
Appendix 2 Public information

This appendix contains lists of:

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

Speeches

Commission Chairman Allan Fels

Towards a modern Trade Practices Act: a regulator's perspective. NSW Press Club. 12 September 2002

The world's best competition law: current issues and future developments. Queensland University of Technology Business Leaders' Forum. 16 September 2002

Building a modern Trade Practices Act: a trans-Tasman analysis. New Zealand Institute of Economic Research. 18 September 2002

The change from a dominance to a substantial lessening of competition test in Australia's merger law. Fordham Corporate Law Institute Conference. 31 October 2002

Commissioner John Martin

Role of ACCC in promoting competition in aviation industry. Regional Aviation Association of Australia Convention. 24–25 October 2002

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

210/02 Consumers to lose from negligence review proposals: ACCC. 2.9.02

211/02 ACCC seeks comment on section 87B undertakings for Foxtel/Optus proposal. 5.9.02

212/02 ACCC institutes legal action against Fila for AFL licensed apparel policy. 5.9.02

213/02 ACCC updates advice for rural industry. 6.9.02

214/02 ACCC decision on postal prices. 6.9.02

215/02 ACCC trifecta against Gold Coast punting software promoters. 9.9.02

216/02 Country of origin guide for the food and beverage industry. 10.9.02

217/02 Broadband take-up continues solid growth. 10.9.02

218/02 Naptha investigation closed. 11.9.02

219/02 Utility Regulators' Forum reports on network access regulation. 11.9.02

220/02 ACCC denies authorisation for API-Sigma merger. 12.9.02

221/02 ACCC approves access arrangement for Ballera to Mt Isa pipeline. 16.9.02

222/02 ACCC approves access arrangement for Wallumbilla to Brisbane pipeline. 16.9.02

223/02 ACCC launches free Internet-based training program. 17.9.02

224/02 ACCC alleges misleading conduct by Internet Registrations Australia. 17.9.02

225/02 ACCC institutes against Dodo Internet Pty Ltd. 17.9.02

226/02 ACCC alleges predatory pricing in barge matter. 17.9.02

227/02 ACCC to keep telco industry informed on access prices. 18.9.02

228/02 ACCC alleges misleading Internet marketing of health products. 23.9.02

229/02 Global enforcement action brings 'sweep'ing change. 23.9.02

230/02 ACCC institutes against Commonwealth Bank over 'cricket' home loan advertising. 25.9.02

231/02 US web-based pyramid selling scheme banned. 27.9.02

232/02 Vodafone refunds customers misled by FastFone changes. 27.9.02

233/02 'Milestone' for merger review, international competition advocacy at Inaugural International Competition Network (ICN) meeting. 30.9.02

- 234/02 ACCC report to the Senate on wholesale grocery prices. 30.9.02
- 235/02 ACCC supports consistent pricing principles for mobiles. 1.10.02
- 236/02 ACCC stops false professional credentials claim by accounting firm. 4.10.02
- 237/02 Federal Court verdict on Saatchi & Saatchi element in NRMA. 4.10.02
- 238/02 ACCC issues decision on collective negotiations in NSW chicken meat industry. 8.10.02
- 239/02 Peter Foster joined to ACCC weight loss case. 9.10.02
- 240/02 ACCC interim decision allows Myer/Grace Bros concession businesses to participate in discount promotions. 10.10.02
- 241/02 ACCC appointment consultation. 10.10.02
- 242/02 ACCC releases guide on telecommunications dispute resolution processes. 10.10.02
- 243/02 Victorian electricity transmission networks revenue cap—draft decision. 14.10.02
- 244/02 Golden Casket to reform procedure for assessing gaming applications. 14.10.02
- 245/02 Company offers undertaking for supplying unsafe children's cot. 14.10.02
- 246/02 ACCC to seek leave to appeal to High Court from Full Federal Court's decision to strike out part of ACCC case against Medibank Private. 15.10.02
- 247/02 ACCC not to oppose Incitec/Pivot merger. 16.10.02
- 248/02 ACCC institutes against the producers of Viva olive oils. 17.10.02
- 249/02 ACCC not to oppose acquisition of Budget by Avis parent company. 17.10.02
- 250/02 Internet domain name resellers warned against misleading, deceptive conduct. 17.10.02
- 251/02 Fair and square: real estate industry guide from the ACCC and the REIA. 18.10.02
- 252/02 ACCC draft determination on market and system operations rules to promote certainty in the Victorian gas industry. 18.10.02
- 253/02 ACCC issues research report into competition and consumer issues in Indigenous communities. 18.10.02
- 254/02 ACCC opposes part of James Cook University's enrolment policy. 21.10.02
- 255/02 Federal Court declares Westfund health insurance fund misled consumers. 22.10.02
- 256/02 ACCC authorises scheme to increase the number of skilled bricklayers in NSW. 24.10.02
- 257/02 ACCC receives public liability pooling proposal for not-for-profit organisations. 24.10.02
- 258/02 ACCC institutes against Telstra 'Say G'day' calling card product. 24.10.02
- 259/02 False labelling and misleading information: Federal Court fines Tamar Knitting Mills. 25.10.02
- 260/02 ACCC announces final decision on postal prices. 25.10.02
- 261/02 Federal Court decision—re: Michael Kotowicz—Shark Challenge 2000 Competition. 25.10.02
- 262/02 Wizard found to have misled or deceived home loan consumers. 29.10.02
- 263/02 ACCC action against BMW (Australia) Limited over jacks. 29.10.02
- 264/02 Federal Court finds Rockhampton obstetricians' boycott of 'no-gap' billing breached competition laws. 31.10.02

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.

