
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 Proceedings withdrawn 17.9.93.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 21.12.01 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 lodged by the ACCC on 18.2.02 will be heard on 10.2.03.

Boral Ltd and Boral Masonry Ltd (formerly Boral Besser Masonry Ltd), s. 46. Alleged misuse of market power.

On 6.3.98 the Commission instituted proceedings against Boral Masonry Limited (BML) and Boral Limited alleging a misuse of market power by

predatory pricing in relation to the supply of concrete masonry products.

The Commission alleged that BML had reduced the prices of its concrete masonry products in Melbourne to below its manufacturing costs with the intention of driving out an efficient new independent operator, C&M Bricks Pty Ltd. The Commission sought a penalty, declarations, injunctions and findings of fact.

On 22.9.99 the Federal Court handed down its judgment, finding that BML had engaged in below-cost pricing to deter new entrants and eliminate competitors. However, the court was not satisfied that BML had a substantial degree of market power in the Melbourne concrete masonry products market. The court also found that Boral Ltd had not contravened the Act.

In November 1999 the Commission appealed to the Full Court of the Federal Court. On 27.2.01 the Full Court of the Federal Court unanimously upheld the Commission's appeal in relation to BML and dismissed the appeal against Boral Ltd. The Full Court held that BML had a substantial degree of power in the Melbourne concrete masonry products market and that it took advantage of this power for the purpose of deterring new entrants and driving competitors out of the market.

Boral Masonry applied for special leave to appeal to the High Court of Australia and on 14.12.01 the High Court granted BML's application. On 7.2.03 the High Court handed down its judgment, upholding BML's appeal by a 6-1 majority. The High Court held that BML did not have a substantial degree of power in the market for concrete masonry products in Melbourne.

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 obtained special leave to appeal to the High Court and the matter was heard on 3.12.02. Judgment pending.

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 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 (both power transformer and distribution 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. A total of \$7m in penalties was awarded against Alstom.

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. On 7.11.02 the ACCC filed its summary of argument 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.

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 on 19.12.02 O'Loughlin J gave judgment that respondents had no case to answer and awarded costs against the ACCC. He also stated that, notwithstanding this, that the ACCC was justified in making the inquiries and taking the action it took. The ACCC is considering its options in relation to the matter.

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

¹ Proceedings were 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.

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 heard by the Full Court 25–27.11.02.

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

Proceedings instituted 7.5.02 in the Federal Court, Sydney. The ACCC is alleging that Qantas misused its market power by increasing capacity and reducing prices in response to the entry of Virgin Blue Airlines on the Brisbane–Adelaide route. The ACCC is seeking 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.

On 12.7.02 Qantas moved to strike out the statement of claim. Issues of clarity in the statement of claim were considered at hearings on 10.10.02 and 2.12.02. The matter is next listed for hearing on 17.2.03.

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 (Administrators Appointed/Subject to Deed of Company Arrangement) 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. On 20.12.02 the court granted the ACCC leave to join Balgee Oil and Mr Peter Muller of Balgee Oil to the proceedings. A further directions hearing was held on 7.2.03 and another is listed for 4.4.03.

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 a.m. 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, 1.11.02 and 7.2.03. A further one is listed for 1.8.03.

Fila Sports Oceania Pty Ltd, ss. 46, 47. Alleged misuse of market power, exclusive dealing.

Proceedings instituted 5.9.02 in the Federal Court, Sydney, with the Commission also taking action against the current and former managing directors of Fila, Mr Craig Reidy and Mr David Carney, for their alleged involvement in the matter.

The Commission alleges that Fila implemented a selective distribution policy in late 1999 to supply clothing retailers with Fila AFL-licensed apparel only on condition that these retailers agreed not to stock AFL-licensed apparel from Fila's competitors.

The Commission is seeking remedies against Fila and the individuals, including pecuniary penalties, declarations, injunctions preventing Fila from engaging in similar conduct in the future, findings of fact and an order for Fila to update its existing trade practices compliance program.

A directions hearing was held on 4.10.02 and a further one listed for 28.4.03.

Eurong Beach Resort Limited and ors, ss. 45, 46, 60. Alleged price fixing and market sharing, misuse of market power, exclusive dealing, harassment and coercion.

