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## Appendix 2 Public information

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This appendix contains lists of:

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

### Speeches

#### Commission Chairman Allan Fels

*Reforming Australia's infrastructure.* National Infrastructure Summit. 14 August 2002.

*Changes to competition law and small business: a perspective of the competition regulator.* NSW Chamber of Commerce. 29 August 2002.

#### Commissioner Sitesh Bhojani

*Should whistleblowing be encouraged and protected, and is it?* Transparency International Australia. 6 August 2002.

#### Commissioner John Martin

*Trade Practices Act and the insurance industry.* Insurance Council of Australia. 22 August 2002.

#### Commissioner Ross Jones

*The rationale for merger law.* Thirteenth Annual Workshop of the Competition Law and Policy Institute of New Zealand. 2 August 2002.

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

### Media releases

- 162/02 ACCC to recommend consistent pricing principles for mobile services. 1.7.02
- 163/02 Significant cut in Telstra's charges for transferring business numbers after ACCC inquiry. 1.7.02
- 164/02 ACCC submission to the review of the Trade Practices Act 1974. 2.7.02
- 165/02 Court orders Dell to publish corrective advertisements. 4.7.02

- 166/02 Draft leniency policy to break hard core cartels issued. 4.7.02
- 167/02 Warning: unsafe fire extinguisher. 4.7.02
- 168/02 National Electricity Market—re-bidding code changes: draft determination. 4.7.02
- 169/02 ACCC action stops pyramid scheme in home loan industry. 10.7.02
- 170/02 Federal Court orders NRMA Health Insurance ads misleading. 10.7.02
- 171/02 Tasmanian launch of ACCC rural and regional program. 10.7.02
- 172/02 Telstra complies with government conditions to increase line rental charges. 10.7.02
- 173/02 ACCC to oppose joint venture between Farm Pride Foods and Pace Farms. 11.7.02
- 174/02 ACCC institutes against Wesfil Australia Pty Ltd alleging country of origin deception. 12.7.02
- 175/02 ACCC and Rural Press. 18.7.02
- 176/02 ACCC alleges misleading conduct about tours to Aboriginal land near Uluru. 19.7.02
- 177/02 ACCC deregulates local call services in major capital cities. 22.7.02
- 178/02 International expert on electricity markets opens ACCC conference. 24.7.02
- 179/02 ACCC does not object to temporary price increase for Airservices Australia. 25.7.02
- 180/02 ACCC receives API/Sigma merger authorisation application: seeks submissions. 26.7.02
- 181/02 Game over for Sony Playstation. 29.7.02
- 182/02 ACCC institutes against Synergy. 30.7.02
- 183/02 ACCC issues final approval on Moomba to Adelaide pipeline access arrangement. 1.8.02
- 184/02 Info4pc.com Pty Ltd and James Rae in contempt. 1.8.02
- 185/02 ACCC seeks to intervene in South Sydney case in High Court. 5.8.02
- 186/02 Compulsory third party claimant charter launched. 6.8.02

- 187/02 Ford Credit to provide over \$430 000 in GST refunds on car leases. 8.8.02
- 188/02 Woolworths beef advertising misleading. 12.8.02
- 189/02 ACCC monitoring initiative for Telstra's wholesale customers. 13.8.02
- 190/02 ACCC issues final decision on transmission ring fencing guidelines. 15.8.02
- 191/02 ACCC and Rural Press. 16.8.02
- 192/02 Real estate agent refunds GST on commission. 16.8.02
- 193/02 ACCC not to oppose Graincorp/Cargill's proposed acquisition of Milling Australia. 16.8.02
- 194/02 ACCC to oppose proposed acquisition to protect competition in flour milling. 16.8.02
- 195/02 ACCC proposing to approve revenue increase for Gasnet. 20.8.02
- 196/02 ACCC proposes to accept key access revisions by Vencorp. 20.8.02
- 197/02 Court finds Wesfil misled about filters' country of origin. 20.8.02
- 198/02 ACCC welcomes Tribunal's decision to allow dairy farmers to collectively negotiate. 20.8.02
- 199/02 Federal Court declares Woolworths beef advertisements false and misleading. 21.8.02
- 200/02 Ausbulk National Grower Register immunity to stand. 22.8.02
- 201/02 Negligence review risks creating significant 'losers': ACCC. 22.8.02
- 202/02 Dangerous confectionery banned. 23.8.02
- 203/02 ACCC not to oppose merger between Consolidated Meat Group and Tey's Bros. 27.8.02
- 204/02 ACCC welcomes Reserve Bank credit card reforms. 27.8.02
- 205/02 Federal Court confirms ACCC decision to allow Victorian chicken meat growers collective negotiation. 28.8.02
- 206/02 ACCC issues draft report on disclosure of telecommunications information. 29.8.02
- 207/02 Court finds TV production company misled job seekers, aided by TV network. 30.8.02

