

---

# Adjudication

## Authorisations

*The ACCC has the function, through the authorisation process, of adjudicating on proposed mergers and certain anti-competitive practices that would otherwise breach the Trade Practices Act.*

*Authorisation provides immunity from court action and is granted if the ACCC is satisfied that the practice delivers offsetting public benefits.*

## Determinations

The full report of the following determinations can be obtained from the ACCC website at:  
<<http://www.accc.gov.au>>.

### **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.*

12.3.03 Draft determination issued.

15.4.03 Pre-decision conference held.

24.9.03 Final determination issued.

The RCSA sought authorisation for its code for ethical conduct and guidelines for divisions: disciplinary and dispute resolution procedure. The RCSA also sought authorisation for a number of clauses contained within its constitution which underpin the disciplinary and appeals procedures of the RCSA.

The code outlines a number of professional standards to which members agree to adhere. They include that members act honestly in all dealings, respect work relationships, ensure that workers are given details of their work conditions etc. The guidelines establish the RCSA's disciplinary and dispute resolution procedures.

A draft determination proposing to grant authorisation was issued on 12 March 2003.

This was the first authorisation of a code of conduct since the ACCC announced it would be considering codes for endorsement again. This authorisation (and subsequent code authorisations) contains a discussion on the difference between authorisation and endorsement and emphasises that an authorisation may not be held out as an endorsement of a code by the ACCC.

On 24 September 2003 the ACCC issued a final determination granting authorisation for five years as sought by the RCSA.

### **Air New Zealand on behalf of Star Alliance (A30211-3)**

*Joint offers of discounted fares and other benefits to convention delegates and organisers by Star Alliance member airlines through the Star Alliance Conventions Plus Program.*

30.5.03 Draft determination issued.

4.9.03 Final determination issued.

On 4 September 2003 the ACCC issued a final determination authorising the implementation in Australia of two programs offered by Star Alliance, the Star Joint Corporate Agreement and the Star Alliance Conventions Plus Program for four years. Under the programs, Star Alliance member airlines, including Air New Zealand, will offer discounted airfares to business travellers and convention delegates.

The ACCC considered that the programs would increase the range of airfares available to corporate travellers and convention delegates, particularly for those who would otherwise not have access to discounted airfares. In reaching its decision, the ACCC was mindful that a Star Alliance carrier does not currently operate in the Australian domestic market

To satisfy the ACCC that the two programs would result in a net public benefit, Air New Zealand undertook to stop participating in the programs if it enters into an alliance with Qantas involving the coordination of fares and schedules on trans-Tasman routes.

## Golden Casket Agents Association Ltd (A90853)

*Authorisation to conduct negotiations on behalf of its members, with Golden Casket Corporation Ltd in Queensland.*

28.4.03 Draft determination issued.

6.6.03 Pre-decision conference held.

4.9.03 Final determination issued.

A draft determination was issued on 28 April 2003 proposing to deny authorisation to the Golden Casket Agents' Association to conduct negotiations on behalf of its members in relation to the terms and conditions of agency agreements and arrangements with the Golden Casket Lottery Corporation. In its draft determination the ACCC expressed the view that the association had failed to demonstrate that the proposed collective bargaining arrangements would result in a benefit to the public. Following the ACCC's draft determination the association requested a pre-decision conference, which was held in Brisbane on 6 June 2003. Further information in support of the authorisation application was provided to the ACCC.

On 4 September 2003 the ACCC issued its final determination granting authorisation to the association for five years. Considering the voluntary nature of the proposed arrangements, the absence of boycott conduct, the regulated nature of the industry and the limited degree to which Golden Casket agents are able to compete (both with and without the proposed arrangements) the ACCC concluded that any anti-competitive detriment would be negligible. The ACCC was ultimately satisfied that the arrangements are likely to generate a small public benefit, as the community generally has an interest in Casket agents benefiting from increased effective input into contracts in situations where there is such a clear disparity in bargaining power.

## Qantas Airways and Air New Zealand (A30220-2, A90862-3)

*Acquisition by Qantas of ordinary shares comprising up to a 22.5 per cent voting equity interest in Air New Zealand and collaborative arrangements between the parties.*

*Cooperation agreement—pricing and scheduling of passenger and freight services.*

10.4.03 Draft determination issued.

9.9.03 Final determination issued.

On 9 December 2002 Qantas and Air New Zealand lodged applications seeking authorisation for Qantas to acquire up to 22.5 per cent of the equity in Air New Zealand and for the formation of a strategic alliance between Qantas and Air New Zealand. The strategic alliance would involve price, capacity and schedule coordination on nominated routes with the primary focus on the trans-Tasman, North America and New Zealand domestic markets.

