
Appendix 2 Public information

This appendix contains lists of:

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

Speeches

Commission Chairman Allan Fels

Regulating competition in converging markets: telecommunications and broadcasting. ABN AMRO, Sydney. 30 April 2003.

Competition in telecommunications. Australian Telecommunications Users' Group, Sydney. 6 March 2003.

Commissioner John Martin

The Trade Practices Act and retail tenancy views of the ACCC. Australian Retailers Association of Victoria, Melbourne. 11 April 2003.

Getting a fair deal in the mango industry. NT Mango Industry Association Code of Practice Forum, Darwin. 14 April 2003.

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

Media releases

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| <p>43/03 ACCC authorises new technical standards for National Electricity Code. 3.3.03</p> <p>44/03 Federal Court declares doctor attempted to induce boycotts of bulk-billing, after hours service at medical centre. 6.3.03</p> <p>45/03 ACCC allows BHP Billiton joint venture in the Pilbara region. 6.3.03</p> <p>46/03 Federal Court finds prima facie case against Mr Peter Foster but has no power to freeze Mr Foster's assets. 12.3.03</p> <p>47/03 Consumer watchdog targets misleading Telco claims: national consumers' day. 14.3.03</p> | <p>48/03 ACCC calls for submissions on Telstra's proposed access undertakings. 14.3.03</p> <p>49/03 ACCC proposes to approve code of ethical conduct for the employment services industry. 14.3.03</p> <p>50/03 More take up broadband: ACCC issues latest figures. 20.3.03</p> <p>51/03 ACCC issues record keeping rule to Telstra for bundling. 21.3.03</p> <p>52/03 Federal Court declares Greenstar pyramid scheme illegal. 26.3.03</p> <p>53/03 ACCC approves changes to Victorian transmission regulatory arrangements. 26.3.03</p> <p>54/03 Country of origin guidelines for the furnishing industry. 26.3.03</p> <p>55/03 Consumers and small business set to gain from lower software prices. 26.3.03</p> <p>56/03 ACCC finalises oil companies' investigation. 28.3.03</p> <p>57/03 International law enforcement network builds consumer confidence in on-line buys. 30.3.03</p> <p>58/03 ACCC approves access arrangement for Amadeus Basin to Darwin pipeline. 31.3.03</p> <p>59/03 ACCC not to intervene in brick merger. 2.4.03</p> <p>60/03 ACCC not to oppose acquisition of Theo's Liquor by Coles Myer Ltd. 2.4.03</p> <p>61/03 ACCC not to oppose Sunny Queen's proposed acquisition of Farm Pride Foods' egg business. 2.4.03</p> <p>62/03 ACCC announces final decision on reply paid mail. 3.4.03</p> <p>63/03 Telstra meets obligations to low income customers in latest price changes. 4.4.03</p> <p>64/03 ACCC obtains interim orders against aboriginal-style souvenir dealer. 4.4.03</p> <p>65/03 Qantas/Air New Zealand alliance 'very anti-competitive and not in public interest'. 10.4.03</p> |
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- 66/03 High Court dismisses ACCC appeal on unconscionable conduct. 10.4.03
- 67/03 ACCC sets the bar for Sideshow Alley arrangements. 11.4.03
- 68/03 High Court grants ACCC leave to appeal. 11.4.03
- 69/03 ACCC to set model price terms and conditions for core telecommunications services. 11.4.03
- 70/03 ACCC to review price increases for air navigation services. 14.4.03
- 71/03 Cosmetic consumers benefit from Federal Court declarations. 14.4.03
- 72/03 ACCC acts against car firms for non-compliant vehicle jacks. 15.4.03
- 73/03 ACCC institutes against Global Pre Paid Communications Pty Ltd and In-Touch Networks Pty Ltd. 15.4.03
- 74/03 Dawson report—preliminary response: criminal sanctions major step forward for competition policy. 16.4.03
- 75/03 Compressor price fixer company and director penalised \$700,000. 17.4.03
- 76/03 New accounting arrangements to increase transparency and accountability. 17.4.03
- 77/03 ACCC issues discussion paper for the production of key performance indicators on Telstra's service performance. 17.4.03
- 78/03 ACCC institutes against Schots Restoration Emporium. 22.4.03
- 79/03 ACCC concerned some petrol pricing arrangements lead to higher retail prices. 23.4.03
- 80/03 Haier, Retravision to refund some consumers over energy claims. 28.4.03
- 81/03 ACCC obtains \$1.2m refunds for misled consumers. 29.4.03
- 82/03 ACCC calls for submissions on regulation of internet interconnection. 29.4.03
- 83/03 ACCC calls for comment on regulation of mobile phone services. 29.4.03
- 84/03 ACCC proposes to allow public liability insurance scheme for not-for-profit organisations. 30.4.03
- 85/03 ACCC proposes not to approve Queensland lottery agents' negotiating group. 30.4.03

