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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

#### Commission Chairman Graeme Samuel

*The big issues and the big ideas.* The Australian Industry Group National Industry Forum, Parliament House, Canberra, 11 August 2003.

*Competition and consumer law and Australia's insurance industry.* The Insurance Council of Australia, Canberra, 14 August 2003.

#### Commissioner Ed Willet

*New investment in the national energy market.* 14<sup>th</sup> National Power and Gas Conference, 18 August 2003.

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

### Media releases

- 143/03 ACCC takes action against lawyers for alleged misleading conduct in relation to fees. 1.7.03
- 144/03 ACCC institutes proceedings against Australian Biologics alleging misleading claims in health product. 1.7.03
- 145/03 ACCC no to oppose proposed alliance between Coles Myer and Shell. 2.7.03
- 146/03 Sharp corrects claims about microwave ovens capacity. 3.7.03
- 147/03 ACCC issues discussion paper on longer-term accounting separation rules for Telstra. 4.7.03
- 148/03 Business must accept trade practices law applies to them: Samuel. 6.7.03
- 149/03 ACCC not to oppose acquisition of OPSM by Luxottica. 7.7.03
- 150/03 ACCC approves portability of premium rate telephone numbers. 8.7.03
- 151/03 ACCC and Mayne group & others. 9.7.03
- 152/03 Ombudsman access to metering data benefits consumers. 10.7.03
- 153/03 ACCC accepts undertakings from Graincorp. 15.7.03
- 154/03 Federal Court declares claims about Viva extra virgin olive oils to be misleading, deceptive. 16.7.03
- 155/03 BMW vehicle jacks 'do not meet mandatory safety standard'. 17.7.03
- 156/03 ACCC not to intervene in Westfield Trust acquisition of AMP Shopping Centre Trust. 24.7.03
- 157/03 ACCC seeks leave to appeal to the High Court over Safeway. 29.7.03
- 158/03 Consumers lose in Playstation decision. 31.7.03
- 159/03 ACCC recovers \$352,000 damages for franchisees. 1.8.03
- 160/03 Northern Territory consumer summit. 1.8.03
- 161/03 Federal Court declares Tassal Limited and Tasmanian Salmonid growers association involved in anti-competitive fish cull. 1.8.03
- 162/03 ACCC welcomes issue of insurance report. 4.8.03
- 163/03 ACCC issues final information paper on bundling Telco services. 5.8.03
- 164/03 Consumer/barrister relationship clarified by ACCC and NSW Bar Association. 7.8.03
- 165/03 Federal Court clarifies ACCC authorisation application process. 7.8.03
- 166/03 ACCC proposes to deny E.F.T.P.O.S. price-fix. 8.8.03
- 167/03 ACCC set to authorise move to regional pricing of certain ancillary services in the electricity market. 11.8.03

- 168/03 ACCC to endorse high standard voluntary industry codes of conduct. 11.8.03
- 169/03 ACCC proposes to extend environment-friendly container collection scheme. 15.8.03
- 170/03 Federal Court finds 4WD franchisor misled franchisees. 15.8.03
- 171/03 ACCC discontinues proceedings against SA fire protection companies. 15.8.03
- 172/03 High Court South Sydney case decision provides some clarification on s. 4D of Trade Practices Act 1974. 15.8.03
- 173/03 ACCC institutes against National Chemical Pty Ltd over alleged misleading country of origin claims in supply of eucalyptus oil. 19.8.03
- 174/03 ACCC issues reports on telecommunications competition, price changes, price controls. 19.8.03
- 175/03 ACCC targets mobile phone \$0 advertising alleging misleading conduct. 20.8.03
- 176/03 ACCC proposes to allow Catholic Health Facilities to collectively bargain with health funds and other suppliers. 21.8.03
- 177/03 Penalties more than doubled to over \$2 million as Full Court upholds part of CDS decision. 22.8.03
- 178/03 ACCC issues retail benchmarking monitoring report for mobile phone termination services. 25.8.03
- 179/03 ACCC puts safety first—banned lead wick candles recalled. 28.8.03
- 180/03 Court declares imitation Sydney Opera House website illegal. 28.8.03
- 181/03 ACCC review of draft regulatory principles issued. 29.8.03
- 182/03 ACCC interim decision maintains the rules for the ASX's electronic settlement system. 29.8.03
- 183/03 ACCC interim decision maintains consumer electronic clearing system rules. 29.8.03

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.*

**Coles Myer Ltd/The Shell Company of Australia Ltd**—various markets for the wholesaling and retailing of petroleum products.