The applicants' public benefit claims supporting authorisation rely heavily on the results of a study undertaken by NECG which attempts to quantify benefits and detriments arising from the conduct. For Australia the primary benefits are identified as arising from cost savings and increased tourism.

Parallel applications were lodged with the New Zealand Commerce Commission (NZCC).

The applicants initially agreed to the ACCC taking up to 5 July 2003 to respond to the merger authorisation application. The applicants subsequently agreed to the ACCC taking up to the end of September 2003 to respond to the merger application.

The ACCC sought comments from interested parties about this matter and received submissions from more than 50 parties.

On 10 April 2003 the ACCC issued a draft proposing to deny authorisation for the proposed arrangements. The NZCC issued its draft determination simultaneously. The NZCC also proposed to deny authorisation for the proposed arrangements.

In accordance with the Act, the ACCC gave interested parties the opportunity to request a pre-decision conference regarding its draft determination. No such conference was requested. The ACCC also gave interested parties an opportunity to provide it with written submissions.

On 9 September 2003 the ACCC issued a final determination denying authorisation to the proposed arrangements.

In accordance with the provisions set out in the Act, interested parties had until 30 September 2003 to lodge an appeal with the Australian Competition Tribunal. On 29 September 2003 Qantas and Air New Zealand lodged an application to review the ACCC's determination with the tribunal.

On 23 October 2003 the New Zealand Commerce Commission declined to authorise the proposed acquisition by Qantas of 22.5 per cent of the voting equity in Air New Zealand and a strategic alliance between Qantas and Air New Zealand. In a

statement, the NZCC said that it considered that a proposed alliance between the airlines would damage competition and harm consumers and would not be in the interests of New Zealanders. The NZCC said that the proposed alliance would result in a substantial lessening of competition in a number of markets.

### **Australian Self-Medication Industry (A30223)**

*Code of conduct for prevention of the backyard manufacture of amphetamines.*

13.2.03 Interim authorisation granted.

18.9.03 Draft determination issued.

22.10.03 Final determination issued.

On 8 January 2003 the ACCC received an application for authorisation from the Australian Self Medication Industry for a pseudoephedrine code designed to reduce illicit diversion of medicines containing pseudoephedrine for the production of methylamphetamine (speed). The code has been developed by the ASMI in conjunction with marketers and manufacturers of non-prescription medicines containing pseudoephedrine.

Signatories to the code (suppliers of pseudoephedrine containing products) would be required to take measures such as participating in sales monitoring arrangements, limiting pack sizes and promotional activities and supporting pharmacies in holding minimum stock weights of products containing pseudoephedrine.

On 12 February 2003 the ACCC granted interim authorisation to the code and on 18 September 2003 issued a draft determination proposing to authorise the code. A final determination authorising the code unconditionally was issued on 22 October 2003.

### **Agsafe Limited (A30194)**

*Application for revocation and substitution of existing authorisation of the drumMUSTER program which authorises a scheme for the collection and recycling of used agricultural and veterinary chemical containers.*

17.4.03 Application lodged.

14.8.03 Draft determination issued.

18.9.03 Final determination issued.

On 2 September 1998 the ACCC granted authorisation to application A30194 relating to an agreement between Avcare Ltd (Avcare), the

Veterinary Manufacturers and Distributors Association (the VMDA), the National Farmers' Federation (the NFF) and the Australian Local Government Association (the ALGA). Authorisation was granted for a period of five years and expired on 29 September 2003.

The agreement established the drumMUSTER program, an industry waste reduction scheme for the collection and recycling of empty agricultural and veterinary chemical containers that is financed by a levy imposed on chemical manufacturers.

The drumMUSTER program is implemented by Agsafe Ltd, a subsidiary of Avcare. The program is a component of the Industry Waste Reduction Agreement which aims to reduce waste at source and reduce the weight of packaging going to landfill.

On 17 April 2003 Agsafe made an application for revocation of A30194 and its substitution by A90871 under s. 88(1) of the Act on behalf of itself, the NFF, Avcare, VMDA and ALGA, the members of those associations and agricultural and veterinary chemical manufacturers who are not members of either Avcare or AMDA but who agree to participate in the drumMUSTER program. The application seeks authorisation for these parties to enter into and give effect to arrangements that constitute the drumMUSTER program, an industry waste reduction scheme of agricultural and veterinary chemical containers, including an agreement between manufacturers of agricultural and veterinary chemicals to charge a common levy to finance the scheme.