- 208/02 ACCC declares line sharing. 30.8.02
- 209/02 No ACCC intervention in AFL finals row. 30.8.02

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

## Public registers

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

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

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

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

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

## Mergers examined under s. 50

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

**Narrandera IGA/Coles Myer Ltd**—grocery supermarkets.

On 2 July 2002 Coles Myer Ltd advised the Commission of Bi-Lo Pty Ltd's intention of purchasing the business currently operating as Narrandera IGA at Narrandera NSW.

The parties own numerous grocery retailing supermarkets and Bi-Lo is a member of the Coles Myer group of companies.

On 9 July 2002 the Commission decided that the acquisition would be unlikely to substantially lessen competition in the relevant market because:

- there is no change in market shares if Narrandera is considered as the relevant market
- the incremental increase in Coles market share, if a broad, state-based market is used, is minimal.

**IPAC Securities Ltd/AXA Asia Pacific Holdings Ltd**—market for retail assets under management.

On 23 July 2002 the Commission decided it would not oppose the proposed acquisition of IPAC Securities by AXA Asia Pacific Holdings.

The main competitive overlap between IPAC Securities and AXA Asia Pacific Holdings was for retail assets under management.

The proposed merger will not cross any of the Commission's concentration thresholds for the exercise of market power. On this basis it was concluded that a substantial lessening of competition was unlikely to occur.

**Australian Wheat Board/Milling Australia**—the state-based markets for grain trading and marketing, and flour milling and mixing markets in Western Australia, Queensland, south-eastern Australia, and New South Wales.

On 14 August 2002 the Commission found that AWB's acquisition of Milling Australia would be likely to substantially lessen competition in the markets for flour milling and mixing across Australia, and in grain trading in Queensland, in contravention of s. 50 of the Trade Practices Act. (See enforcement chapter of this journal for a full report.)

**GrainCorp & Cargill/Milling Australia**—markets for grain storage and handling services in New South Wales and Victoria, and flour milling and mixing in New South Wales and south-eastern Australia.

This transaction was a joint venture proposed to acquire Milling Australia from Goodman Fielder. Milling Australia is a flour milling and mixing operation.

Market inquiries revealed that many market participants were concerned about the proposed acquisition, particularly about the possibility of GrainCorp discriminating against particular users of its storage and handling system and raising the costs of rival millers.

Market respondents were particularly concerned that GrainCorp could use market power against rival millers by raising their storage charges,

denying them access to storage, strategically purchasing grain that rival millers were short of, and blending rival millers' grain with lower grades of grain.

On 14 August 2002 the Commission found there were the following strong constraints on GrainCorp's ability to discriminate against particular users of its storage and handling facilities:

- The main constraint was that the ownership of grain within GrainCorp's facilities was not fixed and millers could, and did, buy and sell large amounts of grain within GrainCorp's storage system. This means that GrainCorp would not be able to target grain within its system because the ownership of that grain could change.
- On access to storage, the Commission recognised that much grain entered GrainCorp's system in the name of growers or traders and was then purchased by millers. Therefore GrainCorp would not know who the grain was destined for when it entered GrainCorp's storage facilities.
- On the raising of rival millers' storage costs, the Commission considered that millers' ability to contract for traders to hold grain on their behalf, thereby defeating a price rise, would deter GrainCorp from attempting to raise charges.
- On GrainCorp using knowledge of millers' stocks to identify their shortages of particular types of wheat and bidding up the prices of those stocks, the Commission found that GrainCorp did not have complete information of millers' stocks. This was either because millers used some storage other than GrainCorp's, or because wheat was held for millers by traders in the traders' names, effectively disguising the wheat's ownership.
- On GrainCorp blending of differing qualities of grain within a defined band, known in the industry as co-mingling, to disadvantage millers the Commission found that co-mingling was a current practice in the industry and would be unlikely to be used to any greater extent against rival millers in the future.

