
Enforcement

Restrictive trade practices

Whitsunday Charter Boat Industry Association

Price fixing agreements (s. 45A)

On 13 August 1996, in the Federal Court Brisbane, the Whitsunday Charter Boat Industry Association (WCBIA) and several of its members accepted that a code of conduct recently entered into by WCBIA members contained parts constituting price fixing in breach of the Trade Practices Act.

The WCBIA is an association of boat owners who offer cruises around the Whitsundays. The cruises are sold through commission agents who regularly discount the cruise ticket prices by forgoing part or all of their commission. Boat owners felt that the discounting practices caused disruption to their industry and consequently developed a code of conduct requiring the members and their agents to abide by a number of provisions, including:

- limiting the amount or rate of commission payable by charter boat operators to booking agents for the sale of charter boat hire services on behalf of the operators;
- limiting the discounting by operators on specified charter boat services;
- limiting the practice of 'value adding' by operators;
- requiring agents not to sell members' products at less than the advertised list price, and not to offer any extra incentive to the customer by way of discounting, inclusions or add-ons; and

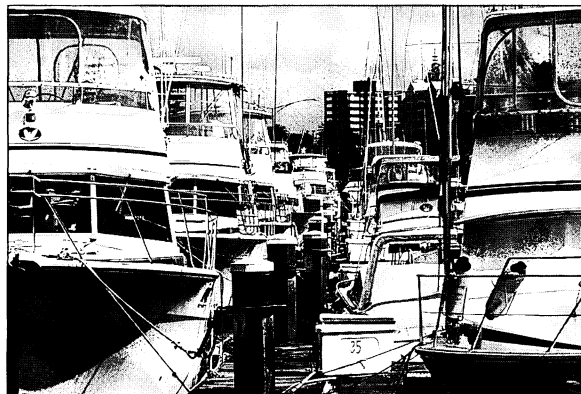
- requiring agents to adhere strictly to the code requirements regarding commissions, discounting and value adding.

The Commission alleged that these provisions had the purpose or likely effect of fixing, controlling or maintaining the price for, or a discount, allowance, rebate or credit in relation to, services supplied or acquired by the parties to the code of conduct.

The matter was raised with the Commission on 5 June 1996 and proceedings were instituted on 17 July 1996. After becoming aware of the Commission's concerns, the WCBIA and its members moved quickly to abandon the code of conduct and offered complete cooperation to the Commission's Townsville office, which investigated the matter.

In most price fixing cases the Commission seeks penalty under the Trade Practices Act. In this case, however, the Commission considered penalty inappropriate. This was due, among other things, to the fact that the businesses involved were mainly small business operators who engaged in the conduct through an apparent ignorance of the law.

The respondents consented to the injunction which restrains them from engaging in similar conduct in future. The Court also ordered the respondents to pay the Commission's costs of \$6500.



Jaycee Rectification and Building Services Pty Ltd and Tony Lodge Group

Price fixing agreement (s. 45), misleading or deceptive conduct (s. 52)

On 30 September 1996, in the Federal Court Sydney, pecuniary penalties totalling \$25 000 were imposed on Jaycee Rectification and Building Services Pty Ltd, its Director, Mr Joaquin Ciganda, and Mr Anthony Lodge trading as Tony Lodge Group.

The Commission alleged that Jaycee and Mr Lodge, competitors in the building waterproofing industry, had engaged in price fixing, market sharing, collusive tendering and misleading and deceptive conduct. It alleged that the businesses had discussed particular jobs and decided what rates to quote and which of them would put in the more competitive quote. The Commission alleged that they had 'covered' each other's quote on particular waterproofing projects, that is deliberately submitted an uncompetitive quote to make the other's quote look competitive. Customers, which include bodies corporate, schools and hospitals, were not aware that this conduct had occurred. The Court agreed that this conduct amounted to a breach of ss 45 (4D, 45A) and 52 of the Trade Practices Act.

The Federal Court accepted a joint submission regarding injunctions and penalty. The joint submission took into account that both parties had been cooperative with the Commission and were merely two players in an industry containing a large number of competitors. The submitted penalties, of \$10 000 for Jaycee and \$5000 for Mr Ciganda, and \$10 000 for Mr Lodge, were accepted as appropriate in this instance.

Health Partners

Exclusive dealing — third line forcing (ss 47(6), 47(7))

On 27 August 1996 the Commission filed proceedings in the Federal Court Adelaide against a health fund, Health Partners, alleging third line forcing conduct. A directions hearing was held on 10 September 1996. The trial

date has been tentatively set down for 4–6 November 1996.

Excel Concrete Pty Ltd

Anti-competitive agreements (s. 45)

On 27 September 1996 in the Federal Court Brisbane the Commission instituted proceedings against Excel Concrete Pty Ltd and its Concrete Manager in relation to alleged price fixing and market sharing in the southern Queensland concrete market.

A directions hearing has been set down for 25 October 1996.

Car rental companies — Northern Territory

Price fixing agreements (s. 45A)

On 3 October 1996 the Commission filed proceedings in the Federal Court Darwin against four Northern Territory car rental companies and three individuals, alleging that they were involved in price fixing conduct.

The Commission alleges that in 1994 and 1995 four car rental companies in Alice Springs made an arrangement, or reached an understanding, to stop offering 'Ayers Rock specials'. The Commission alleges that 'Ayers Rock specials' were discount rates of hire for travel from Alice Springs to places including Ayers Rock.

The Commission regards the alleged offences very seriously as they involve allegations of price fixing in the tourism industry, which is one of the most important industries for the Northern Territory (and Australian) economies.

Proceedings have been instituted against:

- N.T. Outback Adventure Rentals Pty Ltd (trading as Hertz Northern Territory);
- Alice Car & Truck Rentals Pty Limited (trading as Territory Rent-A-Car);
- NorthAust Auto Hire Pty Ltd (trading as Avis Northern Territory); and

- Stafftoy Pty Limited (trading as Thrifty Car Rental).

The Commission also alleges that three of the managers of the companies at the time were knowingly concerned in the alleged breaches of the Trade Practices Act.

The imposition of penalties and injunctions are among the orders the Commission is seeking from the Court. The first directions is set down for 30 October 1996.

Wild Gear Pty Ltd

Resale price maintenance (s. 48)

On 17 July 1996 a group of companies which supply outdoor adventure products gave court enforceable undertakings following a Commission investigation. The group comprises Wild Gear Pty Ltd, Mountain Designs Pty Ltd, Outdoor Designs Pty Ltd, Glyndahigh Pty Ltd and Pack Imports Pty Ltd.

The Commission alleged that Wild Gear had attempted to enforce a resale price maintenance clause in its franchise agreement. The clause allowed the franchisee to sell Wild Gear 'Mountain Designs' products for up to 60 days after termination of the franchise agreement on the proviso that these products were sold within 10 per cent of the then current resale price.

