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## Appendix 2 Public information

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This appendix contains lists of:

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

### Speeches

#### Commissioner Ross Jones

*Competition, broadcasting and pay TV.* Australian Broadcasting summit, Sydney. 20 February 2003

*A trans-Tasman analysis of Competition Law.* New Zealand IIR Competition Law Master Class Conference. 25 February 2003

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

### Media releases

- |       |  |       |   |
|-------|--|-------|---|
| 1/03  | ACCC issues draft information paper on bundling telco services. 13.1.03  | 11/03 | ACCC initiated Federal Court hearing on Mr Peter Foster. 30.1.03  |
| 2/03  | ACCC accepts undertakings from Alliance Wa Pty Ltd over mobile telephone advertising; refunds for consumers. 14.1.03 | 12/03 | Mr Peter Foster: clarification. 31.1.03   |
| 3/03  | ACCC issues Telstra's supporting submission on access undertakings. 17.1.03  | 13/03 | Mr Peter Foster. 3.2.03   |
| 4/03  | ACCC issues final approval on Gasnet's revised access arrangement. 17.1.03   | 14/03 | ACCC not to oppose proposed acquisition by Burns Philp Limited of Goodman Fielder Limited. 5.2.03                     |
| 5/03  | Final price cap reports for phase I privatised airports. 22.1.03   | 15/03 | ACCC allows CSR's W.A. concrete cartage arrangements. 5.2.03  |
| 6/03  | Consumers, retailers warned to check for banned jellies. 23.1.03   | 16/03 | ACCC proposes surgical college reform to help address surgeons shortage. 6.2.03                                       |
| 7/03  | ACCC issues report on disclosure of telecommunications information. 24.1.03  | 17/03 | Federal Court declares misleading and deceptive conduct in sale of orange juice machines. 6.2.03                      |
| 8/03  | ACCC authorises Inghams to continue collective negotiations with S.A. chicken growers. 24.1.03                       | 18/03 | ACCC issues discussion paper on access deficit issues. 6.2.03   |
| 9/03  | ACCC issues discussion paper on Telstra and Foxtel's digital Pay TV exemption applications. 24.1.03                  | 19/03 | ACCC institutes against demolition and asbestos removal companies for alleged price-fixing. 6.2.03                    |
| 10/03 | ACCC proposes to allow BHP joint venture in the Pilbara region. 28.1.03  | 20/03 | Internet trader jailed for contempt. 7.2.03   |
|       |  | 21/03 | ACCC issues paper on Murraylink conversion application. 7.2.03  |
|       |  | 22/03 | ACCC files proceedings against global vitamin C cartel. 7.2.03  |
|       |  | 23/03 | ACCC facilitates smooth introduction of full retail competition in the ACT. 7.2.03                                    |
|       |  | 24/03 | High Court decision highlights difficulties in establishing misuse of market power. 7.2.03                            |
|       |  | 25/03 | Consumer refunds for claimed health cures sold over the internet. 10.2.03   |
|       |  | 26/03 | ACCC leads international internet sweep for travel offers. 11.2.03  |
|       |  | 27/03 | ACCC issues discussion paper on expiry dates for declarations. 11.2.03  |
|       |  | 28/03 | Federal Court declares internet service provider engaged in misleading, deceptive and unconscionable conduct. 11.2.03 |
|       |  | 29/03 | ACCC institutes legal proceedings against National Telecoms Group. 13.2.03  |
|       |  | 30/03 | Dodo Internet Pty Ltd: correction. 13.2.03  |

- 31/03 Full Court reduces penalty to \$5.5 million on Schneider for price-fixing and market-sharing. 14.2.03
- 32/03 ACCC report on aspects of competition in the pharmacy sector. 14.2.03
- 33/03 Options for improving electricity network investment framework: ACCC paper. 19.2.03
- 34/03 ACCC not to oppose merger between Australian Cement Holdings and Queensland Cement Limited. 19.2.03
- 35/03 Weight-loss promoter fined \$9000 for contempt of court. 19.2.03
- 36/03 Furniture Direct misled consumers in 'store cost plus \$1' campaign. 20.2.03
- 37/03 Will Writers Guild & director ordered to pay \$335 000 for misleading franchisees. 20.2.03
- 38/03 ACCC to hold public inquiry into internet interconnection services. 21.2.03
- 39/03 ACCC concludes investigation into Bpay scheme. 21.2.03
- 40/03 ACCC receives EFTPOS reform proposal. 25.2.03
- 41/03 ACCC's interim decision approves industry code to restrict manufacture of illegal amphetamines. 25.2.03
- 42/03 ACCC draft decision proposes to allow greenhouse gas, ozone recovery program. 27.2.03