Proceedings instituted 5.9.02 in the Federal Court, Brisbane, against Eurong Beach Resort Limited, Mr Sidney Melksham, Jaigear Pty Ltd, Oser Pty Ltd and Ms Angela Kay Burger alleging predatory pricing and other conduct in contravention of the Trade Practices Act.

The Commission is seeking declarations, injunctions, pecuniary penalties, adverse publicity orders and

the implementation of a trade practices compliance program.

A directions hearing is listed for 7.3.03.

Baxter Healthcare Pty Ltd, ss. 46, 47. Alleged misuse of market power, exclusive dealing.

Proceedings instituted 1.11.02 in the Federal Court, Sydney.

The Commission alleges that Baxter entered into long-term, exclusive, bundled contracts of between three and five years to be the sole or primary supplier of large-volume parenteral fluids (intravenous fluids), parenteral nutrition, irrigating solutions and peritoneal dialysis products with the purchasing authorities of New South Wales, the Australian Capital Territory, Western Australia, South Australia and Queensland. It alleges that the purpose of the conduct was to damage Baxter's competitors, Fresenius Medical Care Australia Pty Ltd and Gambro Pty Ltd, in the relevant peritoneal dialysis market in contravention of s. 46 of the Act. The Commission further alleges that the bundling of the products into long-term exclusive contracts contravenes the exclusive dealing provisions of the Act.

The Commission is seeking penalties against the company, findings of fact, declarations, injunctions, and orders for Baxter to review its trade practices compliance program.

A directions hearing was held on 22.11.02 in the Federal Court, Sydney and a further one listed for 16.4.03.

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 16.9.00 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 certain evidence and the applicability of privilege status of a number of documents.

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. Trial commences 7.4.03 for up to five weeks.

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.

Consent orders for directions filed on 4.2.02 and 13.6.02. Further court orders were made on 13.9.02 and 29.10.02 on a timetable for the remaining steps before trial. Date of trial to be confirmed.

Chaste Corporation Pty Ltd, ss. 48, 51AC, 51AD, 52, 52(a), 53(aa), 53(c), 53(g) & 59(2). Alleged resale price maintenance, commercial unconscionable conduct, contravention of industry codes, misleading or deceptive conduct, misrepresentation of warranties, misrepresentation of possible income.

Proceedings instituted 26.11.01. The director of the company, Mr Braddon Webb, has been joined to the proceedings as being allegedly involved in the alleged contraventions.

A directions hearing was held on 14.12.01. Mr Webb filed a defence on 18.1.02 and further directions hearings 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 matter. A further directions hearing has been set for 21.3.03.

The Commission is seeking penalties for resale price maintenance conduct, declarations, and injunctions to restrain the respondents from engaging in the alleged conduct. It is also seeking orders to implement a compliance program and pay costs.

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, 4.7.02, 22.8.02, 17.9.02, 11.10.02 and 2.12.02. 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. The next directions hearing is listed for 14.3.03.

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.

Directions hearings were held on 11.4.02, 15.11.02 and trial set for 28.4.03–9.5.03.

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. 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 were filed and made 8.8.02. A case review conference was held on 30.10.02 and on 10.12.02 a hearing of notice of motion that the ACCC request documents from a non-party for inspection by the respondents was granted.

Contravention of industry codes

Helen Ewing, director, and Chris Hudman, former director, Synergy in Business Pty Ltd (in liquidation), ss. 51AD, 52, 59(2). Alleged contravention of industry codes.

Proceedings instituted in the Federal Court, Adelaide, on 22.7.02 with the Commission alleging that the Newcastle-based company advertised throughout Australia to sign up consultants. It then licensed these people to promote and sell Synergy's small business development program, known as the 'Best Practice Program'.

The Commission alleges that Synergy specifically excluded the licence arrangement from being characterised as a franchise by including a clause in the licence contract to that effect, in addition to making oral representations to prospective licensees. However, the Commission's view is that Synergy is in fact a franchise and operates as such in practice.

The Commission is seeking declarations, orders that effectively inaugurate the franchisees' rights under the code, including their cooling off rights, or in the alternative, that the licences are void *ab initio* [from the beginning], injunctions, orders for refunds and costs.

Directions hearings were held on 2.9.02 and 13.11.02. A timetable has been set, with a further directions hearing listed for 25.3.03.

