld) Pty Ltd and ors, ss. 51AC, 52. Alleged unconscionable conduct, misleading or deceptive conduct.

Proceedings instituted 29.10.01 in the Federal Court, Brisbane, against Shopping Centre Manager, Westfield.

Some related companies and representatives of Westfield have also been joined in the proceedings for allegedly aiding or abetting or being knowingly concerned in the misleading or deceptive conduct.

The Commission alleges that Westfield contravened the misleading or deceptive conduct provisions of the Act through misrepresentations made in the course of leasing negotiations to former tenants of the Indooroopilly Shopping Centre, Brisbane (previously managed by Westfield).

It also alleges that Westfield acted unconscionably by refusing to finalise a settlement with a small business tenant regarding the misleading and deceptive conduct unless:

- the former tenants, among other things, withdrew their complaint to the Commission and notified it that they were satisfied with the settlement
- an undertaking was received by Westfield from the ACCC that it would cease its investigations into the matter.

The Commission is seeking court orders including findings of fact, declarations that the parties have breached the relevant provisions of the Act, injunctions preventing the repetition of similar conduct, damages for the former tenants and costs.

Trial date to be fixed.

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 and further directions hearing were held on 15.3.02, 7.6.02 and 20.6.02.

On 16.9.02 the Federal Court granted the ACCC leave to join Peter Foster and other senior executives and consultants of Chaste Corporation (in liquidation) to the action against Chaste and Mr Braddon Webb. A date for a further directions hearing is to be confirmed.

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.

Among other things, the Commission is seeking declarations, pecuniary penalties, permanent injunctions, findings of fact, orders for compensation and refunds, corrective advertising, implementation of a trade practices compliance program and 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 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.

Directions hearings were held in the Federal Court, Brisbane, on 12.3.02, 3.5.02 and 4.7.02. The defence of the first to fourth and seventh respondents was filed on 3.5.02. The ACCC filed a reply on 27.5.02. A further directions hearing was listed for 2.9.02.

Arnolds Ribs & Pizza Australia Pty Ltd, ss. 51AC, 52, 59(2). Alleged unconscionable conduct misleading or deceptive conduct misrepresentations about profitability or risk or any other material aspect of business activity.

Proceedings instituted 12.3.02 in the Federal Court, Sydney with the Commission seeking court orders that include:

- injunctions
- orders that Arnolds disclose proceedings in its disclosure document given to potential franchisees
- orders requiring Arnolds to publicise the outcome of proceedings in an appointed industry publication
- costs.

The Commission action is against the franchisor corporation and five associated individuals arising out of the sale of Arnolds franchises. It does not involve any conduct on the part of Arnolds store owners in their dealings with their customers.

A directions hearing was held on 11.4.02 and a further one listed for 15.11.02.

Kwik Fix International Pty Ltd, ss. 51AC, 51AD, 52, 53(c), 53(e), 59(2). Alleged misleading conduct and/or misrepresentations as to the franchise purchase price and profitability; alleged unconscionable conduct regarding the circumstances of entering into the franchise and loan agreements, subsequent attempts to resolve issues in dispute, and failures to meet requirements of an applicable

code of conduct; alleged contraventions of the franchising code of conduct including failure to meet disclosure and advice requirements.

Proceedings instituted in the Federal Court, Brisbane on 24.4.02 with the director of the company, Mr David Bruckshaw, and a former director, Mrs Kerry Bruckshaw, joined in the proceedings.

Kwik Fix is a franchisor of mobile repair services for motor vehicle paint, plastics and interiors. Alleged misleading conduct and/or misrepresentations as to the franchise purchase price and profitability; alleged unconscionable conduct regarding the circumstances of entering into the franchise and loan agreements, subsequent attempts to resolve issues in dispute, and failures to meet requirements of an applicable code of conduct; alleged contraventions of the franchising code of conduct including failure to meet disclosure and advice requirements.

The Commission is seeking declarations, injunctions, a refund with interest of monies paid by the franchisee under the franchise and loan agreements, implementation of a trade practices compliance program, and costs.

A directions hearing was held on 17.5.02. A hearing of application for an Anton Piller order was held on 30.7.02—not granted. A hearing of notice of motion for specific discovery was held on 2.8.02 with the parties being directed by the court to draft and file consent orders for discovery and forensic examination of certain evidence relied upon by respondents. Consent orders filed and made 8.8.02. The parties are currently executing consent orders.

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 more than \$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. Gatsios Holdings Pty Limited appealed to the NSW Court of Appeal which, after hearing the matter, dismissed the appeal. In April 2002 Gatsios Holdings Pty Limited made an application for special leave to the High Court heard on 5.11.02.

Giraffe World Australia, ss. 52, 57, 61. Alleged 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. Those orders were discharged 8.11.99. Application for summary judgment against Miles Kendrick-Smith listed for hearing on 2.10.02.