- 86/03 Consumers have refund rights for recalled pharmaceuticals not fit for their intended purpose. 30.4.03
- 87/03 ACCC allows JCU to continue enrolment policy. 30.4.03

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.

Foxtel Management Pty Ltd/Optus Vision Pty Ltd—the relevant markets were considered to be:

- the national market for the supply of equipment used for the aggregation, production and broadcasting of television programming
- the market for the retail provision of pay TV services

- the national market for the supply to pay TV operators of channel aggregation and play-out services for pay TV channels.

On 4 March 2003 the Commission decided that it would not oppose the sale of certain television aggregation and production network equipment by Optus Vision Pty Ltd (Optus) to Foxtel Management Pty Ltd (Foxtel).

Both parties provide pay television services in Australia. The transaction involved the termination of Optus' lease on its National Digital Media Centre (NDMC) and the sale of its pay TV aggregation and production equipment to Foxtel. Foxtel would then take occupancy of the NDMC and use it to control its digital network and to provide channel aggregation and playout services to Optus under contract.

The Commission consulted with a range of suppliers of television production and broadcasting equipment on this matter.

The Commission considered that the transaction was unlikely to substantially lessen competition in any of the relevant markets. It considered that the presence of a number of other active buyers of the equipment, including overseas and local buyers, and the fact that demand for such equipment is likely to remain high for the foreseeable future would act to constrain Foxtel's ability to influence prices and profit margins. It was also noted that Optus retains the future right to acquire such equipment and to provide its own play-out services in-house or source them elsewhere.

The arrangement does not limit or reduce Optus' commercial freedom to determine the type of equipment/technologies it will use or the nature and type of pay television and digital services it may provide in future. Consequently, the transaction is not likely to cause a substantial lessening of competition in any of the relevant markets.

Genus plc /RAB Australia Pty Ltd—The relevant markets were considered to be:

1. the national wholesale market for the sale of bull semen used for the artificial insemination of dairy cattle
2. the national wholesale market for the sale of bull semen used for the artificial insemination of beef cattle.

On 18 March 2003 the Commission decided that it would not intervene in the proposed acquisition of RAB Australia Pty Ltd by Genus plc.

Genus plc is incorporated in the United Kingdom and has global interests in the artificial insemination of cattle through its wholly owned subsidiary, ABS Global Inc. ABS Global Inc owns Access Breeding Services Australia Pty Ltd (ABSA). ABSA provides artificial insemination services for dairy cattle. RAB is an Australian company that provides artificial insemination services for dairy and beef cattle, and has associated genetic testing equipment and expertise.

The Commission conducted market inquiries among several parties having interests in the breeding of cattle.

While the Commission's concentration thresholds may be crossed for semen products used for the artificial insemination of dairy cattle, it noted that substantial import competition and the presence of a number of other vigorous and effective competitors would likely act as sufficient competitive constraints to prevent the merged entity from raising its prices post-merger. Accordingly, the Commission considered the acquisition was unlikely to result in a substantial lessening of competition.

Flint Ink Australia Pty Ltd / SICPA Australia Pty Ltd—market for coldset printing ink

On 18 March 2003 the Commission decided that it would not oppose the proposed acquisition of SICPA Australia's coldset printing ink business by Flint Ink.

Flint Ink approached the Commission in February 2003 regarding its proposed acquisition of SICPA's coldset printing ink business.

SICPA is one of two major domestic manufacturers of coldset ink along with Coates. Flint Ink is currently a major supplier of imported coldset ink in Australia.