Each of the companies in the group undertook to:

- delete or strike through the proviso in the offending clause (or any clause with similar effect) in any franchise agreements it issues;
- review all franchise and supply agreements used by them, to ensure the agreements do not contain clauses that breach the Trade Practices Act;
- develop a Commission-approved compliance education program; and
- apply for registration with the Franchising Code Council Ltd and adhere to its code of conduct.

Mergers

Australis Media and Optus Vision

Joint venture (s. 50)

On 4 October 1996 the Commission announced that it would not intervene to oppose a joint venture between Australis Media Limited and Optus Vision. Under the joint venture, Australis and Optus Vision will share satellite infrastructure for the distribution of their pay TV programs from 1 July 1997.

The joint venture was considered in the context of a deed that was previously entered into between Australis and a subsidiary of Publishing and Broadcasting Limited (PBL) as a result of PBL providing certain funding guarantees as part of Australis' recapitalisation plans. Under the deed, PBL was granted certain rights of first and last refusal over certain Australis programming assets and a right to consent to certain modifications of Australis' programming agreements, and Australis was required to use its best endeavours to enter into a joint venture in relation to satellite infrastructure services.

The joint venture and the PBL deed raised a number of issues for consideration because PBL now has interests in two competing pay TV operators.

After careful consideration of the matter, the Commission decided that there was no reason to intervene. This decision was supported by the advice of senior counsel. The Commission's decision was on the basis of the information before it. It will closely monitor the implementation of the joint venture.

The Commission noted that, under the joint venture, Australis and Optus Vision would share satellite infrastructure but would continue to compete in terms of pricing, marketing, and program content. While the joint venture envisages a combined programming package in the future, both Optus Vision and Australis have confirmed in writing that they will not take any steps to provide any combined programming to subscribers without first obtaining the Commission's approval. Interactive services

and near video on demand are excluded from the joint venture.

Under the arrangements, customers will need only one satellite dish and set top box to receive the Galaxy or Optus Vision services, making it easy for subscribers to switch between suppliers.

The arrangements will come into place from 1 July 1997 when restrictions are removed on the provision of satellite pay TV services by parties other than the two current licensed satellite operators (Australis and Continental Century).

The Commission stated that the joint venture differs in a number of ways from the proposed merger between Australis and Foxtel which it rejected earlier this year. The joint venture:

- is an infrastructure sharing arrangement only;
- does not lead to the disappearance of one of the three metropolitan pay TV operators;
- has little or no impact on telephony;
- will not be implemented until mid-1997 when the market is opened to all potential entrants, whereas the proposed Foxtel/Australis merger would have given the merged group a substantial 'first mover' advantage — the merged entity would have been able to access all households via cable, satellite and MDS while its competitor Optus Vision would have had access only to cable distribution until July 1997;
- does not give Optus Vision a greater market penetration than would occur in the absence of the joint venture — independently of the joint venture, Optus Vision would be able to supply pay TV services via satellite as well as cable; and
- does not give Optus Vision a significant advantage over Foxtel in securing new programming (unlike the proposed Australis/Foxtel merger).

Santos and Parker & Parsley Australasia Pty Ltd

Acquisition (s. 50)

On 16 September 1996 the Commission announced it would not intervene in the Santos acquisition of Parker & Parsley Australasia Pty Ltd.

In March 1996, Santos Limited acquired certain oil and gas interests from Parker & Parsley Australasia Pty Ltd. The acquisition raises the level of concentration in natural gas production and marketing in the South Australian Cooper Basin and the Surat Basin in central and eastern Australia. Before the acquisition, Santos held the majority interest in the South Australian Cooper Basin Unit and significant interests in key gas production projects in Queensland.

The Commission was concerned the acquisition may be likely to result in substantial lessening in competition after Santos' acquisition of a further independent gas producer in the South Australian Cooper Basin.

It remains concerned that the further concentration at the gas production and marketing levels may hinder the potential benefits from a competitive gas market envisaged from the implementation of reform processes in the Australian gas industry under the Hilmer reforms.

During the course of the Commission's inquiry, a number of industry participants raised concerns about the increase in concentration resulting from the Santos acquisition. However, the Commission was not able to obtain sufficient evidence on which to take the matter further. Although the Commission still has concerns about competition in gas markets in central and eastern Australia, it decided not to pursue the acquisition.

South Australian Co-operative Bulk Handling and SA port facilities

Acquisition (s. 50)

The Commission announced on 23 September 1996 that it would not oppose the proposed sale to South Australian Co-operative Bulk

Handling (SABCH) of bulk handling facilities at various ports in South Australia.

The South Australian Government advised the Commission of its intention to offer SACBH the first right of purchase of the facilities (which are primarily used for the bulk loading of grain onto ships for export).

The South Australian Government is proposing legislative arrangements to provide reasonable access to the facilities for all current and potential users, together with a framework to safeguard competition and establish a workable procedure for resolving disputes.



Consumer protection

Telstra

Misleading and deceptive conduct (s. 52)

Telstra will provide refunds totalling up to \$45 million to approximately 1.5 million telephone customers following agreement between the Commission and Telstra in relation to Telstra's ServiceNet Wiring Maintenance plan (previously known as the Wiring Repair Plan).

The WRP was introduced by Telstra in 1989 after legislative amendments which meant Telstra no longer owned wiring past customers' first telephone socket in residential and business premises. The change was intended to introduce competition into maintenance and repairs for telephone sockets, after the first socket, and to give consumers the option to carry their own risk, and costs, associated with any fault in succeeding extension wiring or sockets.

Under the WRP, customers with more than one socket paid 50c per month, then 60c from 1992, for a kind of maintenance/insurance WRP under which Telstra would continue to maintain all wiring and repairs. In 1995, the Commission and other agencies received a large number of complaints from consumers following Telstra advice that the cost of the WRP was to rise to 95c. Consumers alleged that they did not know they were part of the WRP and had not asked to join.

The Commission alleged that the 'automatic' method of introducing the WRP in 1989, the lack of information about its terms and conditions and the failure to itemise the WRP as part of Telstra's bills meant no valid contract between Telstra and customers existed. The Commission alleges Telstra had engaged in misleading and deceptive conduct.

Telstra will automatically refund current WRP customers via their telephone accounts. Customers who have been covered by the WRP since November 1992, but are not currently on the WRP, will be advised via press advertisements to contact Telstra. The Telecommunications Industry Ombudsman will conduct a dispute resolution process to deal with complaints associated with the refunds. Telstra will fund an independent auditor to assess Telstra's refund procedures.

The Commission noted that, after becoming aware of its concerns, Telstra cooperated with its investigation and had delivered a most satisfactory resolution by providing compensation to affected customers. In the Commission's view, the settlement is generous and the manner in which Telstra dealt with the problem encouraging.