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. On 12.12.01 a further court-ordered mediation was undertaken by the parties but a settlement was not reached. A directions hearing was held on 16.9.02.

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 the alleged misrepresentations.

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.

A case management conference was held on 3.7.02 and trial set down for 3.10.02.

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 join the parent company, Bio Medical Research Ltd located in Ireland, as a cross respondent to the action and to serve notice outside of Australia and in Ireland. On 4.4.02 Nicholson J ruled that the cross claim issue was to be heard at the trial for the main action. A conference of the experts being relied upon by the parties was held on 18.7.02 to discuss any matters in dispute. A directions hearing is listed for 4.11.02 and trial is expected to re-commence 16–18.12.02

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.

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 dated 31.1.01 and 7.5.01 were heard and on 31.7.02 Info4pc and director Mr James Rae were fined a total of \$14 000 and ordered to pay costs. A hearing was held on 9.8.02 with judgment reserved.

Medical Benefits Fund of Australia Ltd (MBF) and John Bevins Pty Ltd

Proceedings were instituted on 5.2.01. 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 Investments Commission Act 1989*. It is alleged that John Bevins Pty Ltd, an advertising agency, was knowingly concerned in the alleged breaches.

The matter was heard on 3–5.6.02 and Hill J reserved his decision.

Signature Security Group Pty Limited, ss. 52, 53C, 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), 59(2). Alleged failure to comply with mandatory franchising code of conduct, false or misleading representations.

Civil 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 on the criminal proceedings were held on 26.10.01 and 20.3.02. Trial held 15–19.7.02 and submissions heard on 19.8.02. Awaiting judgment.

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.

The trial in this matter was held on 24–28.6.02. Judgment has been reserved by Nicholson J.

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 case management conference was held on 26.7.02, at which time directions were made for the completion of discovery and the filing of affidavits. A further directions hearing will be held after 18.10.02.

The Buyers Group Pty Ltd, (ss. 52, 53(c)).

Alleged 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 that in some instances several of the products contained no Australian juice.

The Commission instituted further proceedings against Berri on 14.12.01 alleging the use of a seasonal qualifier on its pineapple juice products was misleading.

The two proceedings have now been consolidated and 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.

The most recent directions hearing was on 22.4.02 and a case management conference was scheduled for 17.10.02.

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. Before the trial, which was set down for 29.7-2.8.02, Mr Thompson pleaded guilty to all charges, with Tamar (in liquidation) not entering a plea. Trial was adjourned for medical reasons relating to Mr Thompson and was to resume 16.10.02.

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 action relates to SkyBiz.Com Inc. promoting and selling a pyramid style scheme via the Internet and through Australian participants. Briefly, the Commission alleged participants in the scheme paid SkyBiz.Com Inc. US\$100 for a website in order to take part in the scheme. It was further alleged SkyBiz.Com Inc. claimed participants could earn a substantial income for introducing new consumers into the scheme and that the scheme could be used for e-commerce.

On 26.9.02 the Federal Court declared by consent that Skybiz.Com Inc. breached the pyramid selling and other consumer protection provisions of the Trade Practices Act (to be reported on in *ACCC Journal* no. 42).

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. The first directions hearing was held on 7.12.01. There have been subsequent direction hearings and the matter is continuing.

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

Proceedings instituted 28.9.01 against Commercial and General Publications (CGP) and its director, Anthony Robert Hassett, in the Federal Court, Hobart. Trial held 15-19.4.02 and 11-13.6.02. On 22.07.02, Heerey J found CGP and Mr Hassett guilty of all charges of accepting payments from five small businesses for advertising without being able to supply. Charges relating to billing for unauthorised advertising to eight small businesses were not found to have been made out beyond reasonable doubt. Penalty hearing set down for 14.10.02.

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 8.12.02 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. An urgent ex parte application was heard on 1.11.01 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.

Spender J heard the contempt trial on 22–24.4.02, 30.4.02 and 27–28.5.02. The Commission now awaits Justice Spender's judgment in the contempt trial. In the meantime, the earlier orders remain, in that, Mr Butler is unable to leave Australia without first receiving the Commission's written consent to do so, and Mr Butler's passports remain with the Registrar of the Federal Court.

Saatchi & Saatchi Australia Pty Ltd, ss. 12DA, 12DB, 12DF of the ASIC Act. Alleged misleading or deceptive conduct.

Proceedings instituted on 5.11.01 against NRMA Health Pty Ltd, NRMA Insurance Limited and Saatchi & Saatchi Australia Pty Ltd alleging misleading and deceptive advertising of health insurance products.