On 18 September 2003 the ACCC authorised the arrangement for five years.

## **Notifications finalised**

*The following notifications have been allowed to stand.*

**Australian Windows Publishing Pty Limited (N90922)** offering to supply persons who acquire a version AWP of Ezi website Lite at a discount on condition that they acquire internet services from Optus Internet Pty Ltd

**Telstra Corporation Ltd, Telstra Pay TV Pty Ltd (N31232-3)** in relation to arrangements offering discounts to retail customers who acquire telecommunications services from Telstra in AUSTAR areas. AUSTAR will supply television subscription services.

**Capricorn Mutual Limited (N31230)** in relation

to the supply of membership services on condition that the member acquires an insurance policy from Capricorn Insurance New Zealand.

**AGL ACT Retail Investments Pty Limited, ACTEW Retail Limited** (N91123, N91128) in relation to a discount offer for customers who choose at least two ActewAGL services (one of which must be electricity) combined with at least one TransACT services (one of which must be TransTALK or TransSELECT telephony agreement).

**TransACT Capital Communications Pty Ltd** (N91127) in relation to a discount offered to customers who acquire two ActewAGL services (one of which must be electricity) and at least one TransACT service (one of which must be either TransTALK or TransSELECT).

**Lensworth Kawana Waters Pty Ltd, Lensworth Buddina Pty Ltd, Lensworth Caloundra Downs Pty Ltd** (N91139–41) Proposal to supply cottage blocks to purchasers on the condition that those purchasers acquire building and related services for the building of housing on those blocks of land from one of a number of builders nominated by the Lensworth companies.

**Country Energy** (N91152) Propose to offer electricity and natural gas as a bundled package to ACT residents.

**AGL Retail Energy Limited** (N91157) Provision of discounted natural gas on condition that the customer acquires a selected energy appliance from an AGL retail partner and enters into a fixed term contract for up to three years with AGL.

**Australand Holdings Limited** (N91160) Sale of a residential lot to a customer subject to the purchaser entering into a building contract with Rylehall Pty Ltd.

**Foxtel Management Pty Ltd** (N91158) Proposal to retransmit the primary television broadcast signals of Network Ten Pty Ltd and its affiliates, Nine Network Australia Pty Ltd's regional affiliates, Seven Network Limited and its affiliates, Australian Broadcasting Corporation and the Special Broadcasting Service Corporation in the digital environment on Foxtel's cable and satellite set-top units provided that the open broadcasters: secure the use of transponder capacity on the Optus C1 satellite; or secure satellite capacity that otherwise has the same transmission configuration and same satellite orbital location as the Foxtel service delivered by satellite.

**Phoneshack (SA) Pty Ltd** (N40584) Supply or offer to supply a product or offer a discount to retail customers on the condition that they acquire mobile services or particular mobile plans from Telstra.

**Audiocom Pty Ltd** (N70369) Offer of a Sony gift voucher and a chance to win a car to customers buying a Telstra mobile phone.

**Communique Holdings Pty Ltd** (N40583) Supply or offer to supply Communique Holdings product or discount to customers on the condition that the customer acquires or agrees to acquire mobile services or particular mobile plans from Telstra.

**Telstra Corporation Ltd** (N40582) Offer of a discount on a Telstra internet product to customers on the condition that the customer acquires or agrees to acquire an IBM product.

**Myer Stores Ltd, Betta Stores Ltd** (N40580–1) Supply of a Myer stores or Betta stores product to retail customers on the condition that the customer acquires or agrees to acquire mobile services or particular mobile plans from Telstra.

**Stockland WA Development Pty Ltd** (N70368) Proposed supply of house and land packages at Banjup and Southern River WA where land purchasers must acquire the services of nominated builders.

**Suncorp Metway Limited** (N91161) Offer of reward points to customers who acquire a product and who otherwise comply with the rewards program and who make eligible credit card transactions to selected merchants called Bonus Partners.