Telstra has advised the Commission that, due to commercial considerations, it will cease to provide the WRP. To allow an orderly transition, it will provide the WRP free of charge to existing consumers on the WRP for three months.

Nationwide News Pty Ltd

False or misleading representations in relation to the price of goods or services (s. 53(e)), false or misleading representations in relation to the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy (s. 53(g)), falsely offering prizes (s. 54)

Following Commission action, on 30 August 1996 Nationwide News Pty Ltd (publisher of Sydney's *Daily Telegraph* newspaper) was fined \$120 000 for misleading the public in a 'free' mobile phone offer. Nationwide was also ordered to pay the Commission's costs.

On 9 August 1996 Nationwide was found guilty on six charges of misleading the public as to the effect of the conditions applying to the mobile telephone offer. The advertisements on the front page of the then *Telegraph Mirror* promised readers a 'free' mobile phone but the conditions attaching to the offer meant that readers had to pay more than \$2000 in related charges. Those conditions were not disclosed until readers had bought a copy of the *Telegraph Mirror*.

The conditions of the offer required applicants to:

- take up a 15-month contract for services with Vodafone at a rate of \$130 per month, which included some call fees;
- pay a \$65 connection fee, a \$260 security deposit, and a \$19.95 delivery charge; and
- have a credit card.

Only 5000 phones were available.

The Commission had raised concerns about the promotion with Nationwide News during the campaign, but the alterations the newspaper made were insufficient to allay the Commission's concerns.

In determining the size of the fine, Justice Heerey emphasised the following factors:

- the size of the defendant;
- the degree to which the statement departed from the truth;
- the degree of dissemination;
- what efforts had been made to correct the situation;
- any contrition expressed by the defendant; and
- the deterrent effect of the penalty.

Justice Heerey said:

In my view, this is a serious contravention of the Act ... Nationwide is a subsidiary of a major public company [News Limited] and the publisher of a leading Australian metropolitan newspaper ... Offences of this nature have the characteristic that an individual person who is misled into paying a small amount ... is not likely to take any action, but the total aggregate effective loss is potentially very substantial.

The fact that the offences were committed in disregard of specific warnings from the Commission is a factor going to severity of penalty. Nationwide was not being asked to abandon the promotion [by the Commission]. It would not have taken a great deal of ingenuity or expense to find a substitute for the offending word 'free'.

He noted that Nationwide had made no apology or expression of contrition before the penalty hearing. Justice Heerey also said: 'There is an element that since the offence was committed very publicly, the penalty needs to have an element of vindication, so that the public, who saw the law broken, will see the law being enforced'.

Nationwide has appealed the six convictions.

Vales Wine Company Pty Ltd

False or misleading representations (s. 53)

On 24 September 1996 the Vales Wine Company Pty Ltd was fined a total of \$165 000 for falsely representing the vintage and description of quantities of bulk wine. The former directors of the Vales Wine Company Pty Ltd, Claude Curtis and Michael Von Berg, were each fined \$10 000 for aiding and

abetting the company in the misleading and deceptive conduct.

The Commission initiated the action in December 1993 after the Australian Wine and Brandy Corporation had audited the Vales Wine Company's records and discovered some anomalies. On 10 May 1996 Justice O'Loughlin convicted the Vales Wine Company of four charges relating to the sales of bulk wines to a number of Australian wineries between 1991 and 1992. The sales involved volumes of wine of between 30 000 litres and 198 000 litres.

The Court found the company had represented to various wineries that the wines were varietal wines, such as shiraz and cabernet sauvignon, but that the wines supplied were in fact blends. The Commission alleged that the purpose and effect of the deception was to double the price of the wine sold and indicated a company policy to sell inaccurately described wine.

Of the conduct, Justice O'Loughlin said:

The evidence from members of the wine industry made it clear that the offending [conduct] could not be detected by the human senses or by technology. In matters of blends and components, one is wholly dependent upon the integrity of the winemaker... The wine industry is dependent upon the integrity of wine makers and manufacturers. Conduct of the kind engaged in by the company has the potential to cause serious damage to the nation's wine industry.

In regard to the directors, Justice O'Loughlin said: 'Each of them well knew and understood that he was participating in a fraud'.

Justice O'Loughlin also ordered that the company pay 35 per cent, and the directors pay 10 per cent, of the prosecutor's costs.

The matter is subject to an appeal due to begin on 11 November 1996.

Mayne Nickless Pty Ltd

Misleading or deceptive conduct (s. 52)

On 5 September 1996 Mayne Nickless Pty Ltd admitted in the Federal Court that it misled some of its customers over its air freight

business, following an investigation by the Commission.

The company admitted that it represented to some customers of IPEC Air Express (now known as Ipec Priority Express) that their goods would be transported by air when they were actually sent by road.

The Court granted two consent injunctions against Mayne Nickless. One injunction restrains the company from representing that goods of Ipec Priority Express customers will be flown, when in fact they will be transported by road. The other injunction restrains similar conduct in relation to advertisements and promotional material. Mayne Nickless was also ordered to pay the Commission's legal and investigation costs.

Mayne Nickless has also given the Commission a court enforceable undertaking to:

- send letters of apology to relevant customers who used the Ipec Priority Express service during the 12 months to June 1996, offering \$50 refunds or credits;
- publish apology notices in newspapers, providing a contact for queries; and
- develop trade practices compliance training and educational activities.

Ipec has already begun removing references to 'Air' from its vehicles, buildings, stationery, freight satchels, brochures, rate schedules, uniforms etc. The Commission was impressed by the cooperation shown by Mayne Nickless, which acknowledged that its conduct must change and also suggested the refund offer to its customers. Ipec advised that it will continue to transport express freight by road, especially on east coast routes, but in future customers will not be led to believe it is being flown.

To investigate allegations made against the freight industry, Commission staff arranged for various companies to fly parcels between Sydney and Melbourne, and Sydney and Brisbane. Enclosed in each parcel was a small, sturdy, tamper-proof altimeter. Data retrieved from the altimeter indicated that the parcels never achieved altitudes higher than various

points along the Hume Highway. These results echoed similar deliveries arranged by a journalist with the ABC's *7.30 Report*, who brought the allegations to the Commission's attention and subsequently provided valuable evidence.

The Commission is investigating allegations of similar conduct throughout the industry and expects reform within months.

TNT Australia Pty Limited

Misleading or deceptive conduct (s. 52)

On 30 September 1996 the Commission accepted a court enforceable undertaking from TNT Australia Pty Limited, relating to TNT's practice of representing that goods would be transported by air, but sometimes transporting those goods by road. The Commission considered that this conduct breached s. 52 of the Trade Practices Act.