The Commission alleged that the companies used 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 sought court orders including declarations that the companies contravened the relevant provisions of the *Australian Securities and Investments Commission Act 1989*.²

On 4.7.02 the Federal Court made orders by consent for NRMA Health Pty Ltd and NRMA Insurance Ltd 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.

The ACCC's proceedings against Saatchi and Saatchi, the advertising agency responsible for preparing the NRMA's campaign, were heard on 18.9.02 and the decision has been reserved.

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

² 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.

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 & Greatorix (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, 20.3.02, 7.6.02, 23.8.02, 18.9.02 and 30.9.02. The trial, to be over five weeks, was adjourned until 10.3.03.

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.

On 2.7.02 the Federal Court, Sydney, declared that from about June 1994 to 30.11.01. Dell Computer Pty Ltd published advertisements that contravened s. 52 of the Trade Practices Act. (See enforcement chapter, this journal, for a more detailed report.)

However, the court found that there was no contravention of ss. 53(e) and 53C. The ACCC has filed a notice of appeal in the Federal Court appealing the findings of Jacobson J on ss. 53(e) and 53C.

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.

Directions hearings were held on 8.2.02, 19.4.02 and 7.6.02 and a trial date set for 2.12.02.

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.

Directions hearings were held on 4.2.02, 19.3.02 and 12.4.02. On 26.6.02 the court ordered substituted service of originating notice of proceedings against Daewoo Heavy Industries and Machinery Limited on Daewoo Heavy Industries Australia Pty Ltd. Matter set down for trial on 6.12.02.

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.

On 18.9.02 consent orders were made against the second respondent (in liquidation). Proceedings against the first and third respondents are continuing. The matter is to be listed for further review on a date to be fixed.

Western District Health Fund Limited, ss. 12DA, 12DB(c), 12DB(g) and 12DF of ASIC Act. Alleged misleading or deceptive advertising.

Proceedings instituted 23.1.02 against Western District Health Fund Limited in the Federal Court, Sydney, alleging misleading or deceptive advertising of its health insurance products. The proceedings were instituted under the *Australian Securities and Investments Commission Act 1989* as opposed to the Trade Practices Act. At the time of the alleged conduct, health insurance fell within the definition of a financial product and was regulated through the ASIC Act. Since December 1998 and at the time of the alleged conduct, ASIC had formally delegated the regulation of all consumer protection

aspects of health insurance to the Commission through the use of nominated Commission officers as delegates.

The Commission alleges Western District Health Fund, in a television advertisement, made representations that 'all operations (are) covered' with 'no excesses or co-payments' and that 'there's nothing hidden or complicated', in an endeavour to entice consumers to transfer or join their health insurance fund. The advertisement contained two fine print disclaimers that provided that a consumer would receive coverage for operations 'as per (the) Government Medicare Benefits Schedule' and that no excesses or co-payments apply to 'hospital accommodation only'. Similar representations were also contained on the fund's website.

The Commission is seeking declarations that Western District Health Fund contravened the relevant provisions of the ASIC Act. It is also seeking court orders including corrective advertising, refunds, undertakings not to make similar misrepresentations in the future, Western District Health Fund to review its trade practice compliance programs, and costs.

On 16.10.02 the Federal Court declared that Westfund had engaged in misleading and deceptive conduct. Orders made by the court will be reported in the enforcement chapter of *ACCC Journal* no. 42.

Wizard Mortgage Corporation Limited, ss. 52, 53(c), 53(aa). Alleged misleading or deceptive conduct, performance characteristics of goods, misleading representations about the standard, quality, value, grade, composition, style, model, or history of goods or services.

Proceedings instituted 6.2.02 in the Federal Court, Melbourne, alleging that in June and July 2001 Wizard advertised the RateBreaker loan on commercial television and promoted this loan as having some features which, in fact, were unavailable. It is alleged these features were not available with the RateBreaker loan but were available with loans taken out at a higher interest rate.

The Commission is seeking court orders including declarations that Wizard's advertising breached the relevant provisions of the Act, injunctions restraining Wizard from advertising in the same way in the future, orders requiring Wizard to publish corrective advertisements in the media in which the original advertising appeared and costs.

A directions hearing was held on 14.6.02 and a trial date set for 14-15.10.02.

Cadbury Schweppes Pty Ltd, ss. 52, 53(a), 55. Alleged misleading labels on cordial products.

Proceedings instituted 22.3.02 with the Commission seeking declarations from the court that labelling breached the relevant provisions of the Act. It is also seeking an injunction restraining Cadbury Schweppes from supplying these and other drink products labelled with pictures of real fruit when such products are not made from and/or do not contain the fruit pictured. And it is seeking court orders requiring Cadbury Schweppes to issue in-store public disclosure notices and corrective advertising in newspapers and to implement a corporate compliance program.

A directions hearing was held on 22.4.02. A directions hearing on discovery was held on 17.6.02.