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, Nick Kritharas, George Manera and another. On 7.11.97 the court granted leave to the ACCC to join two further parties, 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. 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 Nick Kritharas on 31.10.00.

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 then made an application for special leave to the High Court. This was heard on 5.11.02 and the application refused. The assets of the trusts are now in the hands of the liquidator and are due to be auctioned on 4.3.03.

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 was heard on 2.10.02. Awaiting outcome of application for summary judgment.

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. A trial date is yet to be set.

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. The trial commenced on the 22.7.02 and the matter has been partly heard. A directions hearing was held on 7.11.02 with arguments put forward on the admissibility of the respondent's expert and lay witnesses.

Nicholson J will provide a ruling on these issues with the trial to recommence on 11–14.3.03.

Michigan Group Pty Ltd, Imobiliare (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 was handed down by Dowsett J on 26.11.02, in which he made findings of contraventions of s. 52 against Michigan Group Pty Ltd, Imobiliare Pty Ltd (trading as Queensland Juice Company), Yeppoon Pty Ltd, Mr Rodney Laski and Mr Peter Semos. On 4.2.03 Dowsett J made orders against the parties (details will be provided in the enforcement chapter of *ACCC Journal* no. 44).

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, ss. 12DA, 12DB, 12DF of the ASIC Act. Alleged misleading or deceptive conduct.²

Proceedings were instituted on 8.2.01 in the Federal Court, Sydney, concerning print and television advertisements containing pregnancy-related images. It was also alleged that John Bevins Pty Ltd, an advertising agency, was knowingly concerned in the alleged breaches. The Commission alleged that fine print in the advertisements stating that the 12-month waiting period for pregnancy-related

² Proceedings were 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.

services would not be waived, were inadequate and unlikely to come to the attention of consumers. Hill J handed down his decision on 9.9.02 making an order that the respondents pay the Commission's costs and indicating that he proposed to make orders that MBF undertake corrective advertising on television and in newspapers because the original television and billboard advertisements were misleading. The matter was stood over to 20.9.02 to hear submissions from the parties as to the form of orders to be made. Following those submissions the Federal Court made orders for corrective advertising and this decision was appealed by MBF. The appeal is listed for hearing on 12.5.03.

John Bevins Pty Ltd, ss. 12DA, 12DB, 12DF of the ASIC Act. Alleged misleading or deceptive conduct.³

Proceedings instituted on 5.2.01 with the MBF matter above. The Federal Court found that John Bevins Pty Ltd, MBF's advertising agent, was 'knowingly concerned' in the alleged contraventions by MBF. This aspect of the case was also appealed and will be heard with the MBF proceedings on 13.5.03.

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.

³ Proceedings were 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.

Directions hearings were held on 11.4.01, 15.6.01, 3.8.01 and 2.10.01. Matter heard 2–3.4.02. On 13.1.03 judgment was delivered though the matter was stood over to a date yet to be fixed for final orders. In the reasons for judgment, Stone J found that Signature had breached ss. 52, 53(e), 53(d), 53C, and 87B(4).

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. Judgment given 11.10.02—all charges proved against both defendants. Penalties hearing 16.12.02. Judgment pending.

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 with the *Mareva* injunction freezing the assets of Greenstar and Mr Smith being extended to the other directors of Greenstar until a judgment is handed down.

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 further directions hearing will be held on 18 February 2003 to list the matter for trial.

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 Dowsett 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 matter has been set down for trial in the Federal Court, Brisbane, commencing 7.4.03 for five days.

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 court book will be filed in early February 2003 and the matter is progressing towards trial.

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 directions hearings and a trial date has been set for 23.7.03.

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 9.11.01 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.

NRMA Health Pty Ltd trading as SGIC Health and SGIO Health, NRMA Insurance Ltd and Saatchi & Saatchi Australia Pty Ltd, ss. 12DA, 12DB, 12DF of the ASIC Act Alleged misleading or deceptive conduct.⁴

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*.

On 4.7.02 the Federal Court made orders by consent for NRMA Health Pty Ltd and NRMA Insurance Ltd. The orders included declarations that NRMA Health breached the relevant provisions of the ASIC Act, a requirement that NRMA Health inform consumers of the misleading conduct, waiver of waiting periods for those who were misled and the availability of refunds for excesses and co-payments.