Under its undertaking TNT will change the names of several divisions involved in express freight, removing the word 'Air' from those names. The new names will be reflected in changes to building signs, vans and trucks, drivers' uniforms, satchels, advertising material, and stationery.

TNT will write to new customers up until 31 December 1996, advising them of the changes. It will also write to customers the Commission considers might have been affected over the past nine months, offering a free freight satchel to transport goods to any Australian destination. TNT has also undertaken to develop a trade practices education program for its staff.

The Commission acknowledged the cooperation shown by TNT and the efforts it had made toward compensating affected customers.

TNT uses an extensive air network for most deliveries. It advised the Commission that it will continue to use road transport facilities in certain circumstances, but will make clear to customers whether air or road freight is to be used.

On Clinic Australia Pty Limited, Men Only Medical Clinic Pty Ltd and Potent-C Clinics (Australia) Pty Ltd

False and misleading representations (s. 53)

On 15 August 1996 in the Federal Court Sydney the Commission obtained an injunction to prevent On Clinic Australia Pty Limited, Men Only Medical Clinic Pty Ltd and Potent-C Clinics (Australia) Pty Ltd from making certain misleading claims about the erectile dysfunction treatments offered at their clinics.

Justice Tamberlin also ordered the clinics to place corrective advertisements offering to refund any payments by dissatisfied customers who went to the clinics as a result of the advertisements, and providing an 1800 freecall number for making refund claims.

The Commission stressed that the suitability of the treatment was not of concern as it was widely used by medical practitioners, but rather that it was concerned with the clinics' advertising claims.

The claims included that:

- the treatment offered was the only one proven to work;
- there were no costs to the patient as the treatment was covered by Medicare;
- the treatment took only two visits; and
- the diagnosis used 'unique' medical equipment.

The Commission alleged that:

- similar treatments were available from other clinics;
- while consultations were bulk-billed, there existed other significant costs not covered by Medicare, such as that for a course of the injections;
- between one and five consultations were necessary to achieve the desired result;
- the success rate of the treatment was about 85 per cent; and

- the 'unique' equipment was standard diagnostic equipment used by the majority of physicians and clinics specialising in treating erectile dysfunction.

Formal orders regarding the details for corrective advertising were made on 29 August 1996.

Anstar Holdings Pty Ltd

Misleading or deceptive conduct (s. 52), false or misleading representations (s. 53(bb)), unsolicited goods or services (s. 64)

On 10 July 1996 the Commission instituted proceedings in the Federal Court Brisbane against Patrick O'Keeffe and Anstar Holdings Pty Ltd, a Gold Coast based company, alleging conduct amounting to 'telefraud'. It is seeking injunctions and other orders against both respondents.

The Commission alleges that both Patrick O'Keeffe and Anstar Holdings Pty Ltd caused invoices to be sent to small businesses throughout Australia claiming payment for unsolicited advertising in the following publications: *Union Views*, *Labour Review*, *Industrial Health and Safety Report*, *Environmental Health and Safety Report*, *The Union Worker*, and *Workplace Safety Review*.

It also alleges that employees of Patrick O'Keeffe and Anstar Holdings Pty Ltd misled small businesses by telephoning businesses and misrepresenting that the businesses had previously advertised in one of the publications.

A directions hearing was held on 23 August 1996. A hearing for an interlocutory injunction was held on 26 September 1996, but the Commission was unsuccessful.

Business registers and consultancies

Misleading or deceptive conduct (s. 52), unsolicited goods or services (s. 64)

On 9 August 1996 the Commission began legal proceedings against a firm and several individuals which it alleges have made misleading and unsolicited claims to small

businesses and false representations about business registers and consultancies.

The Commission action follows extensive investigations, assisted by a number of State and Territory consumer affairs bureaux and fair trading agencies, the Australian Federal Police, the Australian Tax Office and the Insurance and Superannuation Commission.

The Commission has filed two actions: the first against Stephen Gregory Wyer, and the second against Optell Pty Ltd, Geoffrey Allan Beckett and Clinton Wade Andela. The schemes involved are: Office of Superannuation Assistance (OSA), Superannuation Assistance Registry (SAR), Australian Business and Companies Register (ABCR), Australian Business and Companies Guide (ABCG) and The Certified Quality Assured Companies of Australia (CQA).

The various schemes purported to offer two types of services:

- entry to a register which is to be sent to government and business purchasing departments; and
- a brokerage-like service to provide referrals for quality assurance consultants or superannuation consultants.

The Commission alleges that false representations about the registers and consultancies were made to businesses, including that:

- the 'registers' or 'consultancies' were either a government agency, or in some way associated with a government;
- the businesses needed to use the services in order to meet government regulatory requirements;
- small businesses which did not use the 'registers'/'consultancies' services would not be able to obtain government contracts; and/or
- the businesses had already agreed to use the service, or had used it in the past — the Commission alleges the conduct included sending invoices for 'renewals' when the business had not previously used the service.

On 15 August 1996, in the Federal Court Canberra, Justice Finn granted consent orders against Mr Stephen Wyer in relation to the OSA and SAR schemes, restraining him from carrying on the superannuation assistance schemes, freezing moneys obtained through the schemes in his bank account, and ordering him to forward any moneys obtained through the schemes to the Commission or to the Court.

On 26 August 1996 Justice Finn gave interlocutory orders against Optell Pty Ltd and others:

- preventing them from carrying on the register and consultancy businesses;
- preventing them from producing the guides or registers (so as to protect the funds already received);
- preventing the distribution of letters or forms by the consultancy businesses; and
- ordering them to forward to the Commission all cheques and moneys received from customers in relation to the registers and consultancies.

The Commission is seeking permanent injunctions to prevent the conduct from continuing, including orders for the cessation of advertising promoting the scheme. Other orders sought include the return of cheques received, and corrective advertising and letters to clients offering a refund.

The Commission has limited powers to obtain financial redress for consumers affected by the schemes. However, it is already holding more than \$12 500 in cheques made in payment for these schemes, gained under its statutory information gathering powers and by operation of the court orders referred to above.

The Commission has warned consumers that a number of other schemes also may have no association with any government, including The Victorian Contractors Register, the South Australian Contractors Register, The Consumers Business Register, The Register of Quality Assured Companies of Australia and New Zealand, the Victorian Contractors Register and Australian Business Reports.

Golden Sphere International Inc

Pyramid selling (s. 61)

In a joint investigation, the Queensland Office of Consumer Affairs and the Commission have uncovered a number of Queensland promoters of pyramid selling schemes. As part of the investigation, Consumer Affairs officers searched a number of premises used by the alleged promoters of one scheme. Inquiries are continuing in relation to the promotion of other schemes.

On 5 September 1996 the Commission instituted proceedings against Golden Sphere International Inc, Pamela Joy Reynolds and Victor Michael Cottrill, in relation to an alleged pyramid selling scheme. On 6 September 1996 it gained *ex parte* interim injunctions against the respondents, freezing their assets.