IT&T AG, ss. 52, 55A, 64. Alleged misleading or deceptive conduct, certain misleading conduct in relation to services, assertion of right to payment for unsolicited goods or services or for making entry in directory.

On 28.3.02 the Commission instituted proceedings in the Federal Court, Perth, against Swiss-based company, IT&T AG, alleging it engaged in misleading and deceptive conduct in relation to an international fax directory operated by the company.

The Commission alleges that from May 2001 until about March 2002 IT&T AG sent unsolicited documents by mail from Switzerland to Australian business consumers about the IT&T International Fax Directory which is published on the Internet and available on CD-ROM from IT&T AG in Switzerland.

Remedies sought by the Commission include declarations, injunctions, corrective notices, refunds, TPA compliance program and costs.

Internet Name Protection Pty Ltd t/a Internet Name Group, ss. 52, 53(aa), 53(c), 53(f)), 53(d), 53(g), 53(e), 55A, 58, 64. Alleged misleading or deceptive conduct, history of goods or services, performance characteristics of goods, sponsorship, approval or affiliation of a corporation, misleading representations about the standard, quality, value, grade, composition, style, model, a buyer's needs for goods or services, false or misleading representations, certain misleading conduct in relation to services, accepting payment without intending or being able to supply, assertion of right to payment for unsolicited goods or services or for making entry in directory.

Proceedings instituted 18.4.02 in the Federal Court, Melbourne, against domain name reseller, Internet Name Protection Pty Ltd, trading as Internet Name Group, and its director, Mark Spektor.

The Commission is seeking interlocutory and permanent injunctions, alleging misleading and deceptive conduct in relation to Internet Name Group's marketing of domain name services.

Among other things, the Commission is seeking to restrain Internet Name Group from continuing to represent that it is necessary for Internet Name Group to have access to a 'registry key' before a registration of a domain name can be renewed.

The Commission is also seeking orders including declarations, injunctions, corrective advertising, an order requiring Internet Name Protection Internet Name Protection Pty Ltd and Mark Spektor to undertake a trade practices compliance program and costs.

At an interlocutory injunction hearing on 26.4.02 Ryan J ordered the group to stop distributing unsolicited letters with references to the registry keys to consumers

in the form of a renewal advice form. He also ordered the group to stop distributing documents or advertising on any of its web-sites with the slogan ".bz equals business". The .bz address is the country code for Belize in Central America, which is leveraging off its closeness to the Internet domain name, .biz. Internet Name Group started reselling .bz names in February.

A directions hearing was held on 24.5.02 and court orders included that:

- Sasha Alexander Sudakov and Craig Missell be added to the proceedings
- the applicant have leave to amend its application, to include conduct surrounding applications to become registered bidders for generic domain names in the generic name auction conducted by auDA
- the next directions hearing would be on 13.12.02.

Advanced Medical Institute Pty Ltd (AMI), ss. 52, 53(a) and/or 53(aa), 53(c), 53(g), 55 and/or 55A. Alleged misleading or deceptive conduct, misrepresentations about goods and/or services being of a particular standard or quality, about the performance characteristics, uses or benefits about the existence of a guarantee and about the nature, characteristics and suitability of treatments.

Proceedings instituted 19.4.02 in the Federal Court, Sydney, against Advanced Medical Institute Pty Ltd (AMI) and its Managing Director, Jacov Vaisman.

The Commission is alleging that some of AMI's representations are likely to have misled prospective patients about treatments offered by AMI for impotency and premature ejaculation.

The Commission is seeking court orders including declarations, injunctions, corrective advertisements, refunds and community service orders.

It is also seeking orders that AMI disclose details of the failure rates and contraindications of all forms of treatment to all future or prospective patients, prior to those patients committing to receive any treatment at AMI clinics, implementation of a trade practices compliance program and costs.

A directions hearing was heard on 14.6.02 and a further one listed for 11.10.02.

Allans Music Group Pty Ltd, s. 53(e). Alleged false or misleading representations about the price of goods and services.

Proceedings instituted by the Director of Public Prosecutions on 30.4.02. It is alleged that Allans made false or misleading representations about the price of goods advertised in its Christmas 2000 catalogue.

The alleged misrepresentations were about the price of musical instruments and recording and other equipment and arose from statements 'WAS \$x, NOW \$y'. For example, Allans Music allegedly represented that the price of a Gibson 1960 Les Paul Classic guitar 'WAS \$4499, NOW \$3495'.

The Commission alleges that such a representation suggests that, in the period immediately before December 2000, the item had been sold by Allans Music at the 'WAS' price and was available for purchase at the 'NOW' price for the period of the sale, thereby enabling a price saving which amounted to the difference between the 'WAS' and 'NOW' price.