Saatchi & Saatchi Australia Pty Ltd, ss. 12DA, 12DB, 12DF of the ASIC Act. Alleged misleading or deceptive conduct.⁵

⁴ Proceedings were 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, since December 1998, ASIC has formally delegated the regulation of all consumer protection aspects of health insurance to the Commission through the use of nominated Commission officers as delegates.

⁵ Proceedings were 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, since December 1998, ASIC has 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 ACCC alleged that Saatchi & Saatchi, NRMA's advertising agency, was involved in the contraventions outlined in the matter above and they were joined to the action as primary contraveners as opposed to being knowingly concerned. On 3.10.02 Jacobsen J dismissed the Commission's application as it related to the involvement of Saatchi & Saatchi. On 24.10.02 the ACCC lodged an appeal in the Full Federal Court and a hearing is set for 13.5.03.

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 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.

Nine directions hearings have been held with the first on 3.12.01 and the most recent on 19.11.02. The next directions hearing is listed for 19.12.02. The trial, to be over five weeks, was adjourned until 10.3.03.

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 listed for further review on 18.2.03.

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 instore public disclosure notices and corrective

advertising in newspapers and to implement a corporate compliance program.

A directions hearing on discovery was held on 3.2.03 and the matter is progressing towards trial.

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.

On 2.5.02 an ex parte notice of motion filed by the Commission was heard by Nicholson J who ordered that leave be granted to enable service out of jurisdiction.

Allegations made by the Commission are 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.

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.

Directions hearings were heard on 14.6.02 and 11.10.02 and a further one listed for 7.2.03.

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.

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 further directions hearing was held on 22.10.02. The matter is listed for 6.2.03 to discuss consent orders.

Voyages Hotels and Resorts Pty Ltd, s. 52. Alleged misleading or deceptive conduct.

Proceedings instituted 18.7.02 with the Commission alleging misleading and deceptive advertising for tours to Aboriginal land near Uluru.

The Commission is seeking interim injunctions, permanent injunctions, the publication of public notices, declarations, costs and a trade practices compliance program.

A directions hearing is listed for 4.2.03.

Transformation 2012, ss. 51A, 52, 53(c). Alleged misleading or deceptive conduct, misrepresentations about the performance characteristics of goods, representations as to future events without reasonable grounds.

On 11.9.02 the Commission instituted proceedings in the Federal Court, Canberra, against Internet trader, Michael Desveaux.

The Commission is seeking an interim injunction to prevent Mr Desveaux making representations about health benefits from the use of the marketed products.

The Commission is seeking orders including:

- declarations that Mr Desveaux breached the relevant provisions of the Trade Practices Act
- injunctions restraining Mr Desveaux from engaging in the same conduct in the future
- corrective advertising
- refunds for consumers
- an order requiring Mr Desveaux to undertake a trade practices compliance program
- findings of fact
- costs.

The Commission is also alleging that Mr Desveaux engaged in conduct designed to intimidate or harass an officer of the Commission in breach of provisions of the Trade Practices Act and the Crimes Act. The Commission is seeking orders that Mr Desveaux:

- not contact the Commission officer the subject of the alleged conduct
- will not disclose the Commission officer's details on his website or otherwise
- will cause to be displayed on his website and, via email distribution list, a corrective statement
- costs.

On 3.2.03 the Federal Court made orders against Mr Desveaux who also provided court enforceable undertakings to the ACCC (details will be provided in the enforcement chapter of *ACCC Journal* no. 44).

Dodo Internet Pty Ltd, ss. 51AB, 52, 53(e), 53(g). Alleged misleading or deceptive conduct, false or misleading representations, unconscionable conduct.

Proceedings instituted 17.9.02 in the Federal Court, Adelaide against Dodo Internet Pty Ltd and one of its directors, Maxim Zabelov. Two other directors, Larry Kestleman and Mark Baranov, were joined to the proceedings by consent on 25.11.02.

The Commission alleged that Dodo engaged in conduct in breach of the Act by making false and misleading representations in television, print and website advertising with regard to local call cost connection. The Commission also alleged that Dodo made false representations with regard to contractual non-excludable conditions and warranties and that Dodo engaged in unconscionable conduct in its dealings with customers who incurred STD telephone charges as a result of its misleading and deceptive conduct.