On 1 October 1996 the Federal Court granted the Commission interlocutory injunctions restraining the respondents from promoting or being knowingly concerned in the promotion of the Golden Sphere scheme. The Court also allowed the Commission to amend its application to begin a representative proceeding for scheme members who have lost money as a result of their participation in the scheme, and extended the injunctions which restrain the respondents from dealing with their assets. The next directions hearing has been set down for 15 November 1996. The trial date has not yet been set.

Promoters and participants of such schemes face fines or six months' imprisonment under Queensland's *Pyramid Selling Schemes (Elimination) Act 1973*. Under Queensland law, a participant includes *anyone* who has sold products or induced others to take part in a pyramid selling scheme. Promoters and participants who are convicted can be ordered to pay back moneys to those who bought into the scheme. Additionally, promoters and participants face action under the Trade Practices Act.

Consumer Affairs and Commission officers have warned that usually only the promoters, or those at the very top of the pyramid, benefit.

The majority of participants who enter the pyramid at a late stage lose their money.

Network Ten Limited

False representations in relation to land (s. 53A)

On 23 August 1996 the Commission began a representative action on behalf of consumers against Network Ten, alleging misleading advertising and false representations in regard to land sales at Maryvale, Queensland. A directions hearing was held on 27 September 1996. A further directions hearing will be held on 22 November 1996.

Top Snack Foods Pty Limited

Misleading or deceptive conduct (s. 52), false or misleading statements about work-at-home schemes (s. 59)

On 23 September 1996 the Commission instituted legal proceedings in the Federal Court Sydney against franchisor Top Snack Foods Pty Limited and several of its employees. It is seeking injunctions and other orders against both Top Snack Foods and the other named respondents.

The Commission is concerned about alleged misrepresentations by Top Snack Foods to franchisees about the level of profitability and projected losses of its franchise operations.

The Commission emphasised that it has no issue with the retailing practices of any franchisee, or with the quality or the retail prices of the goods.

A directions hearing was held on 9 October 1996. The matter was adjourned until 4 November 1996.

Berrivale Orchards Ltd

Misleading or deceptive conduct (s. 52), false or misleading representations (s. 53(a))

On 6 September 1996 the Commission discontinued action against Berrivale Orchard Ltd relating to alleged misleading labelling. The

Commission had filed proceedings on 6 August 1996.

The company's Daily Juice Company's juice products had used the terms 'squeezed daily' on its front labels for its orange juice products and 'crushed daily' on its apple and blackcurrant juice products.

The Commission alleged in the Federal Court Canberra that the orange juice contained a proportion of reconstituted juice during the winter months and that the apple and blackcurrant juice always contained reconstituted blackcurrant juice.

The company signed court enforceable undertakings to place corrective advertising in newspapers and to adhere to a corporate compliance program to ensure that in future its labelling complies with the Trade Practices Act.

Chubb Security Australia Pty Ltd

Misleading or deceptive conduct (s. 52)

The Commission recently investigated allegations that Wormald Security Australia Pty Ltd, now trading as Chubb Security Australia Pty Ltd, had consistently failed to provide mobile security services within the Perth metropolitan area at the contracted level.

On 3 July 1996 Chubb Security Australia Pty Ltd gave court enforceable undertakings that it would:

- maintain sufficient staff levels, including adequate back-up resources;
- advise all existing Perth metropolitan clients with whom it contracted to provide a mobile security service of the shared nature of the services and that in 'exceptional circumstances' the services may not be provided as contracted;
- unconditionally offer 2.5 per cent of the contracted fee or equivalent additional services as compensation to Perth metropolitan clients who received mobile security services during the relevant period;
- fully refund significantly underserved clients; and

- establish a trade practices compliance program.

Jones Stroud Australia Pty Ltd (trading as J&J Cash)

False and misleading representations about place of origin of goods (s. 53(eb))

Following Commission intervention, consumers who bought baseball caps incorrectly swing-tagged as being made in Australia will be offered a refund.

The Commission alleged that 'Olympic Authentics Collection' caps, supplied by Jones Stroud Australia Pty Ltd to Myer and Grace Bros stores, were made in China, not Australia. The caps had 'Made in Australia' swing tags, but were labelled as being 'Made in China' in a sewn-in label on the cap.

The Commission warned the supplier that it may be breaching the Trade Practices Act through false and misleading representations about the country of origin.

Jones Stroud cooperated with the Commission to ensure that remaining stock of the caps was correctly labelled and advertised an offer of refunds to consumers who believed they had been misled by the swing tags. The company will also conduct an internal trade practices education program.

Product safety

Nordic Lust Pty Ltd (trading as City Pro Sport & Fitness)

Non-compliance with mandatory consumer product safety standard (s. 65C)

On 16 July 1996 Nordic Lust Pty Ltd, trading as City Pro Sport & Fitness, was convicted of selling an exercise cycle which did not meet the relevant mandatory consumer product safety standard.

On 19 January 1996 the Commission had filed information in the Federal Court Adelaide alleging that Nordic Lust Pty Ltd had supplied

an exercise cycle which had inadequate guards and two points at which a child's finger could be permanently injured.

This was the first prosecution for a breach of the standard, which was gazetted on 19 October 1994 and came into effect on 1 July 1995. It is based on Australian Standard 4092-1993, *Exercise cycles — Safety requirements*, and is intended to reduce injuries to children, such as crushing or amputation of fingers, by requiring, among other things, the guarding of hazardous moving parts.

On 4 October 1996 the Court imposed a penalty of \$400 on the company and ordered it to pay prosecution costs.

Other matters still before the Court

Restrictive trade practices

Pioneer (Warwick), ss 45, 46. Alleged predatory pricing by Pioneer in the Warwick pre-mixed concrete market. Proceedings instituted 30.9.92. Directions hearing 4.3.93 — Pioneer brought application to strike out Commission's statement of claim. 12.5.94 judgment handed down striking out part of statement of claim.

Respondents and Commission appealed. 1.8.94 leave to appeal and cross-appeal allowed. 5.8.94 Pioneer's appeal dismissed, and Commission's cross-appeal allowed with costs. 24.8.94 Pioneer sought special leave to appeal to the High Court.

10.3.95 Court refused Pioneer, saying Full Federal Court decision was 'plainly correct'. Matter reverted to Federal Court for directions hearing.

Final directions hearing 12.4.96. Matter is now awaiting a trial date.