It is now for the court to determine whether the Commission's allegations are correct. Allans Music ceased using this style of advertising once the Commission drew its concerns to the company's attention.

Directions hearings were held on 12.6.02, 7.8.02, 4.9.02 and 2.10.02. Judgment pending.

Virgin Mobile Australia Pty Ltd, ss. 53C, 52, 53(e), 53(g). Alleged misleading or deceptive conduct; failing to state full cash price.

Proceedings instituted 3.5.02 with the Commission alleging Virgin Mobile's advertising for 'Dial High Club' packages failed to state the full cash price of the mobile phones, was likely to mislead consumers as to the minimum and/or total cost commitment of their signing up to the mobile phone plus calls package (which, in relation to Virgin Mobile's Nokia 8310 mobile phone Dial High Club package was over \$1000), and was likely to mislead consumers as to the conditions associated with their signing up to the packages.

Danoz Direct Pty Ltd, ss. 52, 53(c), 53(c), 53(e). Alleged misleading or deceptive conduct, false or misleading representations, performance characteristics of goods.

Proceedings instituted 3.5.02. The Commission seeks to prevent Danoz from representing that a health and fitness industry product, the Abtronic, has performance characteristics, uses or benefits that include that it can flatten your stomach 'once and for all'; that you just sit, relax and watch your 'abs' tighten, your 'love handles' disappear and your thighs and bottom firm up—with no sweating involved; and that you can get the results of up to 600 sit-ups in just 10 minutes without any effort.

This matter was set down for trial in the Federal Court, Brisbane, commencing 28.10.02. On 29.10.02 the trial was adjourned until 19.3.03.

Network Ten Pty Ltd & ors, ss. 52, 53B. Alleged misleading or deceptive conduct, misleading conduct in relation to employment.

Proceedings instituted on 6.5.02 in the Federal Court, Sydney.

The Commission sought court orders, injunctions, a requirement for Crackerjack and Network Ten to send letters to affected job seekers acknowledging and apologising for their conduct, implementation of trade practices compliance programs and costs.

On 28.8.02 the Federal Court, Sydney, made orders by consent against television production company, Crackerjack Productions Pty Ltd, its producer Mr Jim Burnett and Network Ten Pty Ltd. The orders were for conduct that included placing misleading job advertisements in several newspapers by Crackerjack to lure potential subjects for a reality television show it was producing (See enforcement chapter, this journal, for a more detailed report.)

The ACCC asked the court to also restrain Network Ten from engaging in similar conduct in future. The company opposed this application, which is to be heard by the court on 21.10.02.

Collagen Aesthetics Australia Pty Ltd, ss. 52, 53(a), 53(c). Alleged misleading or deceptive conduct, false representations about the composition of goods, misrepresentations about the performance characteristics of goods.

Proceedings instituted 17.5.02 in the Federal Court, Adelaide, with the Commission alleging that Collagen Aesthetics made false and misleading representations in various magazines about its collagen and hylaform products. These advertisements appeared in numerous magazines including *Vogue Australia*, *She* and *Marie Claire*.

The Commission is seeking court orders including declarations, corrective advertisements, injunctions, trade practices compliance training and costs.

A directions hearing was held on 24.6.02 during which the respondent advised that it intended to seek to have this matter referred to mediation. Cooper J in the Federal Court considered the mediation issue on 20.8.02 and declined to make the order sought by the respondent. A directions hearing is listed for 22.10.02.

Internet TV Australia Pty Ltd t/a Free2aiR, ss. 51AB, 52, 53(e), 53(g), 60. Alleged misleading or deceptive conduct, false or misleading representations about the price of goods and services, false or misleading representation, harassment and coercion, unconscionable conduct.

Proceedings instituted 17.5.02 in the Federal Court against Internet TV Australia Pty Ltd trading as Free2aiR and its sole director, Mr James Young.

It is alleged that Mr James Young was knowingly concerned in each of the alleged breaches, or aided, abetted and procured each of them.

The Commission is seeking court orders including declarations, injunctions, including an injunction restraining Free2aiR from collecting further administration fees, refunds of quarterly administration fees paid, the establishment of a trade practices compliance program and costs.

On 29.7.02 consent orders for interlocutory relief were made against the first respondent, which included an order that the company, by its receiver and manager, issue refunds to consumers who paid administration fees during the term of the receivership.

The Commission's claim for final relief is continuing.

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.

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

Interim authorisation expired 5.2.01.

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.

14.1.58 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.

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.

15.4.02 Amended application.

CSR Limited (A90769) Rostering provisions which establish the system for the distribution of CSR's cartage work among its carriers in WA.

22.8.02 Amended application.

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.

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 training surgeons, and for assessing overseas-trained doctors.

4.5.01 Interim authorisation granted.

1.11.01 Interim authorisation amended.

The Royal Australian College of General Practitioners

(A90795) Application for authorisation in relation to fee agreements within general practices.