On 2 July 2003 the Commission announced that it would not oppose the proposed alliance between Coles Myer and Shell.

Coles Myer and Shell announced their proposed alliance in May 2003 whereby Coles Myer would take over the management of Shell's core retail service station network encompassing 584 sites across Australia.

Shell is part of the Royal Dutch/Shell Group of companies which is an Anglo-Dutch conglomerate and is one of the world's largest oil companies. In Australia Shell is involved in upstream oil and gas production and operates a downstream oil products business. It is one of four vertically integrated refiner/marketer companies operating in Australia.

Coles Myer is Australia's largest retailer and is involved in traditional and discount department stores, grocery supermarkets, liquor retailing, office supplies, direct marketing and electronic retail businesses. It operates two grocery supermarket businesses in Coles Supermarkets and Bi-Lo.

The Commission carefully considered the competitive effect of the proposed alliance and conducted extensive market inquiries consulting with a range of interested parties.

Although the Commission noted a high level of concern about the proposed alliance, the proposal did not cross any of the Commission's concentration thresholds for the exercise of market power. Shell will not increase its overall market share in fuel wholesaling simply through its participation in the proposed alliance whereas Coles Myer represented an entirely new entrant into fuel retailing.

In effect, the proposed alliance will result in Coles Myer taking over an existing position in fuel retailing currently occupied by Shell. On this basis, the Commission concluded that the proposed alliance is unlikely to result in a substantial lessening of competition.

**Hobart Private Hospital Radiology Unit/MIA Group Limited**—market for the provision of private radiology services in southern Tasmania.

On 14 March 2003 the Commission received a submission from MIA Group Limited about their proposed acquisition of the Hobart Private Hospital Radiology Unit. MIA proposed that it acquire the radiology business and assets of Hobart Private Hospital. MIA intended to lease space at Hobart Private from Healthscope. As part of the proposed transaction, MIA proposed that it acquire some assets from Healthscope, which included X-ray machinery and a CT scan.

MIA is Australia's largest radiology company, providing a full range of services, including traditional radiology, advanced medical imaging and nuclear medicine. MIA provides radiology services from 10 clinics (including private hospitals) based in Hobart and its surrounds.

Hobart Private Hospital is the last remaining private radiology practice other than MIA in the Hobart region. Hobart Private was, until recently, owned and operated by Mayne Health. This was one of the hospitals Mayne Health acquired from Australian Hospital Care (AHC) in 1999. AHC had established the hospital in November 1999 as a co-location hospital on the Royal Hobart Hospital campus.

Mayne Health has recently sold the hospital to Healthscope, which intends to withdraw from the provision of radiology services.

The Commission conducted extensive market inquiries with interested parties.

On 3 July 2003 the Commission concluded that the proposed transaction would be likely to result in a substantial lessening of competition for the provision of radiology services for private patients in southern Tasmania for the following reasons:

- the creation of a veritable monopoly with at least 95 per cent of the market
- the likely removal of the final competitive force in the market, with it being unlikely there will be an entrant into the market for some years post-acquisition
- the lack of any competitive constraint on the merged entity, primarily as the public hospital system services Medicare patients and is already subject to waiting periods
- the high barriers to entry into the market
- the likelihood of the merged entity having the ability to raise prices and still retain its share of the market.

### **Coles Myer Ltd/Shopfast**

On 20 May 2003 the Commission became aware through media reports of the acquisition of Shopfast to Coles Myer Ltd. Shopfast operates an online grocery business in Sydney, primarily in the Sydney metropolitan area.

The Commission conducted market inquiries with other online grocery retailers, grocery retailers and interest groups.

The Commission did not define a market to analyse this acquisition but considered the effect on competition for groceries in the Sydney metropolitan area.

On 3 July 2003 the Commission concluded that the small incremental increase in Coles' market share was unlikely to cross the Commission's concentration thresholds for the exercise of market power. The Commission therefore decided not to intervene in this acquisition.