Delaware Champion Acquisition Corporation/Burger King Pty Ltd—national market for quick service restaurants.

On 1 October 2002 the Commission decided not to oppose the proposed acquisition of Burger King Pty Ltd by Delaware Champion Acquisition Corporation.

On 25 July 2002 Diageo plc, a UK company, announced the \$2.26 billion sale of Burger King to Delaware Champion Acquisition Corporation, a US consortium of investment funds managed by TPG Advisors III Inc., Goldman Sachs Group Inc. and Bain Capital Investors. The only area of competitive overlap arising from the acquisition stemmed from Bain Capital Investors' management of another investment fund (not a party to the Burger King acquisition) which has a controlling interest in the global pizza chain, Domino's.

After carefully considering the indirect competitive overlap, the Commission concluded that the proposed acquisition was unlikely to result in a substantial lessening of competition. The Commission noted that even if the consortium's indirect interest in Domino's were included in an analysis of market concentration, the Commission's indicative merger concentration thresholds would not be exceeded. Because of this, the variety of substitutes and the relatively low barriers to entry, it concluded that the proposed acquisition would not result in a substantial lessening of competition.

Australian National Credit Union Limited/City Coast Credit Union Limited—market for the provision of financial services in New South Wales.

On 4 October 2002 the Australian Prudential Regulation Authority informed the Commission of the transfer of business of the City Coast Credit Union to the Australian National Credit Union.

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

There is virtually no competitive overlap between the two parties. The operations of the City Coast Credit Union are spread along the south coast of New South Wales and centred around the Wollongong region. The Australian National Credit Union has several branch locations in the outer suburbs of Sydney and one branch on the deep south coast of New South Wales.

The proposed merger will not cross the Commission's concentration thresholds for either the exercise of unilateral market power or combined market power for the provision of financial services, and therefore a substantial lessening of competition is unlikely to occur.

Pivot Ltd/Incitec Ltd—markets for several fertiliser nutrient products in various regional locations on the Australian eastern seaboard.

On 16 October 2002 the Commission announced it would not oppose the proposed merger between Incitec and Pivot.

Incitec and Pivot are the two largest manufacturers and suppliers of fertiliser products in Australia. The main area of competitive overlap between the companies is in the supply of fertiliser products to farmers on the Australian eastern seaboard.

The Commission conducted extensive market inquiries into this proposed merger consulting farming organisations, competitors and others.

Market inquiries indicated that the relevant product markets should be categorised on the basis of the fertiliser nutrients: nitrogen, phosphorus and potassium. The Commission concluded that fertiliser products containing the same basic nutrients were generally substitutable for each other and constrained each other in price.

Despite the merger leading to the merged party having high market shares in some product categories, the Commission concluded that the importation of fertiliser products is likely to operate as an effective competitive constraint on the merged

entity, thereby thwarting any attempt to raise the price of fertiliser to farmers. Although it is expensive to enter any of the markets by establishing a new manufacturing facility, the importation of fertiliser products is fairly routine and does not present an insurmountable barrier. Independent imports of fertiliser products represent more than 20 per cent of all fertiliser products used by Australian farmers.

Accordingly, the Commission believes that the proposed merger is unlikely to result in a substantial lessening of competition.

Cendant Corporation/Budget Australia—national market for car rental services.

On 17 October 2002 the Commission announced it would not oppose Cendant's acquisition of Budget Australia.

Cendant Corporation is a global company operating in travel and real estate. It owns the car rental company Avis Australia and has other Australian transport, travel and vacation operations. Its acquisition of Budget Australia was part of its acquisition of the Budget Group in the USA and elsewhere overseas. Budget Group is a global vehicle rental company, which operates the Budget Rent A Car business in Australia.

The Commission conducted market inquiries into this proposed acquisition, consulting with customers and competitors.

The Commission concluded that market conditions, the continuing presence of strong competitors and the opportunity for new entry means that the transaction would not result in a substantial lessening of competition for car rental services.

Custom Fleet/Hertz Leasing Ltd—national market for car fleet financing, leasing and/or management.

On 31 October 2002 the Commission decided it would not oppose Custom Fleet's acquisition of Hertz Leasing Ltd.

Custom Fleet is a nationwide provider of car fleet leasing and management services and is part of the National Australia Bank. Hertz Leasing provides similar services but on a smaller scale.