19.9.01 Interim authorisation granted.

20.6.02 Draft determination issued.

Adelaide Airport (A90796)

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

National Electricity Code (A90797–9)

Generators bidding and rebidding strategies and their effect on prices.

24.6.02 Draft determination issued.

Inghams Pty Ltd & Others (A90800)

Collective negotiation regarding standard growing agreement or agreements in New South Wales.

1.11.01 Interim authorisation denied.

20.3.02 Draft determination issued.

13.5.02 Pre-decision conference.

Queensland Newsagents Federation Ltd (QNF), Australian Newsagents Federation (ANF) (A90804)

QNF/ANF seek authorisation to collectively represent newsagent members in their negotiations with suppliers nationally.

21.11.01 Interim authorisation denied.

29.4.02 Amended application.

2.9.02 Further amendment to application.

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

7.11.01 Interim authorisation granted.

Health Purchasing Victoria (A90811–2)
Proposed calling and awarding of a tender by HPV for the exclusive acquisition of temporary agency nursing staff.

24.1.02 Interim authorisation denied.

26.6.02 Draft determination issued.

National Electricity Code (Full Retail Competition Mark II) (A90813–5) Changes to the National Electricity Code to implement full retail competition in NEM.

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

National Electricity Code (A90818–20) Code changes to implement the conclusions and recommendations of the joint NECA/NEMMCO review of directions in the NEM.

Inghams Enterprises Pty Limited (A90825)
Application for authorisation—extension to A90595 (expiring 30/6/02). Continuation of collective negotiations between growers and Inghams. Standard growing agreement including common fees.

17.4.02 Interim authorisation granted.

Recruitment & Consulting Services Association Ltd (A90829) Application for authorisation of code of professional conduct for industry members who provide recruitment, consulting and on-hire services.

Air New Zealand on behalf of Star Alliance (A30209–10) A program allowing Star Alliance members jointly to offer competitive fares and other incentives to corporate customers.

22.5.02 Interim authorisation denied.

Air New Zealand on behalf of Star Alliance (A30211–3) Offer of competitive fares and other benefits to convention delegates and organisers through the Star Alliance Conventions Plus Program.

22.5.02 Interim authorisation denied.

Australian Bankers' Association (A30214) On behalf of NAB, Commonwealth Bank, Bank of Western Australia, Adelaide Bank, ANZ Banking Group, Westpac Banking Corp, St George Bank, Suncorp Metway Bank, Bank of QLD, Bendigo Bank. Arrangement to offer a basic bank account that meets agreed standards.

NEC (A90834–6) Technical Standards Code changes that are the outcome of the review required by the ACCC's condition of authorisation of the NEC in 1997.

Australian Hotels Association (NSW) (A90837) Application for authorisation collective negotiations with TAB Ltd provision of PubTAB and Skychannel to AHA (NSW) members.

OMG Kokkola Chemicals Holding BV (A70013–4) Alliance agreement with MPI Mines Ltd and MPI Nickel Pty Ltd development of nickel tenements, mining nickel and concentrating and processing nickel in Australia.

Withdrawn.

BHP Billiton Minerals Pty Ltd (A70015)
Exclusionary provisions, agreements affecting competition, and exclusive dealing (POSMAC joint venture deposit C of mining area C Pilbara region in Western Australia).

Proceeding to draft determination.

Clay Brick & Paver Association of New South Wales (A90676, A90830) Application for revocation and authorisation in substitution in relation to a scheme to increase the number of trained bricklayers in NSW.

28.8.02 Draft determination issued.

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 maximum price for home delivery (third line forcing).

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

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

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 (third line forcing).

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).

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

James Cook University (N90962) Condition of enrolment that students gain and maintain membership of the James Cook University Student Association (third line forcing). Draft notice to revoke issued 21/10/02

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 (third line forcing).

Origin Energy Electricity Limited (N40470) Offer of rewards to Origin Energy Vic p/l (gas retailer) including reduction in gas bills (third line forcing).

Retravisio (N40471) Retravisio will supply a Retravisio product to retail customers if the customer acquires mobile services from Telstra (Eternity campaign) (third line forcing).

One Xerro Communications, Myer, Grace Bros, Dick Smith, Leading Edge (N90981–4) Will supply goods on condition customer acquires mobile services from Telstra (third line forcing).

Fone Zone (N40472) Will supply on condition customer agrees to acquire mobile services from Telstra (third line forcing).

Cairns Post Pty Ltd (N40473–4) Two notifications (full line forcing) relating to territorial distribution agency agreement.

Nationwide News Pty Ltd t/a Sunday Times (N40475–6) Two notifications (full line forcing) relating to territorial distribution agency agreements.