The Commission conducted extensive market inquiries into the proposed acquisition, consulting with both competitors and customers of Flint Ink and SICPA.

Although the proposed acquisition would result in a high level of market concentration for coldset ink, the potential importation of coldset ink appears to be a constraining factor preventing coldset ink prices from rising in the post-acquisition environment. Market inquiries confirmed that there are low barriers to the importation of coldset ink and that potential imports would act as a competitive constraint on Flint Ink. Under these circumstances, the Commission concluded that the proposed acquisition would be unlikely to result in a substantial lessening of competition.

Healthscope's acquisition of 6 of Mayne Group's hospital businesses—market to provide private acute general hospital services to patients and private health funds in each of the regions where the hospital acquisitions were taking place.

On 7 February 2003 the Commission became aware, through the media, of the proposed acquisition of 6 of Mayne Group Limited's hospital businesses by Healthscope Limited. The hospital businesses are located in North Sydney, Canberra, Geelong, Southern Tasmania (2) and Northern Tasmania.

The Commission consulted various market participants about this matter, including private health insurance companies and relevant government agencies.

The acquisition will not alter the existing market structure in Southern Tasmania, Northern Sydney, Geelong or Canberra. In these markets Healthscope does not currently own/operate any acute general hospital facilities and will replace Mayne as a competitor in the market.

The proposed acquisition would give Healthscope a market share of around 24.5 per cent in private acute general hospital services in Northern Tasmania.

Following the acquisition, Healthscope will face competition from two large private acute general hospital service providers in Northern Tasmania; the Uniting Church and the Catholic Health Care Association.

The Commission considered that the presence of these competitors, the oversupply of beds in Tasmania and the degree of countervailing power exercised by the large private health funds will act as significant constraints on the merged entity.

On 1 April 2003 the Commission decided not to intervene in the proposed acquisition.

Cadbury Schweppes and Sunrise Confectioners—market for wholesale sugar confectionery.

On 18 March 2003 the Commission was informed that Cadbury Schweppes Pty Ltd proposed to acquire Sunrise Confectioners (Aust) Pty Ltd, manufacturers of the 'Natural Confectionery Company' gelatine confectionery.

On 15 April 2003 the Commission decided not to oppose the proposed acquisition after conducting market enquiries with competitors and customers.

In reaching its determination the Commission considered that the relevant market was the wholesale of sugar confectionary in Australia. The sugar confectionary market was found to be distinct from that for chocolate confectionary, following the Commission's earlier determination in the acquisition of Kenman Kandy by Effem Foods Pty Ltd (Mars) in May 1998.

In reaching its determination the Commission considered that the proposed acquisition would be unlikely to result in a substantial lessening of competition because:

- post-acquisition the merged entity would be expected to hold only 14 per cent of the wholesale sugar confectionary market with a corresponding CR4 (four-firm concentration ratio) of 67.8 per cent
- the merged entity would face competition from established competitors such as Nestle and Mars
- imports were significant at 10.5 per cent
- barriers to entry appeared to be low.

Palm Island Barge Service/Riverside Coal Transport Company Pty Ltd—Markets for barge services in northern Queensland.

On 31 March 2003 the Commission received a complaint about the proposed acquisition of Palm Island Barge Service (Palm Island) by Riverside Coal Transport Company Pty Ltd (Riverside Marine).

The Commission considered the market for barge services in Northern Queensland, in particular the barge services to Palm Island and to Magnetic Island.

On 14 April 2003 the Commission decided that it would not intervene in this matter. It based this decision on the fact that there are a number and range of barge services to Palm Island and it was not likely that the merged entity will be able to increase prices.

All barge ramps on Magnetic Island are exclusively leased. It is not possible to establish a barge service to Magnetic Island without access to a barge ramp on the island. Given that the proposed acquisition did not alter the situation for barge ramp access on Magnetic Island, the Commission believed that the proposed transaction would not result in a substantial lessening of competition.

Proposed acquisition of Giacci Quarry and Pre-mixed concrete business by Pioneer—

markets for quarried hard rock; pre-mixed concrete; sand, gravel and limestone in southwest Western Australia.