The Commission is seeking declarations that Dodo breached the relevant provisions of the Act and that Mark Baranov and Larry Kestleman were knowingly concerned in the conduct. It is seeking injunctions restraining Dodo from making the same or similar representations in the future; injunctions restraining Maxim Zabelov, Mark Baranov and Larry Kestleman from being knowingly concerned in making the same or similar representations in the future. It is also seeking orders for Dodo to compensate affected consumers, for corrective notices to be sent to consumers, for Dodo to implement a trade practices compliance program and for costs.

(This matter was settled by consent orders in February 2003 and will be reported in full in *ACCC Journal* no. 44.)

The South Australian Olive Corporation Pty Ltd & ors, ss. 52, 53(a), 53(eb) and 55. Alleged misleading country of origin claims by the producers and marketers of Viva brand olive oils.

Proceedings instituted 15.10.02 in the Federal Court, Adelaide, against The South Australian Olive Corporation Pty Ltd, Inglewood Olive Processors Ltd, Mark Sybert Troy, a director of The South Australian Olive Corporation Pty Ltd and James Smyth, the general manager of The South Australian Olive Corporation. A directions hearing was held on 4.11.02. Proceedings were discontinued against James Smyth at that time on the basis that Smyth was not knowingly concerned in the conduct.

The Commission alleges that between late 1998 and mid-2002, The South Australian Olive Corporation supplied Viva Early Harvest Extra Virgin Olive Oil and Viva Late Harvest Extra Virgin Olive Oil with labels containing a prominent representation that the oils were 'Australian' to major supermarket chains. It is alleged that the oils contained a proportion of imported extra virgin olive oil. The inclusion of the imported olive oil was not disclosed anywhere on the product labelling. The Commission alleges the manner in which the word 'Australian' was used on the labelling would be likely to mislead a consumer into believing that the oils were a product of Australia.

The Commission is seeking declarations that The South Australian Olive Corporation and Inglewood Olive Processors breached the relevant provisions of the Act; declarations that Mark Troy was knowingly concerned in the conduct; injunctions restraining The South Australian Olive Corporation and Inglewood Olive Processors from making similar representations in the future; an injunction restraining Mark Troy from making similar representations in the future; an order requiring The South Australian Olive Corporation and Inglewood Olive Processors to implement a trade practices compliance program; an order for corrective advertising and an order for costs.

A directions hearing was held on 5.2.03 at which time a timetable was put in place towards hearing argument on an issue concerning corrective advertising.

Commonwealth Bank of Australia, s. 52.
Alleged misleading or deceptive conduct.

Proceedings instituted 25.10.02 with the Commission alleging false, misleading or deceptive advertising in one of its home loan campaigns, the Cricket Home Loan Campaign which ran from 22.11.01 to 27.1.02 as part of the bank's No Regrets themed advertising.

The Commission is seeking court orders including declarations, injunctions, refunds, orders for corrective advertising and costs.

Directions hearings were held on 24.10.02 and 12.12.02. A trial date has been set for 26.5.03.

Product safety (Part V)

BMW (Australia) Limited, s. 65C. Product safety standards.

Proceedings instituted 28.10.02 in relation to the safety warning carried on vehicle jacks supplied with BMW vehicles and in the vehicle owner's manual in respect of safe usage instructions for the jack.

The Commission is seeking a finding of facts, a declaration that BMW has contravened the Act, an injunction, orders for a recall program and public notices, an order that BMW have its trade practices compliance program independently audited and reported on and costs.

A directions hearing was held on 13.12.02 at which time the interlocutory timetable was set down. A further directions hearing is listed for 21.3.03.

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

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.

14.1.98 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 Application amended. Second draft determination required.

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.

6.11.02 Draft determination issued.

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.

21.10.02 Draft determination issued.

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.

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.

14.1.03 Application withdrawn.

Refrigerant Reclaim Australia Ltd (A90854).
Application for authorisation to charge a \$1 per kilo levy on refrigerant gases. The applicant already has authorisation to charge such a levy on ozone depleting gases.

6.11.02 Interim authorisation granted.

National Electricity Code (A90797–9)
Generators bidding and rebidding strategies and their effect on prices.

24.6.02 Draft determination issued.

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.

6.10.02 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.