Dick Smith Wholesale, Fone Zone, Mobileworld Operating, One Xerro Communications and Retravisio Australia (N40477) Supply goods on condition customers acquire mobile services from Telstra (third line forcing).

ANZ Rewards Pty Ltd (N90994) Loyalty program discounts on purchases from nominated suppliers.

Telstra Licensed Shops (N40482) Offer of goods or services to customers who acquire mobile services or plans from Telstra (third line forcing).

AOL7 Australia Holdings Pty Ltd and BAOL7 Pty Ltd t/s AOL17 Online Services Limited (N31147) Free Internet subscription if a customer acquires a Dell computer and registers for AOL services via a CD-ROM supplied with the Dell Computer (third line forcing).

National Australia Bank (N40525) Offer to supply a National product on condition that customers acquire one or more Your Prosperity products (third line forcing).

Dick Smith Electronics Pty Ltd (N40526) Supply of goods on condition customers acquire mobile phone services from Telstra (third line forcing).

Krispy Kreme Doughnut Corporation (N31150) Franchisee required to enter into an agreement with Krispy Kreme for the use of marks and copyright.

Vodafone Pty Ltd (N31151) Arrangement with Clear Capital Management for the purchase of mobile phone equipment.

Telepathy System Pty Ltd (N31153) Compelling SMS users to connect with the Vodafone network.

Alshandegha Pty Ltd t/a Wendy Ford Hair and Beauty (N40527) Franchisees to acquire beauty products from the franchisor, Wendy Ford Hair and Beauty.

Vircom Solutions Pty Ltd and Australian Integrated Finance Pty Ltd (N31158) Provision of telecommunications and office equipment under integration agreements with nominated carriers.

Hewlett Packard Australia Ltd (N40528) HPA and others offer of a bundled arrangement for financed multi-function printers support and maintenance service and consumables—price per performance.

Mooloolaba Yacht Club Marina Pty Ltd (N91007) Requirement that berth lease holders are members of the Mooloolaba Yacht Club.

Harvey World Travel Franchises Pty Ltd (N91004) Requirement that franchisees operate with a nominated computer reservation system (exclusive dealing).

Vodafone Pty Ltd (N91008) Vodafone acting as agent for Telepathy System Pty Ltd compelling customers to connect to the Vodafone network (third line forcing).

Australian Integrated Finance Pty Ltd (N31159) Nominated suppliers to provide telecommunications and office equipment—with Vircom Solutions Pty Ltd.

Australia and New Zealand Banking Group Limited (N40529) Requirement that Qantas Telstra Visa Card holders have membership with Qantas Frequent Flyer Program. Allowed to stand 8/7/02

Rapid Solutions Pty Ltd (N31163) Offer of urban pest control franchise if professional indemnity and general liability insurance is acquired from a nominated supplier (third line forcing).

AAPT Limited (N31164) Proposing to offer a 25 per cent discount on fixed to mobile telephone calls made by its Smartchat residential customers and small business customers to a Hutchison CMDA mobile service on condition that a customer acquires CDMA mobile telecommunications services from Hutchison.

Myer Stores Limited (N40530) Offer of discount if a customer has purchased goods of specific value from Coles Supermarkets Australia Pty Ltd (third line forcing).

Telstra Corporation Limited and Telstra Pay TV Pty Limited (N31170–1) Resell subscription television services together with Telstra's telephony and other telecommunications services.

Westpac Life Insurance Services Limited and Westpac Banking Corporation (N31172–3) Offer to pricing advantage to HCF customers when acquiring products from Westpac Banking Corp and Westpac Life Insurance Services Limited.

APIR Systems Pty Ltd (N90120) Access to online services via a digital cryptography system Public Key (PKI). Users to apply for APIR Certificate Smartcard.

2002 World Cup Women's Hockey Limited (N91023) Appointment of Ticketmaster7 to sell and distribute tickets to 10th FIH Women's World Cup.

Motor Sports Australia Pty Ltd (N91024) Licensing and registration for sedan racing.

Dendy Cinema Pty Ltd (N31175) Offer of a free second movie ticket when first full adult ticket purchased with MasterCard.

Sizer Developments Pty Ltd (N70332) Purchasers of lots within the development required to enter into a building contract with Sizer Builders.

Bank of Western Australia Ltd (N70333) BankWest will offer a loan to pharmacists on condition the applicant opens a trading account with Sigma.

Western Power Corporation (N70334) Power purchase agreement between Western Power and Burns & Roe Worley Developments Pty Ltd.

2002 World Cup Women's Hockey Limited (N70337) Sponsorship arrangements with sponsors of the event.

ProfiTune Business Systems Pty Ltd (N50142) Business coaching franchising operation (franchise agreement).