The Commission was notified on 18 March 2003 of a proposed acquisition by Pioneer Construction Materials Pty Ltd of certain assets of Giacci Holdings Pty Ltd, Giacci Quarries Pty Ltd and Giacci Concrete Pty Ltd.

The main businesses of both Giacci and Pioneer are the manufacture and supply of pre-mixed concrete and the mining and supply of quarry rock and similar materials. Giacci also has transport, logistics and limestone businesses which are not the subject of the proposed acquisition.

The Commission consulted various market participants in relation to this matter, including customers, competitors and potential market entrants.

The proposed acquisition will not alter the existing market structure in the market for the provision of sand, gravel and limestone as Pioneer does not currently operate in that market and will simply replace Giacci.

The proposed acquisition would give Giacci a 64 per cent share of the hard rock market in the southwest region of Western Australia and a 55–65 per cent share of the pre-mixed concrete market in that region.

Post-acquisition the merged entity will face one sizeable competitor in the production and supply of hard rock, CSR Readymix, and two competitors in the production of pre-mix concrete, CSR Readymix and Australind Pre-mix.

Despite the significant market share of the merged entity, the Commission considered the acquisitions would be unlikely to result in a substantial lessening of competition. There are constraints on the merged entity in the form of countervailing power from customers, most held the view that their bargaining power would not be affected. The Commission also believed it was unlikely that the merger would result in the removal of a vigorous and effective competitor as the quarry and concrete businesses of Giacci were no longer financially viable.

On 29 April 2003 the Commission decided not to intervene in the proposed acquisition.

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.

Proton Cars Australia Pty Limited, s. 65C.

Product safety standards and unsafe goods.

12.3.03 undertaking to identify all Proton owners, provide owners with replacement warning labels and safe usage instructions, implement a recall of non-compliant jacks, 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 Proton authorised dealers.

The undertaking also provides for the company to implement a trade practices corporate compliance program.

Haier Electrical Australia Pty Ltd, ss. 52, 53(aa), 53(c), 53(d). Misleading or deceptive conduct, false or misleading representations.

24.3.03 undertakings in relation to the sale of Haier brand washing machines. Made because of a Commission investigation into allegedly false energy rating and capacity claims on washing machines (models XQJ50-31 5kg and XQJ100-96 10 kg). The matter was referred by the Australian Greenhouse Office (AGO) under the cooperation agreement between the two agencies to refer potentially misleading energy efficiency claims about electrical appliances.

The undertakings provide that Haier will ensure that any white goods distributed by it have been tested at a NATA accredited or equivalent testing authority indicating compliance with the relevant standard.

Retravisio Pty Limited, ss. 52, 53(aa), 53(c), 53(d). Misleading or deceptive conduct, false or misleading representations.

23.4.03 undertakings in relation to the sale of Haier brand washing machines. Made because of a Commission investigation into allegedly false energy rating and capacity claims on washing machines (models XQJ50-31 5kg and XQJ100-96 10 kg). The matter was referred by the Australian Greenhouse Office (AGO) under the cooperation agreement between the two agencies to refer

potentially misleading energy efficiency claims made about electrical appliances.

The undertakings provide for a full refund for consumers who bought one of the machines and where Retravision creates agreements with new suppliers for electrical goods which have not been tested at a NATA accredited or equivalent testing authority, it will provide for random testing at an accredited laboratory.

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. Please note that the list is compiled primarily from information supplied to the Commission by the Commonwealth, states and territories under the Conduct Code Agreement. It is possible that, from time to time, a government may fail to advise the Commission of the passing or repeal of legislation made under s. 51(1). Therefore this may not be a complete list of all relevant legislation.

Commonwealth

Trade Practices Act 1974—Part X, Division 5 and section 173

Wheat Marketing Act 1989

Australian Postal Corporation Act 1989

Year 2000 Information Disclosure Act 1999

New South Wales

Totalizer Act 1997

Registered Clubs Act 1976

Liquor Act 1982

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

Poultry Meat Industry Amendment (Price Determination) Act 2002

Olympics Arrangements Act 2000*

Olympic Roads and Transport Authority Act 1998*

Competition Policy Reform (NSW) Regulation 1996*

Sydney Organising Committee for the Olympic Games Act 1993*

Queensland

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) Public Passenger Service Authorisations Regulation 2000*

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

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.