CC (New South Wales) Pty Ltd, Holland Stolte Pty Ltd, Multiplex Constructions Pty Ltd, Leighton Contractors Pty Ltd, Australian Federation of Construction Contractors (AFCC) & ors, ss 45, 52, 53, 55A. Alleged collusive tendering practices, misleading or deceptive conduct, false or misleading representations, conduct that is liable to mislead the public as to the nature, characteristics, suitability or quantity of any services. Proceedings instituted 30.8.94. Directions hearing 29.9.94 — Mr Russell Richmond, a former National Executive Director of the AFCC, announced that he would not defend the proceedings brought against him and consented to the entry of a judgment against him. On the same day AFCC informed the Court that it did not propose to take further part in the proceedings. 24.11.94 the Court imposed a penalty of \$10 000 on Mr Richmond.

5.5.95 Holland Stolte Pty Limited and Mr Graham Duff, a former Managing Director of Holland Stolte Pty Limited, withdrew their defences and consented to judgment. Penalties totalling \$400 000 were imposed against Holland Stolte, and \$50 000 against Mr Duff.

2.8.95 Lindgren J in the Federal Court ordered CC (NSW) Pty Ltd, Multiplex Constructions Pty Ltd and Leighton Contractors Pty Ltd to give the Commission discovery of documents relating to alleged collusive tendering practices in respect of the building project known as the Commonwealth Offices Haymarket project.

8.9.95 Lindgren J in the Federal Court imposed on Leighton Contractors Pty Ltd and Multiplex Constructions Pty Ltd the (previous) maximum penalty of \$250 000 for each of two offences and ordered each company to pay \$75 000 costs. Personal penalties were imposed on Mr Leonard Dixon, a chief estimator for Leighton (\$25 000) and Mr Geoffrey Thomas Palmer, a retired director of Multiplex (\$50 000). The penalties followed the withdrawal of defences by Leighton, Multiplex, Dixon and Palmer. The companies have also made full restitution to the Australian Government of the \$750 000 'unsuccessful tenderers fee' which each had received from the successful tenderer, Holland Stolte.

Proceedings are continuing against CC (NSW) Pty Ltd.

Garden City Cabs Co-operative Ltd, ss 45, 46. Alleged anti-competitive agreement. Proceedings instituted 22.7.94. Directions hearing 4.11.94. Interlocutory decision handed down 15.3.95. TPC unsuccessful in obtaining an interlocutory injunction to restrain conduct as Cooper J said there was no serious question to be tried and the balance of convenience was against granting the orders sought. TPC filed Notice of Motion 22.3.95 seeking leave to appeal. TPC withdrew notice of appeal and matter is to proceed to hearing — date not fixed.

21.5.96 ACCC granted leave to amend statement of claim and application. Next directions hearing 18.9.96.

Mobil Oil Australia Limited, BP Australia Limited, The Shell Company of Australia Limited, ss 45, 45A. Alleged anti-competitive agreements concerning the retail prices of petrol. Proceedings instituted 23.11.94. Strike-out applications filed by the respondents were heard before Ryan J on 20.3.95. With the consent of all parties the TPC filed a further amended statement of claim on 3.4.95. Respondents filed written submissions in response for the Court's consideration. Awaiting His Honour's decision.

IMB Group Pty Ltd, Logan Lions Ltd, Redbeak Pty 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. Directions hearing re discovery issues 21.4.94. 20.9.94 judgment handed down ordering all respondents to file a list of discoverable documents. Directions hearings 28.7.95, 20.9.95, 8.12.95. Hearing to consolidate this and related National Mutual proceedings 29.2.96. Matters listed for argument re the ACCC's application to amend the statement of claim and application on 12.3.96.

Federal Court consolidated this and National Mutual Life matter 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. ACCC 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.

Commonwealth Bureau of Meteorology, s. 46. Alleged misuse of market power in relation to refusal to supply meteorological information. Proceedings instituted in the Federal Court Melbourne 13.12.95. ACCC seeking a mandatory injunction that the Bureau provide information to MetService and an injunction restraining the Bureau from supplying its specialised services other than on commercial terms. Directions hearings 23.2.96, 26.4.96, 14.6.96. Next directions hearing 19.7.96.

Mayo International Pty Ltd, s. 48. Alleged resale price maintenance in relation to supply of hair care products. Proceedings instituted in the Federal Court Brisbane 6.11.95. ACCC is seeking permanent and mandatory injunctions as well as pecuniary penalties. First directions hearing 1.12.95. Further directions hearings 16.2.96, 27.3.96.

Further directions hearing before Federal Court Registrar on 22.5.96. Respondents ordered to file and serve witness statements within 28 days and the matter to be reviewed by the Registrar in 4–6 weeks and set down for trial. Respondents did not file and serve witness statements as ordered and ACCC solicitors requested that the matter be listed before a judge to raise the issue of non-compliance. Hearing date to be advised.

J McPhee & Son (Australia), s. 45. Alleged price fixing arrangement. Proceedings instituted in the Federal Court Melbourne 20.12.95. Directions hearing 20.2.96. Respondents filed a strike-out application for mention on 2.5.96. Strike-out application set for hearing on 29.5.96. ACCC amended its statement of claim. Respondents filed a Notice of Motion to strike it out. Matter listed for

directions on 18.7.96. Further and better particulars have also been served on the ACCC.

Model Agents and Managers Association Inc, s. 45. Alleged price fixing agreement in relation to enforcing payment of an agency service fee. Proceedings instituted in Federal Court Sydney 16.11.95. ACCC is seeking penalties and injunctions. Directions hearing 9.2.96 at which respondents ordered to file defences by 8.3.96. Three of the 12 respondents have filed admissions to most of the statement of claim. Conference before Registrar 22.4.96. Directions hearings 26.4.96, 12.7.96. Next directions hearing 29.8.96.

Cromford Pty Limited, Australian Film and Pipe Manufacturers and Anross Investments Pty Limited, s. 45. Alleged price fixing, market sharing in relation to the supply of polythene building film and acquisition of polythene scrap plastic, and alleged resale price maintenance in relation to the supply of polythene building film. Proceedings instituted in Federal Court 29.12.95. ACCC is seeking penalties and injunctions. Next directions hearing 5.12.96.

NW Frozen Foods and ors, s. 45. Decision handed down 7.8.96 following joint submission and agreed statement of facts heard on 18.7.96. Appeal lodged by NW Frozen Foods on 27.8.96 regarding penalty imposed. Papers in appeal to be settled on 11.9.96.

Consumer protection

Venture Industries and Collings Construction Company Pty Ltd, ss 51AB, 52. Alleged misleading, deceptive and unconscionable conduct in relation to building homes. Proceedings instituted 3.9.93. Representative action on behalf of seven families.

Venture filed Notice of Motion seeking stay of proceedings pending outcome of arbitration hearings.

Wilcox J indicated merit in appointing arbitrators to this case under Order 72 of

Federal Court Rules. Parties instructed to agree on short minutes in relation to running of arbitration hearings. Ongoing negotiations. No agreement reached by parties to appoint arbitrators under Order 72.