**Liquorland (Australia) Pty Ltd, Liquorland (Qld) Pty Ltd** (N91167–8) Provision of goods at a discount price on the condition that the customer has purchased goods and/or services of a specified volume at Coles Supermarkets Australia Pty Ltd

**Liquorland (Australia) Pty Ltd, Liquorland (Qld) Pty Ltd** (N91165–6) Arrangements with Emap (Australia) Pty Ltd whereby customers upon purchasing an FHM Magazine are entitled to receive two coupons. One coupon entitles customers to purchase a discounted case of Carlton Premium Dry from any Liquorland Store. The other coupon entitles customers to a free Carlton Premium Dry bottle. The coupons are not redeemable in the Northern Territory.

**NewQuay Nodal and Marina Pty Ltd, NewQuay Stage 2 Pty Ltd, Nolan Tower Pty Ltd, Windsor Storage Pty Ltd t/a Precinct Management Services PMS** (N40585–7) Sale of retail properties to purchasers on condition they: (1) comply with various covenants and other obligations relating to the terms on which purchasers lease or operate the retail properties; (2) acquire the property management services of precinct management services in accordance with a property management agreement for a term of 7 years with a further 3 year option; and (3) agree that they will novate the property management agreement to any subsequent purchaser for the unexpired term of that agreement if they sell the property.

**Australia and New Zealand Banking Group Limited** (N40593) Offer of a discount on variable interest rate personal loans for customers who also take out loan insurance issued by ANZ Life Insurance Company Limited and QBE Insurance (Australia) Ltd T/A Western QBE Insurance at the time of application.

**Mason Lawyers Pty Ltd** (N91172) Offer of a discount on professional fees normally charged to clients who are purchasing a residential property and financing the purchase: (1) with a loan directly from Phoenix (NSW) Credit Union Limited; (2) by way of a loan arranged by Foundation Homeloans Pty Ltd; (3) by way of a loan arranged by Foundation Homelands (Newcastle) Pty Ltd.

**Origin Energy (Vic) Pty Ltd, Origin Energy Electricity Ltd** (N40591–2) Offer of a rebate to members of the Association of Professional Engineers, Scientists and Managers Australia (APESMA) who sign a market contract with Original Energy (Vic), and a discount to members who sign a market contract with Origin Energy Electricity.

**Origin Energy (Vic) Pty Ltd, Origin Energy Electricity Ltd** (N40589–90) Offer of a rebate and rewards to customers who sign a market contract with both Origin Energy Electricity and Origin Energy (Vic) and remain on contract for a minimum of 12 months.

**Mont Park Development Company Pty Limited** (N91162) Offer of sale of a residential allotment on the condition the purchaser enters into a contract with a 'preferred builder' for the construction of a house on the allotment.

**Millenium Holdings Pty Limited T/A Newtech Mobile Phone Centre** (N40588) Supply of a product to retail customers on the condition that the customer acquires or agrees to acquire mobile services or particular mobile plans from Telstra.

**B&E Ltd** (N91169) Offer of discount on loan establishment fee if client acquires one or more products from CGU Insurance Ltd, Swann Insurance (Aust) Ltd and American Express International Inc.

**Telstra Corporation Limited, Telstra Pay TV Pty Limited** (N31244–5) Promotion of services to retail customers allowing discounts etc. to customers who also acquire subscription television services supplies by Telstra Pay TV. Telstra Pay TV notification of the promotion of services to retail customers allowing discounts etc. to customers who also acquire telecommunication services from Telstra.

**Liquorland (Australia) Pty Ltd, Liquorland (Qld) Pty Ltd** (N91163–4) Discount off purchase of a carton of Hahn Premium Beer at any Liquorland store for customers of Village Roadshow who purchase a Village Gold Class Father's Day cinema package.

**Michelle Debra Watson** (N91181) Offer of discount on Buteyko Institute method courses to members of the health fund, Australian Unity.

**MK & MH Gibbs T/A Guichen Bay Motors** Sale of fuel on condition that the customer acquires groceries from Robe Foodland IGA.

**Intertan Australia Pty Ltd** (N40594) Supply of a product to customers on the condition that the customer acquires or agrees to acquire mobile services or particular mobile plans from Telstra.

**Callaway Golf South Pacific Pty Ltd** (N50146) Proposal to exchange certain golfing products (promotion kits) to authorised retailers for certain other second-hand golfing products acquired by the retailers from consumers.

**AGL Electricity Limited** (N91182) An offer of a discount, allowance, rebate or credit off the customer's residential electricity account with AGL Electricity on the condition they enter into a fixed term contract of up to three years with AGL Electricity to provide electricity; or a dual fuel contract with AGL Electricity to provide electricity and AGL Retail to provide natural gas.