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

## Public registers

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

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

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

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

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

## Mergers examined under s. 50

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

### **Mayne Group Ltd/Pacific Healthcare Ltd—market for diagnostic imaging services**

On 21 January 2003 the Commission decided that it would not intervene in the proposed acquisition by the Mayne Group of 10 diagnostic imaging clinics located in Sydney and regional New South Wales.

On 2 December 2002 the Mayne Group publicly announced its intention to acquire the operations of 10 diagnostic imaging clinics owned by Pacific Healthcare. Those sites are at Liverpool, Baulkham Hills, Fairfield, Burwood, Maroubra, Bondi, Eastlakes, Randwick in Sydney, and Mudgee and Cooma in regional New South Wales.

The Commission conducted extensive market inquiries into the proposed acquisition.

Within metropolitan areas, market inquiries suggested that the scope of the relevant geographic market is generally confined to a radius of around 5 km within which a patient either lives or works. Overall, there was little geographic overlap between the diagnostic imaging practices of the Mayne Group and Pacific Healthcare.

The area of greatest geographic overlap between the Mayne Group and Pacific Healthcare was in the Sydney suburbs of Fairfield and Burwood and the surrounding areas. However, the material gathered during market inquiries suggested that the presence of numerous other diagnostic imaging service providers in the Fairfield and Burwood areas would act as a sufficient competitive constraint to prevent the Mayne Group from raising its prices post-merger. On this basis, the proposed acquisition is unlikely to result in a substantial lessening of competition.

**Allen's Asphalt Pty Ltd/Boral Resources Queensland Pty Ltd**—market for asphalt road paving materials

On 28 January 2003 the Commission decided that it would not intervene in the proposed acquisition of Allen's Asphalt by Boral Resources Queensland. The Commission received a submission from Boral Resources Queensland regarding its proposed acquisition in December 2002.

The main area of competitive overlap between Allen's Asphalt and Boral Resources Queensland is in the supply of asphalt used for the surfacing and maintenance of roads in the Brisbane metropolitan area and its surrounding regions and in several regions to the north of Brisbane. Allen's Asphalt operates three asphalt plants at Brisbane, Caboolture and Tewantin. Boral Resources Queensland operates three asphalt plants in the south-east corner of Queensland at West Burleigh, Brisbane and Narangba.

The Commission undertook extensive market inquiries into this proposed acquisition.

The proposed acquisition did cross the Commission's concentration thresholds for the exercise of combined market power in the Brisbane metropolitan area and its surrounding regions and in regions to the north of Brisbane. However, during the course of market inquiries no concern was expressed regarding the competitive impact of the proposed acquisition on Brisbane and its surrounding areas with the participation of the Brisbane City Council and its extensive asphalt manufacturing operations seen as the major driver of competition. In regions to the north of Brisbane, the asphalt plant operated by the Maroochy Shire Council was considered to act as a major competitive constraint on the ability of the merged firm to raise its prices. On this basis, it was concluded that the proposed acquisition was unlikely to result in a substantial lessening of competition.

**Merger of Queensland Cement Limited (QCL) and Australian Cement Holdings (ACH)**

ACH and QCL manufacture, distribute and supply cement, and also have interests in the supply of cementitious products, namely flyash and blast furnace slag. Excel supplies pre-mix concrete and has quarry operations.

On 26 November 2002 CSR Limited, Hanson Plc and Holicm Ltd announced that they propose to merge their Australian cement businesses—Australian Cement Holdings and Queensland Cement Limited.

The proposal involves the merger of all ACH and QCL assets and operations involved in the production,

distribution and supply of cement, flyash and blast furnace slag, and divestiture of QCL's Excel assets to CSR and Pioneer (owned by Hanson).