Venture motion to stay proceedings and TPC motion to cross-vest proceedings to NSW Supreme Court heard 29–30.8.94. On 16.9.94 Wilcox J granted TPC motion and cross-vested the matter to NSW Supreme Court.

On 18.4.95 Hunter J in the Supreme Court made an order referring certain technical building issues to a Court-appointed referee, Mr Lumsdaine. The reference began 13.6.95 and the referee released his report on 9.8.95. The Collings and Venture defendants opposed the adoption of the report; however, on 28.9.95 Hunter J adopted the report with some alterations, in accordance with submissions by the TPC.

Trial before Hunter J from 9.10.95 to 28.11.95. Awaiting judgment.

In December 1995 the Venture parties applied to the High Court to overturn the September 1994 cross-vesting of the matter from the Federal Court to the NSW Supreme Court. On 5.2.96 Gaudron J remitted the matter to the Full Federal Court. Directions hearing before Black CJ 23.2.96 at which ACCC sought and gained right to appear. Hearing before Full Federal Court 15.3.96. Judgment delivered 23.5.96 refusing the application of the Venture parties. Venture parties lodged an application for special leave to appeal to the High Court.

Proceedings for contempt against fifth respondent, June Collings, commenced 12.4.96. It is alleged that June Collings sold real property in breach of an order of 18.3.94 which required that she not '... advertise for sale, not attempt to sell, nor dispose of, nor take steps to encumber any real or personal property without first giving 3 working days notice to the [Commission] ...'. Hearing of matter delayed. Directions hearing 5.7.96.

Gold Coast Land Sales Pty Limited & Channel 10, s. 53A. Alleged misleading advertising and false representations in regard to land sales in Maryvale. Proceedings

instituted 17.3.94, interlocutory injunctions granted by consent against Gold Coast Property Sales, its directors and agents.

6.6.95 Court found Gold Coast Sales had contravened the Act and ordered that it be restrained from making further representations regarding Maryvale land. Also ordered to pay Commission costs.

Further directions hearings against Channel 10 on 8.9.95, 6.10.95, 16.2.96, 15.3.96. Waiting for matter to be listed for trial.

Europark International Pty Limited & anor, ss 52, 53(c), 53(d). Alleged misleading or deceptive conduct and false representations concerning sponsorship, approval. Proceedings instituted 19.7.94. Directions hearings 20.8.94, 22.11.94, 16.12.94, 15.2.95, 12.5.95, 26.6.95, 4.8.95. 13.10.95 directions hearing seeking further amendments to statement of claim. 24.11.95 directions hearing — respondents did not object to statement of claim. Trial held 26.4.96 – 1.5.96. Spender J reserved his decision.

BioMetrics Contour Treatment, ss 52, 53(c), 55. Alleged misleading and deceptive advertising and promotion of goods. Proceedings instituted 6.1.95. Proceedings amended and a fifth respondent (Peter Foster) included on 19.5.95. 12.9.95 ex parte order obtained from the ACT Federal Court granting leave to serve the amended statement of claim on fifth respondent in the UK. 21.9.95 documents served on the fifth respondent in the UK.

9.2.96 consent order obtained against Harrison for payment of ACCC's costs of \$4000 by 31.3.96.

Holiday Concepts, ss 52, 53(c), 53A. Alleged misleading and deceptive conduct with respect to the promotion and selling of timeshare. Proceedings instituted 14.6.95 in the Federal Court Melbourne. At a directions hearing on 8.12.95 the matter was placed in the list of cases awaiting trial. A substantive hearing date has yet to be set.

Reef Distributing Company Pty Ltd, ss 52, 53(bb), 53(e), 64. Alleged false and misleading

representations in relation to the supply of agricultural products. Proceedings instituted in Federal Court Melbourne 8.9.95. Interim injunction granted restraining the company and its Director Russell Loel from continuing some, but not all, proceedings commenced in the Manly Local Court against farmers. Matter transferred to the Sydney Federal Court.

6.3.96 hearing for an extension of interlocutory injunction. 13.3.96 further interlocutory injunction granted, restraining Reef from proceeding with prosecution of any proceedings now pending, and from instituting any new proceedings to recover monies for the price of agricultural goods. Hearing date for permanent injunction not yet set.

Universal Vending Systems Pty Ltd and Corporate Catering Group Pty, ss 52, 58. Alleged misleading or deceptive conduct in respect of business opportunities for the supply of vending machines and sports cards and lack of provision of sites for snack food vending packages. 6.6.95 ex parte injunction granted in the Federal Court Melbourne against both corporate and individual respondents restraining them from engaging in the conduct and freezing the assets of the corporate respondents. 1.9.95 Jenkinson J ordered that initial orders be held until matter is fully heard. Directions hearing 29.9.95. Order made for parties to make discovery of documents by 27.10.95. Directions hearings 17.11.95, 9.2.96, 22.3.96. Next directions hearing 31.5.96.

Chats House Investments Pty Ltd, ss 51AA, 51A, 52, 53(d). Alleged misleading or deceptive conduct in relation to foreign exchange trading. Proceedings instituted 24.4.96. 26.4.96 Federal Court accepted undertakings from Chats House and its director Mr Chan. 3.5.96 directions hearing. Next directions hearing 5.8.96.

Vales Wine Company Pty Ltd, s. 53. Alleged false representations in relation to vintage and description of quantities of bulk wine. 10.5.96 Vales and two of its former directors, Michael Von Berg and Claude Curtis, convicted of false representations. Matter adjourned until 3.6.96 for submissions on penalty. Matter listed for submissions as to penalty 25.7.96. Penalties of \$165 000

against company and two former directors handed down 24.9.96.

Appeal by the directors to be heard by Full Federal Court on 11.11.96. Full Court decision expected to be handed down by March 1997.

Marigny Australia (A/sia) Pty Ltd (trading as L'Oreal), ss 52, 53(e) & (g), 54. Alleged false and misleading representations in relation to a 'cash back' offer on a hair colorant. Proceedings instituted 28.6.96 in the Federal Court Perth. ACCC seeking declarations and permanent injunctions. Matter heard before Lee J on 2.7.96 and 1.8.96. Interim injunction, which included press advertisements, granted 1.8.96. Directions hearing listed for 31.10.96.

Telstra Corporation Ltd, ss 52, 53. Alleged false and misleading representations about its Local Call Saver 15 Flexi-Plan. Proceedings instituted 11.7.96 in the Federal Court Melbourne. ACCC seeking declarations, injunction and corrective advertising.

Telstra placed corrective advertising in major Australian newspapers on 29–30 July 1996. ACCC still seeking a declaration and an injunction.