**Woolworths Ltd acquisition of Bailey & Bailey**—retail market for packaged liquor for off-premises consumption in the Adelaide metropolitan area and Stirling in regional South Australia.

On 29 March 2003 Woolworths Ltd approached the Commission indicating that they were seeking to acquire the business of Bailey & Bailey, consisting of six liquor stores in South Australia.

Following market inquiries of suppliers and competitors, the Commission decided not to oppose the acquisition on 15 July 2003. In reaching its decision the Commission noted that:

- post-acquisition Woolworths's Ltd would hold around 25 per cent of the Adelaide metropolitan market. The Commission's competition thresholds would not be crossed by the acquisition in the Adelaide metropolitan market
- the merged entity would face ongoing competition from other liquor retailers, including independent and banner liquor stores and hotel bottleshops, which following the acquisition would account for around 60 per cent of the Adelaide metropolitan market
- concentration levels in liquor retailing in the Stirling area would remain unchanged following the acquisition.

**Money Wise Credit Union/SGE Credit Union**

—various markets for financial services in New South Wales.

On 22 July 2003 the Commission decided that it would not intervene in the proposed merger between Money Wise Credit Union and SGE Credit Union.

The Commission was notified of a pending transfer of the entire business of the Money Wise Credit Union to SGE Credit Union by the Australian Prudential Regulation Authority.

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

Money Wise Credit Union is a Sydney-based credit union providing financial services for government employees residing in New South Wales and their families. SGE Credit Union principally caters for employees of the state governments of New South Wales and Victoria and their families.

Given that the proposed merger will not cross the Commission's concentration thresholds for the exercise of market power, a substantial lessening of competition is unlikely to occur.

**National Australia Bank Ltd/Commonwealth Bank of Australia Ltd**—market for domestic and master custody services.

On 5 June 2003 the Commission was informed of the National Australia Bank Ltd's interest in acquiring the domestic and master custody services contracts of the Commonwealth Bank of Australia Ltd by way of novation. Custody services are essentially administrative services (settlement, safekeeping and reporting services) provided for various financial securities.

Both the NAB and the CBA provide domestic (in relation to Australian securities) and master (in relation to Australian and global securities) custody services, the CBA through its wholly owned subsidiary, Commonwealth Custodial Services Ltd.

On 22 July 2003 following market inquiries the Commission decided not to oppose the proposed acquisition. In reaching its determination the Commission noted that the acquisition would increase the NAB's market share from approximately 26.3 per cent to 32.6 per cent with a four-firm concentration ratio of 67 per cent. The Commission considered that the proposed acquisition was unlikely to lead to a substantial lessening of competition in the Australian market for domestic and master custody services owing to the small size of the acquisition and the fact that, following the acquisition, the merged entity would be constrained by apparently significant countervailing power exercised by clients of custodial services (such as superannuation funds and master trusts) and by the potential for new entry or expansion in the market by major global providers of custody services.

**Post-Tel Credit Union Ltd/Macquarie Credit Union Ltd**—various markets for financial services in New South Wales.

On 29 July 2003 the Commission decided that it would not intervene in the proposed merger between the Post-Tel Credit Union and Macquarie Credit Union.

The Commission was notified of a pending transfer of the entire business of the Post-Tel Credit Union to the Macquarie Credit Union by the Australian Prudential Regulation Authority.

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

The Post-Tel Credit Union and the Macquarie Credit Union are both based in regional New South Wales.

The proposed merger will not cross any of the Commission's concentration thresholds for the exercise of market power. As a consequence, the Commission determined that a substantial lessening of competition was unlikely to occur.

**Konica Corporation/Minolta Corporation**—markets for copiers/printers, cameras and photometers.

On 29 July 2003 the Commission decided that it would not intervene in the proposed merger between Konica and Minolta. The Commission was notified of the proposed merger in early July.

Both Konica and Minolta are Japanese companies and the proposed merger was originally announced in Japan back in January. Konica is acquiring Minolta through a stock swap whereby Minolta shareholders will trade in their stock for newly issued stock in Konica.