In its investigation, the Commission considered the competitive effect of the proposed merger on the supply of cement and other materials. Extensive market inquiries were conducted with customers and competitors. Following these inquiries, the Commission concluded that the proposed merger would be unlikely to result in a significant reduction in competition in any relevant market.

There is minimal geographic overlap in the current operations of ACH and QCL, with the nature of competition in each Australian state influenced by the location of cement production and distribution facilities.

ACH produces cement in Tasmania and New South Wales, with sales mostly in Victoria and NSW where its main competitors are Blue Circle Southern Cement (owned by Boral Limited), and Adelaide Brighton Limited. ACH does not have spare capacity to supply into Queensland.

QCL operates predominantly in Queensland, where its major competitor is Sunstate Cement (a joint venture between Blue Circle Southern Cement and Adelaide Brighton).

There is also evidence that during the past five years, imports have played an increasing role in the environments in which the merging firms operate. In a number of instances, customers have used the threat of importing cement to achieve a greater level of competition between domestic cement suppliers.

In respect of slag and flyash, the proposed merger is not likely to lead to a substantial lessening of competition. ACH is not currently involved in the supply of ground or crushed blast furnace slag. In respect of flyash, the regions serviced by ACH and QCL's interests do not generally overlap. Also, there are a number of other firms that acquire flyash from power stations for use in the cement and concrete industries.

The Commission also examined the likely effect on competition of the sale of QCL's Excel quarries and pre-mix concrete operations. These will be sold to CSR and Pioneer in such a manner that it is unlikely to lead to a lessening of competition in the relevant concrete and quarry markets.

Accordingly, the Commission decided on 19 February 2003 that it would not oppose the proposed transaction.

**Locker Group Limited/Lemvest Limited**—national market for the manufacture and supply of perforated metal products to industrial, commercial and residential customers.

On 29 October 2002 Locker Group Pty Ltd and Lemvest Limited entered into a Heads of Agreement under which Locker has agreed to acquire all the issued shares in Richardson Pacific Limited, a fully owned subsidiary of Lemvest Limited. The main area of overlap between the merger parties is in regard to perforated metal products.

The proposed acquisition did cross the Commission's concentration thresholds for the exercise of unilateral market power. However, imports appear to comprise greater than 10 per cent of the market and will likely be an effective constraint on the merged entity. Market inquiries indicated the low barriers to entry in the market and the ability of turret presses to be a competitive constraint on the merged entity. Market inquiries also indicated that it was likely that the merged entity will not have the ability to raise prices and retain its share of the market for most of the applications of perforated metal. On 27 February 2003 the Commission concluded that it would not intervene in this matter.

### **Sale of Southern Hydro**

Southern Hydro operates approximately 500MW of peaking hydro electricity generation plant at a number of sites in north-eastern Victoria. It was sold in March 2003 following a competitive bid process.

In the first few months of 2003 the Commission considered the possible sale of Southern Hydro to a number of parties that operate in the wholesale and retail electricity sectors in Victoria, including AGL, International Power and China Light & Power.

The Commission conducted market inquiries with competitors and customers of Southern Hydro, as well as parties responsible for the efficient operations of the NEM, before providing a view to prospective bidders as to whether or not their proposed bid raised substantive competition concerns under s. 50 of the TPA.

Southern Hydro was ultimately acquired by Meridian Energy, which is based in New Zealand and had only a small presence in Australia before this transaction.

## **Section 87B undertakings**

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

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

**Alliance WA Pty Ltd**, ss. 52, 53(e). Misleading or deceptive conduct, false or misleading representation.

10.1.03 undertakings to:

- not misrepresent the total cost of a mobile phone and/or calls package in its future ads and in particular not misrepresent that the cost stated in its ads includes call charges in circumstances where this is not the case
- should it misrepresent in any future ads that the cost of the mobile phone and/or calls package is the total cost of a mobile phone and/or calls package when it is not, not require subscribers to that mobile phone and/ or calls package to pay any charges, including any call charges, additional to the cost misrepresented in the ad as the total cost of that mobile phone and/or calls package
- within seven days of the acceptance of this undertaking, call all customers who bought any of the mobile phones referred to in the ads and who subscribed through it to 'No Plans'
- advise customers that if they believe they were misled by the ads, they can return their mobile phone to Alliance and Alliance will cancel their contract without penalty and refund any instalment payments paid by the customer for the mobile phone
- within three months of acceptance of this undertaking implement and maintain for a period of not less than two years and at its own expense, a trade practices compliance program.