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 Hotels Association (NSW) (A90837) Application for authorisation collective negotiations with TAB Ltd provision of PUBTAB and SKYCHANNEL to AHA (NSW) members

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).

22.1.03 Draft determination issued.

Myer Stores Limited (A40082) Agreements with concession businesses to participate in Myer Grace Bros. discount promotions.

9.10.02 Interim authorisation granted.

NEC—chapter 9 derogations for Victoria relating to transmission regulation (A90850–2) Applications relate to the Victorian regulation from 1.1.03.

18.12.02 Interim authorisation granted.

Golden Casket Agents Association Ltd (A90853) Seek authorisation to conduct negotiations on behalf of its members, with Golden Casket Corporation Ltd in Queensland.

4.12.02 Interim authorisation granted.

Sisters of Charity Health Service Limited (A30216, A30219) Joint negotiation of Hospital Purchaser Provider Agreements (HPPA) with health funds and joint negotiation of purchasing arrangements with suppliers.

Allianz Australia Insurance Limited, QBE Insurance (Australia) Limited, NRMA Insurance (A30217–8) Provision of public liability insurance for not-for-profit organisations—pool arrangements.

27.11.02 Interim authorisation granted.

International Air Transport Association (A90855) Revocation of part of A90435—Air Cargo Agency Program.

Qantas Airways Limited and Air New Zealand Limited (A30220–2) 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.

Qantas Airways Limited and Air New Zealand Limited (A90862–3) Cooperation Agreement—pricing and scheduling of passenger and freight services.

Australian Self-Medication Industry (A30223) Code of conduct for suppliers of non-prescription medication, aimed at preventing common cold and cough medicines being obtained by backyard laboratories for the manufacture of amphetamines.

Investment and Financial Services Association (IFSA) (A90857) Application for revocation of A30200 and A30201 and substitution by a new authorisation. Application relates to an updated version of IFSA's Genetic Testing Policy.

6.12.02 Interim authorisation granted.

Resource NSW (A30204) Application for revocation of authorisation A30204 and its substitution in identical terms except as to the date from which the authorised conduct may commence.

8.1.03 Draft determination issued.

Notifications under consideration

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).

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

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

AOL7 Australia Holdings Pty Ltd and BAOL7 Pty Ltd t/a 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).

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

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

13.9.02 Draft notice to revoke issued.

21.10.02 Pre-decision conference held.

Harvey World Travel Franchises Pty Ltd (N91004 – N91006) Requirement that franchisees operate with a nominated computer reservation system (exclusive dealing).

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.

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

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

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

ProfiTune Business Systems Pty Ltd (N50142) Business coaching franchising operation (Franchise Agreement).

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).

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

South Australian Housing Trust and UPL (SA) Pty Ltd (N91037) Urban renewal project Westwood Precinct 2 nominated builders.

The Royal Automobile Club of Qld Limited (RACQ) (N51043) Exclusive use of RACQ branded batteries in RACQ road service vehicles.

National Refrigeration & Air-Conditioning Council (N91040) Suppliers to provide the services of technicians certified under the certification scheme administered by the council.

The John James Memorial Hospital Limited (N91041) VMO status and allocation of theatre times.

Sun World International Inc. (N91042) Proposal to appoint various authorised fruit growers in Australia.

Globe Australia, Garrards, C Rudduck, David Gray & Co. Pty Ltd, Bayer Australia (N91043–6) CropScience accreditation program for installers of Kordon TMB and Kordon TB moisture and termite protection.

Sydney Futures Exchange Limited and SFE Clearing Corporation Pty Limited (N91050)
Clearing and settlement services provided by facility participants.

Sydney Futures Exchange Limited and SFE Clearing Corporation Pty Limited (N91050)
Clearing and settlement services provided by facility participants.

Liquorland Pty Ltd, Liquorland Qld, Emap Australia Pty Ltd (N91052–5) An arrangement between Liquorland (trading as Vintage Cellars) and Emap and McWilliams Wines (sole distributor of Holsten beer) for customers to receive Holsten beer with presentation of a promotional coupon.

Sensis Pty Ltd (N40545) Supply of free online listing when Yellow Pages print advertisement is purchased.

Synergy Capital Management Limited and Challenger Manager Investments Limited (N40543–4) Supply product on condition products are purchased from the other party.