The Commission concluded that the proposed acquisition would be unlikely to lead to a substantial lessening of competition in the market for flour milling and mixing in New South Wales and south-eastern Australia.

## Section 87B undertakings

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

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

**Hunter Area Health Service**, ss. 45, 47. Price fixing and market sharing, exclusive dealing.

30.7.02 undertakings to not, for a period of seven years from the date of acceptance, reinstitute the HAHS referral policy or similar direction without giving the Commission three months notice in writing. HAHS also agreed to inform radiologists, to send a letter to the Royal Australia College of Radiologists and to undertake training for visiting medical officers and senior medical practitioners about an agreed list of issues to be addressed.

**Golden Way Realty (S.A.) Pty Ltd t/a Professionals Golden Grove**, s. 53(e). False or misleading representation.

9.8.02 undertakings not to represent or quote fees, charges or prices in any documents provided to its customers that are GST exclusive. Golden Way Realty also agreed to identify and write to those customers and offer refunds of the additional amount of GST charged in agreements that were silent about a GST liability for the professional fee, and to develop and implement a trade practices compliance program.

**MacDonald Johnston Engineering Company Pty Ltd**, ss. 52, 53(eb). Misleading or deceptive conduct, false or misleading representations as to place of origin.

28.8.02 undertakings to cease making any representations that may contravene ss. 52 and 53(eb) of the Trade Practices Act about the Australian content and/or country of origin of the road sweepers, circulate corrective notices to affected consumers and implement a trade practices compliance program.

**William Greig Millar**, ss. 51AB, 52, 53(c), 53(d), 53(e), 59(1). Unconscionable conduct, misleading or deceptive conduct, misrepresentation of performance characteristics, uses or benefits, misrepresentation of approval or affiliation, misrepresentations about the price of goods and

services, misleading statements about work-at-home schemes.

3.9.02 undertaking to provide 72 hours of community service with a gambling support organisation on the Gold Coast by no later than six months from the date of the orders. (See enforcement chapter of this journal for a full report of this matter.)

## Subsection 51(1) exceptions to the Trade Practices Act

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

The ACCC Journal progressively updates this list throughout the year.

### Commonwealth

Trade Practices Amendment (Country of Origin) Act 1998

Wheat Marketing Act 1989

Trade Practices Amendment (International Liner Cargo Shipping) Act 2000

### New South Wales

Totalizer Act 1997

Registered Clubs Act 1976

Liquor Act 1982

Competition Policy Reform (NSW) Regulation 1996

Marketing of Primary Products Act 1983

Farm Produce (Repeal) Act 1996

Coal Industry Act 2001

Industrial Relations Amendment (Public Vehicles and Carriers) Act 2001

Industrial Relations (Ethical Clothing Trades) Act 2001

Olympics Arrangements Act 2000\*

Olympic Roads and Transport Authority Act 1998\*

Sydney Organising Committee for the Olympic Games Act 1993\*

## Queensland

Competition Policy Reform (Queensland) Public Passenger Service Authorisations Regulation 2000

Petroleum Act 1923

Gladstone Power Station Agreement Act 1993

Forestry Act 1959

Chicken Meat Industry Committee Act 1976

Sugar Industry Act 1999

Year 2000 Information Disclosure Act 1999\*

Competition Policy Reform (Queensland—Dairy Industry Exemptions) Regulation 1998\*

Competition Policy Reform (Queensland—Sugar Industry Exemptions) Regulation 1998\*

Competition Policy Reform (Queensland) Act 1996\*

## Victoria

Gas Industry Act 2001

Gas Industry Act 1994

Gas Industry (Residual Provisions) Act 1994

Barley Marketing Act 1993\*

Competition Policy Reform (Victoria) Act 1995\*

Electricity Industry (Amendment) Act 1996\*

Electricity Industry (Trade Practices) Regulations 1994\*

## Tasmania

Electricity Supply Industry Act 1995

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

## Western Australia

North West Gas Development (Woodside) Agreement Act 1979

## South Australia

Barley Marketing Act 1993

Authorised Betting Operations Act 2000

## Northern Territory

Electricity Reform Act 2000

Water Supply and Sewerage Act

Consumer Affairs and Fair Trading (Tow Truck Operators Code of Practice) Regulations

Year 2000 Information Disclosure Act 1999\*

\*Subsection 51(1) exceptions no longer current.