The Commission consulted with customers and competitors in examining this proposed acquisition.

The Commission concluded that the increase in Custom Fleet's market share would be minimal and it would continue to face strong competitors and customers with bargaining power in an expanding

market. The Commission concluded that the proposed acquisition is not likely to result in a substantial lessening of competition.

Proposed allocation of subscription television broadcasting licences to TransACT Broadcasting Pty Ltd—retail market for the provision of pay television services.

On 31 October 2002 the Commission decided not to oppose the application by TransACT for the allocation of 50 subscription television broadcasting licences by the Australian Broadcasting Authority under s. 96 of the *Broadcasting Services Act 1992*.

The Commission decided that the proposed acquisition of television broadcasting licences would not result, or be likely to result, in a substantial lessening of competition.

The Commission based its decision on the ease of obtaining subscription television broadcasting licences. The Commission noted that the additional licences would not exceed Commission concentration levels. The Commission considered that any effects on competition would arise from conduct in the industry and not the allocation of licences. It was also believed that the allocation of subscription television licences was not likely to significantly raise barriers to entry for other pay TV operators.

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.

Mark Leyden, ss. 45(2)(a)(i), 45(2)(b)(i), 76(1)(c) and 76(1)(e). Alleged agreements lessening competition, primary boycotts of the Trade Practices Act and of the Queensland Competition Code.

29.10.02 undertakings to:

- reimburse to patients of Dr Khoo who were affected by the alleged conduct a proportion of the gap payments made by those patients to Dr Khoo in relation to the provision of private in-hospital obstetrics services provided during the period 1.1.01–31.7.01

- reimburse to patients of Dr Robson who were affected by the alleged conduct a proportion of the gap payments made by those patients to Dr Robson in relation to the provision of private in-hospital obstetrics services provided during the period 1.1.01–31.7.01.

(See enforcement chapter in this journal for further details.)

Paul Khoo and Paul PT Khoo Pty Ltd,

ss. 45(2)(a)(i), 45(2)(b)(i), 76(1)(c) and 76(1)(e). Alleged agreements lessening competition, primary boycotts of the Trade Practices Act and of the Queensland Competition Code.

9.10.02 undertakings to:

- reimburse to patients of Dr Khoo who were affected by the alleged conduct a proportion of the gap payments made by those patients to Dr Khoo in relation to the provision of private in-hospital obstetrics services provided during the period 1.1.01–31.7.01
- send a letter to patients of Dr Khoo explaining the outcome and that the ACCC is working to secure the remainder of the payment that patients were required to make.

(See enforcement chapter in this journal for further details.)

Golden Casket Lottery Corporation Limited, s. 46. Misuse of market power.

8.10.02 undertakings to:

- review and, if necessary, amend its agency selection criteria to ensure they do not contain factors which, if relied upon in determining whether to accept agency applications, could place Golden Casket at risk of breaching s. 46
- continue to make its selection criteria publicly available
- ensure that market analysis undertaken for the purpose of assessing the impact of the appointment of a proposed agent will be of a standard reasonably suitable for its intended purpose
- develop a public complaints-handling process
- upgrade its trade practices compliance program.

(See enforcement chapter in this journal for further details.)

Lane Wrigley Pty Limited, s. 65C(1)(a). Product safety.

3.10.02 undertakings to refrain from supplying or offering to supply at any time in the future a household cot that does not comply with AS/NZS 2172:1995—Cots for Household Use—Safety Requirements. Lane Wrigley have also agreed to implement a trade practices compliance program and appoint an independent auditor to audit that compliance program.

Vodafone Network Pty Ltd, s. 52 Misleading or deceptive conduct.

25.9.02 undertakings to:

- credit FastFone customers the number of call credits that were lost from their first activation between 3.9.01 and 24.6.02
- not misrepresent the expiry period of Vodafone FastFone pre-paid call credits for 12 months
- place corrective advertisements in *The Australian* newspaper
- offer to supply any FastFone customer whose service has been de-activated with a new starter pack with appropriate call credits
- review and report on its trade practices compliance program and internal policies.

(See enforcement chapter in this journal for further details.)

William Greig Millar, ss. 51AC, 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 undertakings to provide 72 hours 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 in this journal for further details.)

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 representations of the type referred to above
- circulate corrective notices to affected consumers
- implement a trade practices compliance program in accordance with the Australian Standard AS 3806.

MacDonald Johnston Engineering Pty Ltd sells throughout Australia a range of road sweepers.

The purchasers of the road sweepers are predominantly local government authorities and some commercial entities that use the vehicles for cleaning facilities or to contract sweep local government and industrial sites.

The Commission has expressed concerns about some documentation distributed by MJE over a period of about two years in response to tender requests from many local government authorities. This included some representations as to the Australian content and/or country of origin of the sweepers.

Subsection 51(1) exceptions to the Trade Practices Act

Under subsection 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*

Poultry Meat Industry Amendment (Price Determination) Act 2002

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
Grain Marketing Act 2002 (WA)

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.