Citibank Pty Ltd (N30870) Discount offered to customers who acquire a financial product from nominated suppliers.

Caltex Australia Petroleum Pty Ltd (N31205) Caltex to provide rebates to GE Capital Fleet Services Australia upon GE requesting issue of Caltex Fuel Cards to clients and employees of GE.

Encyclopaedia Britannica Australia Ltd (N31206) Free access to an online product if consumers use MasterCard to purchase other products.

Golf Marketing International Pty Ltd (N31207) Free copy of book *The Sandbelt—Melbourne's Golfing Heaven* for customers who use MasterCard to make bookings.

Diners Club Pty Ltd (N31208) Offer of a charge card to eligible customers who acquire a financial product issued by Citibank Pty Ltd.

Citicorp Investments Ltd (N31209) Provision of services on condition consumer acquires a financial product issued by a third party.

Tip Top Dry Cleaners Pty Ltd (N91057)
Discounted fuel for proof of purchase from participating Foodland stores.

Suncorp Metway Limited and ors (N91058)
Supply on condition purchaser acquires product from specified company or other third parties.

RACV Sales and Marketing Pty Ltd (N40547)
Discounted travel insurance for members of Royal Automobile Club of Victoria (RACV) Ltd.

Sanford Securities Ltd (N91060) Supply services on condition clients also acquire the services of specified financial institutions.

L J Hooker Pty Ltd (N91062) Nominated suppliers of telecommunications, gas and electricity for new tenants.

AWB Seeds (N40535) End point royalties system.

Australian Competition Tribunal

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.

4.12.02 Final determination issued with conditions.

20.12.02 Appeal to the Australian Competition Tribunal.

Certification trade marks

Completed

Australian Institute of Risk Management (CTM 862543) Approval of accreditation scheme for risk management consultants.

Australian Crop Accreditation System (CTM 867784) Rules for consideration.

Certified Financial Planning Board of Standards (CTM 796728, 868237) Certification of financial planners as being trained, tested and disciplined to certain standards.

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) Certification of Italian cheeses.

18.3.02 Initial assessment issued. Consideration is currently on hold as IP Australia is seeking further information from the applicant.

Australian Registered Cattle Breeders Association and Beef Improvement Association of Australia Inc. (CTM 727387) Certification 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) Certification of financial advising services.

29.11.02 Initial assessment issued.

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.

13.6.02 Initial assessment issued. Consideration is currently on hold; awaiting further information from applicant.

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.

30.10.02 Initial assessment issued.

Community Child Care (CTM 836887) Certification of child care centres as being community owned.

30.10.02 Initial assessment issued.

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.

Homeworker Committee Inc. (CTM 887980) Certification of compliance with Homeworkers' Code of Conduct.

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) Certification of compliance with safety standards for gas appliances.

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

17.12.02 Initial assessment issued.

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

30.10.02 Initial assessment issued.

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

13.12.02 Initial assessment issued.

Verbband 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.

King Island Council (CTM 916199) CTM indicating that goods originate from King Island.

Coffee Marks Ltd (CTM 852577) Jamaica Blue Mountain Coffee.

7.11.02 Initial assessment issued.

Meat and Livestock Limited (CTM 914767).

Hill and Knowlton (Australia) Pty Ltd (CTM 871540).

HACCP Australia Pty Ltd (CTM 880083).

The Association for Payroll Specialists Pty Ltd (CTM 800486) Certificate in payroll efficiency.

University of Sydney Glycemic Index Tested (CTM 912626) Certification that product has been tested by University of Sydney with regard to glycemic index.

Belgian State Ambao (CTM 872652) Ambao chocolate products.

Coffee Marks Limited (CTM 852576).

Wireless Ethernet Compatibility Alliance Inc. (CTM 926160). Wi-Fi zone and design mark.

Aus-Meat Limited (CTM 872207–8).

National Association of Testing Authorities (CTM 873239) NCS International certified quality management system.

Pyrenees Vignerons Association Inc. (CTM 888055) Use of wine grapes grown in the Pyrenees region.

SmartUse Environmental Certification Pty Ltd (CTM 882082).

Benchmark Certification (Conformance) Pty Ltd (CTM 92456–8).

Biodynamics Research Institute (several CTMs). Application to amend rules of several CTMs, dating back to the 1960s.

Initial assessment issued.