**Chief Entertainment trading as The Basement Studios** (N31254) Offer of a discount in relation to a Basement product to customers on the condition that the customer acquires telecommunication services from Telstra.

**ActewAGL Retail** (N91191) Offer of a one-off discount on customer's residential electricity or gas account with ActewAGL Retail on condition they purchase a selected energy appliance and/or energy appliance service from an ActewAGL Retail partner.

**Honda Australia Motorcycles and Power Equipment Pty Ltd** (N91183) Offer of a free floor plan period when a dealer places an order for a Honda Product with Honda MPE and renting out, in effect, from a CIT Group Company.

**CIT Credit Pty Ltd, CIT Group (Australia) Limited** (N40596, N91273) Offer to give or allow a discount, allowance, rebate or credit on the supply of finance services to dealers on condition that the dealers will acquire rights in Honda products from Honda MPE.

**Western Power Corporation** (N70371) Power Purchase Agreement between WPC and Exmouth Power Station Pty Ltd whereby in the event of a curtailment in the supply of electricity WPC has priority in supply over the supply of electricity to non-WPC customers.

**NewQuay Nodal and Marina Pty Ltd, NewQuay Stage 2 Pty Ltd, Nolan Tower Pty Ltd** (N40602-4) Offer of retail properties to purchasers on condition that they (a) comply with various covenants relating to the terms of lease or operation; (b) acquire property management services from PMS in accordance with a Property Management Agreement for 7 years with a further 3 year option; (c) novate the Property Management Agreement to subsequent purchasers for the unexpired term of that agreement if they sell the property.

**RWC 2003 Ltd** (N91187) Supply of an official license for betting services on condition that the official licensee will acquire and use data services directly from the official licensee of data services.

**RWC 2003 Ltd** (N31256) Supply of an official license for broadcasting services on the condition that the official licensee will: acquire and use data services directly from the official licensee for data services; and provide recognition by way of on-screen graphics to the official licensee for data services.

**University of Melbourne** (N91190) Offer of discounted educational or ancillary services to overseas students on condition that they acquire accommodation, support and welfare services from pre-approved providers.

**Optus Internet Pty Ltd** (N31257) Offer of a discount on Xbox games on condition that customers acquire internet services or other products from Optus Internet, and the Xbox Live product from a Harvey Norman outlet.

**Liquorland (Australia) Pty Ltd** (N91278) Offer of: a Henkell Trocken Piccolo 200ml bottle at no charge; discounted 3-pack of Henkell Trocken Piccolo on condition the customer presents a relevant voucher obtained from Murdoch's *Marie Claire* magazine.

**Diners Club Pty Ltd** (N91180, N91274) Offer of reward points to be redeemed for Qantas Frequent Flyer points where using the ANZ Frequent Flyer Diners Club Card or the Qantas Frequent Flyer Diners Club Card for purchases on the condition the cardholder is a member of the Qantas Frequent Flyer program.

**Diners Club Pty Ltd** (31252) Offer of reward points to ANZ Rewards Diners Club Card holders on condition they already hold an ANZ Telstra Visa Card.

**McMillan Shakespeare Australia Pty Limited** (N91186) Offer of an efficient salary packaging service and meal entertainment program to customers who acquire a salary packaging diners card and meal entertainment payment card issued by Diners Club Pty Ltd.

**Medibank Private Ltd, ACP Publishing Pty Ltd, RedBalloon Pty Ltd, Aussie Breaks Pty Ltd, Australiawide Airlines Ltd, Express REX** (N40597-601) Offer of various discounts or vouchers to consumers on the condition they acquire health services from Medibank Private Limited.

**Commander Australia Limited** (N31255) Offer of packages comprised of voice telecommunications services and equipment maintenance services on the condition customers rent equipment from Commander Rentals Pty Ltd via an agency agreement with Commander.

**St Kilda Football Club** (N31258) Offer of a signed club jumper to customers on the condition they acquire or agree to acquire telecommunication services from Telstra.

**AAPT Ltd** (N31241) Proposing to offer a discount to residential customers that acquire on a single bill a full service fixed line product.

**Bloomberg LP, EBS Service Company Limited** (N31242-3) Offer financial incentives to Bloomberg customers who acquire access to EBS products within the Bloomberg Professional Service. EBS will supply trader and certain other products to customers who subscribe to the Bloomberg Professional Service.