Ipswich Properties Pty Ltd (N91023) Arrangement with Tip Top Dry Cleaners Pty Ltd t/a Tip Top Mobil Golden Grove. Offer of discounted fuel for proof of purchase of goods from selected supermarkets.

Liquorland (Australia) Pty Ltd (N31176, N31188) Discount offered to customers who have purchased goods to a particular value from Coles Supermarkets Australia Pty Ltd.

IGA Distribution Pty Ltd (Vic) and (SA), Australian Liquor Marketers Pty Ltd (Qld) and (WA) (N31177–82) Discount offered supply of goods to independent grocery retailers if a member of a banner group (list supplied).

ATS Franchises Pty Ltd (N91035) Hardware and software used in the provision of survey and ancillary services relating to traffic.

Esanda Finance Corporation Limited (N91031) Refusal to supply financing of insurance premiums to applicants if the applicant has acquired specific insurance from an insurer that has not entered into a service level agreement with Esanda.

Monsanto Australia Limited (N40532) Requirement for licence agreement with Monsanto prior to the purchase of Ingard, Bollgard 2, and Roundup Ready cotton seeds.

Subaru (Aust) Pty Ltd and General Motors Acceptance Corp. Aust. (N40533–4) Concession offered with the supply of finance to purchasers of Subaru WRX if vehicle is acquired from a GMAC wholesale dealer.

Harvey World Travel Franchises Pty Limited (N31187) Franchisees nominated CRS Galileo.

Australian Competition Tribunal

Finalised

Resource NSW and seven inner Sydney councils (A30204–5) In relation to an arrangement under which two groups of Sydney councils would collectively tender for facilities to sort recyclable household waste.

7.3.02 Draft determination issued.

15.4.02 Pre-decision conference.

6.6.02 Final determination issued.

27.6.02 SSWB and ISBW applied to the Australian Competition Tribunal for review.

7.8.02 Appeal withdrawn.

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.

2.4.02 National Foods Limited applied to the Australian Competition Tribunal for review.

16.8.02 Tribunal made determination granting conditional authorisation by consent.

Marven Poultry Pty Ltd (A90750) Collective negotiation of standard growing agreements between contracted chicken growers and six processors in Victoria.

12.12.00 Draft determination issued.

8.3.01 Pre-decision conference.

29.6.01 Final determination issued.

25.7.01 Victorian Farmers Federation filed appeal to the Federal Court.

4.3.02 Appeal heard.

8.9.02 Appeal denied.

Certification trade marks

Completed

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

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

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

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

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 Application to amend rules of several CTMs owned by the applicant.

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

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

Free Range Egg and Poultry Association of Victoria (CTM 799171) Approval of rules governing CTM application no. CTM0098.

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

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.

Tradev Pty Ltd (CTM 901616) Compliance with government food quality standards.

Davis Langdon International Quality Pty Ltd

(CTM 794564) General accreditation system.

Food Operations Pty Ltd (CTM 863428) Food quality certification.

Australian Furnishing Research and Development Institute (CTM 839361)

Application to register Blue Tick scheme.

Standards Australia International Ltd

(CTM 5884684, 586566, 591335) Application for consent to assign certification trade marks to Quality Assurance Services.

Under consideration

Australian Vine Improvement Association Inc.

(CTM 720347) Certification of grapevines, and related cuttings, buds, graftings, tissue cultures and strikings.

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.

National Safety Council of Australia Ltd

(CTM 725527) Certification of audit services of occupational health and safety activities.

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.

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.

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.

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.

Wireless Ethernet Compatibility Alliance Inc.

(CTM 838376) 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.

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.

Australian Institute of Risk Management

(CTM 862543) Approval of accreditation scheme for risk management consultants.

Australian Environmental Labelling

Association Inc. (CTM 890745) Rules for consideration. Withdrawn, new rules to be submitted.

Homeworker Committee Inc. (CTM 887980)

Trade mark. Compliance with Homeworkers' Code of Conduct.

Australian Crop Accreditation System

CTM 867784) Rules for consideration.

Government of Thailand, Dept of Foreign Trade, Ministry of Commerce (CTM 891642)

Certification that rice is Thai Hom Mali Rice.

Australian Gas Association (CTM 845494–5, 845497, 845499) Compliance with safety standards for gas appliances.

Freshcare Limited (CTM 901311) Compliance with fresh produce food safety and quality assurance program.

Australian National Training Authority

(CTM 876524–5) Accreditation of training programs under Australian Qualifications Framework.

Cattlecare Ltd and Flockcare Pty Ltd

(CTM 835014) Compliance with livestock producers' codes of conduct and quality assurance program.

Verband Hannoverscher Warmblutzuchter E.V. (CTM 868690) Certification system for horses.

Australian Communications Industry Forum Limited

(CTM 887036, 901898) Certification for industry Compliance Mark Rules and Code of Conduct.