The main areas of competitive overlap between Konica and Minolta is for the manufacture and distribution of copiers/printers, cameras and photometers.

Both Konica and Minolta are major worldwide suppliers of copiers/printers and cameras. The other main area of overlap in the area of photometers arises from Konica's shareholding in Sekonic.

Around the world, markets for cameras and copiers/printers are dominated by Japanese corporations which include Fuji Xerox, Kyocera Mita, Canon, Toshiba, Olympus and Ricoh. In Australia the merged entity will not cross the Commission's concentration thresholds for the exercise of market power for copiers/printers and cameras.

The only competition concern about this merger arises in relation to photometers. Taking into account Konica's shareholding in Sekonic, the merged entity would account for more than 50 per cent of the market for photometers in Australia. However, after taking into account the offer provided by Konica to sell down its shareholding in Sekonic, the Commission concluded that the proposed merger was unlikely to result in a substantial lessening of competition.

**Scallop Credit Union Co-operative Limited/Advance Credit Union Limited**—market for the provision of financial services in Victoria.

On 19 August 2003 the Commission decided that it would not oppose the proposed merger of Scallop Credit Union Co-operative Limited with Advance Credit Union Limited.

On 6 August 2003 the Australian Prudential Regulation Authority informed the Commission of the transfer of business of the Scallop Credit Union Co-operative Limited to Advance Credit Union Limited.

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

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

## 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.*

**Western Tool Distributors Pty Ltd**, s. 65C.  
Product safety standards and unsafe goods.

26.8.03 undertakings from Western Tool Distributors to comply with the standard.

Western Tool Distributors Pty Ltd has offered consumers with the non-compliant jack either:

- amended instructions that comply with the standard
- a replacement of the jack with a new jack that complies with the standard

or

- a refund of the purchase price of the jack.

**Bonnet Imports Pty Limited**, s. 65C.  
Product safety standard and unsafe goods.

19.8.03 undertaking from Bonnet Imports Pty Ltd to:

- refrain from supplying or offering to supply frog ornaments with candles with lead wicks subject to the permanent ban
- refrain from supplying or offering to supply in future a candle product with a lead wick subject to the permanent ban
- provide retailers with a letter prepared by the Commission
- provide retailers with a warning sign and use its best endeavours to ensure that each retailer displays the sign

- provide in writing the names and addresses of each retailer to whom Bonnet sent the letter and warning sign
- ensure that a senior officer attend a trade practices awareness program
- use its best endeavours to acquaint officers and employees of Bonnet with prescribed consumer protection notices relating to products supplied.

**Tassal Limited**, ss. 45(2)(a)(ii), 45(2)(b)(ii).  
Agreements lessening competition.

19.8.03 undertaking from Tassal Limited to implement a trade practices training program for relevant staff.

Tassal Limited admitted to making and giving effect to an arrangement or understanding with its competitors that was likely to have the effect of controlling or maintaining the price of Atlantic salmon by limiting supply. Tassal agreed with its competitors to grade out stock that would otherwise reach the market, and subsequently graded out some of its 2001 stock in partial fulfilment of its obligation under the arrangement.

**Graincorp Limited**, s. 50. Prohibition of acquisition that would result in substantial lessening of competition.

14.7.03 undertakings from Graincorp for the divestiture by GrainCorp of Grainco's interest in the ABA joint venture in the event that the sale of that interest is not completed by Grainco before the merger of the two companies.

The Commission's assessment was based on the parties' submission that Grainco would not retain its interest in ABA. ABA is a joint venture between Grainco and AusBulk Ltd which owns 10 grain storage and handling facilities in Victoria and NSW, and a 50 per cent interest in the Melbourne Grain Terminal (with the other 50 per cent interest held by AWB Ltd).

**Sharp Corporation of Australia Pty Ltd**, ss. 52, 53(a). Misleading or deceptive conduct, false or misleading representations.

1.7.03 undertaking from Sharp to

- stop making the misrepresentations about oven capacity
- conduct a comprehensive retail attendance program to ensure existing stock is relabelled
- publish a corrective notice in newspapers and on its website which includes offering affected consumers a number of remedies

- funding a consumer awareness campaign
- implementing a compliance program
- instituting a complaints handling system.

## 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 in reliance upon 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.