**Daewoo Automotive Australia Pty Limited**, s. 65C. Product safety standards and unsafe goods.

21.2.03 undertaking to identify all Daewoo owners, provide owners with replacement warning labels, implement a recall of non-compliant jacks, publish a recall notice in a major daily newspaper and issue a service bulletin to all Daewoo authorised dealers. The undertaking also provides for the company to

implement a trade practices corporate compliance program.

**Audi Australia Pty Limited**, s. 65C. Product safety standards and unsafe goods.

21.2.03 undertaking to identify all Audi owners, provide owners with replacement warning labels and safe usage instructions, implement a recall of non-compliant jacks, rectify identified jack performance problems, publish a recall notice in a major daily newspaper, post a safety warning notice on its website for a period of 30 days and issue a service bulletin to all Audi authorised dealers. The undertaking also provides for the company to implement a trade practices corporate compliance program.

**Berties Pty Ltd**, s. 52, 53(eb). Misleading or deceptive conduct, false or misleading representations as to place of origin.

26.2.03 undertaking to not in future misrepresent the place of origin of any product it supplies, and to implement trade practices compliance measures.

Berties Pty Ltd operates two butcher shops in Launceston, Tasmania. Between September and December 2002 Berties displayed signs at its shops representing that several bulk prime meat varieties offered for sale were of Tasmanian origin (for example 'whole Tasmanian rumps'). Each sign was displayed on or above the refrigerated unit containing the meat variety to which the sign referred.

From time to time during that period, some or all of the packaged bulk meat to which the signs referred was bought by Berties from a wholesale meat supplier in Victoria, and originated from processing plants in Victoria, South Australia, Western Australia and Queensland.

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

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

The *ACCC Journal* progressively updates this list throughout the year.

## Commonwealth

Trade Practices Amendment (Country of Origin) Act 1998

Wheat Marketing Act 1989

Trade Practices Amendment (International Liner Cargo Shipping) Act 2000

## New South Wales

Totalizer Act 1997

Registered Clubs Act 1976

Liquor Act 1982

Competition Policy Reform (NSW) Regulation 1996

Marketing of Primary Products Act 1983

Farm Produce (Repeal) Act 1996

Coal Industry Act 2001

Industrial Relations Amendment (Public Vehicles and Carriers) Act 2001

Industrial Relations (Ethical Clothing Trades) Act 2001

Olympics Arrangements Act 2000\*

Olympic Roads and Transport Authority Act 1998\*

Sydney Organising Committee for the Olympic Games Act 1993\*

Poultry Meat Industry Amendment (Price Determination) Act 2002

## Queensland

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

Petroleum Act 1923

Gladstone Power Station Agreement Act 1993

Forestry Act 1959

Chicken Meat Industry Committee Act 1976

Sugar Industry Act 1999

Year 2000 Information Disclosure Act 1999\*

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

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

Competition Policy Reform (Queensland) Act 1996\*

**Victoria**

Gas Industry Act 2001  
Gas Industry Act 1994  
Gas Industry (Residual Provisions) Act 1994  
Barley Marketing Act 1993\*  
Competition Policy Reform (Victoria) Act 1995\*  
Electricity Industry (Amendment) Act 1996\*  
Electricity Industry (Trade Practices) Regulations 1994\*

**Tasmania**

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

**Western Australia**

North West Gas Development (Woodside) Agreement Act 1979  
Grain Marketing Act 2002 (WA)

**South Australia**

Barley Marketing Act 1993  
Authorised Betting Operations Act 2000

**Northern Territory**

Electricity Reform Act 2000  
Water Supply and Sewerage Act  
Consumer Affairs and Fair Trading (Tow Truck Operators Code of Practice) Regulations  
Year 2000 Information Disclosure Act 1999\*  
\*Subsection 51(1) exceptions no longer current.