Tasmania Distillery Pty Ltd, ss 53(eb). Alleged false or misleading representations about the place of origin and method of manufacture of bottled spirit products. Proceedings instituted 31.7.96 in the Federal Court Hobart. Directions hearing 14.8.96. Further directions hearing after 11.10.96.

Mergers examined under s. 50

The following is a list of non-confidential mergers examined in the 1996 calendar year to date. This list is periodically updated on a public register held at the Commission.

Mergers on the public register for the calendar year 1994 are listed in the former Trade

Practices Commission *Bulletin* 75, April 1994 (which also included matters considered in 1993) and *Bulletin* 80, February 1995. Mergers examined in the calendar year 1995 are listed in *ACCC Journal* nos 1–2.

Mergers examined in 1996

Neverfail Springwater Co Ltd/Aqua Vital Australia Ltd — bulk bottled water. This matter was raised in January 1996. Neverfail acquired Aqua Vital in January 1996. Both companies bottle and supply bulk bottled water. The Commission considered that the acquisition was unlikely to have the effect of substantially lessening competition in the market. The market has potential for growth, barriers to entry are relatively low and there are substitutes for bulk bottled water.

The Commission did not oppose the acquisition.

Woolworths Ltd/Cannons Food Stores — grocery wholesaling and retailing. This matter was raised in January 1996. Woolworths proposed acquiring 11 Cannons' retail grocery stores, one liquor store and the business of Australian Independent Wholesalers, which operates a warehouse in the ACT.

The Commission did not oppose the acquisition.

Unilever/Diversey (Australia) Pty Limited — industrial detergents. This matter was raised in February 1996. Unilever Canada and its parent company Unilever Pty Ltd signed an agreement in January 1996 that will result in Unilever purchasing Diversey Corporation from the Molson Companies Limited. The agreement will involve the transfer of the assets of Diversey Australasia to Unilever. The sale closed on 1 April 1996.

The Commission did not oppose the acquisition.

Dauids Limited/QIW Limited — wholesale supply of groceries. On 13 February 1996 Dauids lodged an application for authorisation of its proposed acquisition of QIW Limited. The acquisition of QIW by Dauids would leave

Dauids as the sole wholesale distributor of grocery products to independent retailers along the eastern seaboard of Australia. However, Dauids claimed that significant public benefits would result from the acquisition particularly in terms of cost savings and the establishment of a 'fourth force' to better compete with the major chains.

The Commission was satisfied that in all the circumstances the acquisition of QIW by Dauids would result in such a benefit to the public that it should be allowed to take place, and authorisation was granted on 28 March 1996.

D George Harris & Associates & ors/Penrice Ltd — manufacture and distribution of soda ash. In February 1996, Harris & Associates approached the Commission with a proposal to acquire all the issued shares in Penrice Ltd. The Commission considered that the acquisition was unlikely to lead to a substantial lessening of competition because it was merely a change of ownership, Harris being a new entrant to the Australian market.

The Commission did not oppose the acquisition.

Maersk Medical/Indoplas Pty Ltd — supply and distribution of medical products. This matter was raised in February 1996. Maersk Medical proposed acquiring Indoplas Pty Ltd. Maersk and Indoplas are both involved in the supply and distribution of medical products, including catheters and urinary drainage bags, throughout Australia. The parties entered into the acquisition agreement in March 1996 conditional on the Commission's approval.

Based on the results of market inquiries, the Commission concluded in March 1996 that it would not oppose the acquisition.

National Australia Bank/St George — banking. In February 1996 the Commission announced that it was making routine inquiries about the National Australia Bank's 5.8 per cent shareholding in St George Bank. In September 1995, following its decision not to oppose Westpac's acquisition of Challenge Bank, the Commission said that regional banks play a key role in promoting competition and

consumer choice. The Commission said that it would scrutinise any acquisitions of regional banks by major trading banks very carefully.

Should National Australia Bank or any other major trading bank move to acquire St George, the Commission would look at the matter on its merits at the time of the proposed acquisition.

Goodman Fielder/Bunge Industrial Pty Ltd — joint venture. In March 1996 the Commission confirmed that it would not oppose a revised proposal to merge certain operations of Goodman Fielder and Bunge.

The Commission considered that, in principle, the new proposal did not appear likely to substantially lessen competition.

On 10 May 1996 the Commission was informed that the two parties had ended their discussions and the proposed joint venture would not proceed.

Titan Nails/Otter Nails Pty Ltd — supply of loose nails and fasteners. This matter was raised in March 1996. Otter Nails proposed to acquire Titan Nails. The Commission defined the relevant market as a national market for the supply of loose nails and fasteners to retail outlets.

The Commission noted that, as a result of the acquisition, the merged entity would have a market share of approximately 42 per cent. The Commission took the view that despite the level of concentration, market inquiries had indicated the potential for import substitution, the existence of alternative domestic suppliers and countervailing power of a small number of national customers.

On this basis, the Commission determined that it would not oppose the merger.

American Banknote Corporation/Leigh-Mardon Security Group of Leigh-Mardon Pty Ltd — security printing, holography, printing of telephone and identification cards. In April 1996 American Banknote Corporation proposed to acquire the Leigh-Mardon Security Group. An important consideration for the Commission at the time was the fact that American Banknote

Corporation was a new entrant into the Australian security printing market.

The Commission did not oppose the acquisition. However, the Commission will monitor the market.

SPC/H J Heinz — market for canned baked beans and spaghetti. This matter was raised in March 1995. SPC and Heinz entered into a tolling arrangement for the production of canned baked beans and spaghetti. The arrangement provides for SPC to manufacture some of Heinz spaghetti, and for Heinz to manufacture a quantity of SPC baked beans.

Section 45 of the Trade Practices Act prohibits arrangements which are likely to result in a substantial lessening of competition. The Commission is concerned that any joint enterprises between competitors do not breach this provision.

In relation to this tolling arrangement, the Commission had some concerns that the arrangement may reduce the incentive for Heinz and SPC to compete aggressively in the production and sale of canned baked beans and spaghetti products, and that the arrangement provided for an exchange of information regarding production costs and schedules which may reduce the ability of the parties to compete effectively against each other.

Given that the parties have retained separate marketing functions, the Commission decided not to intervene in the matter at this time. However, it will continue to monitor the arrangement and review its position in 12 months time to determine what, if any, effect the arrangement has had on the market.

Air New Zealand/Ansett Holdings Ltd, Bodas Pty Ltd and associated entities — domestic and Trans-Tasman passenger and air cargo transport.

This matter was raised in April 1995. Air New Zealand proposed to acquire TNT Ltd's 50 per cent interest in Ansett. The Commission examined the nature of the deal being proposed by the parties and conducted market inquiries in both Australia and New Zealand to determine

how the market definition and competition assessment issues should be resolved.

The Commission noted the move toward the creation of a single aviation market for Australia and New Zealand and took account of this when reaching its decision. It concluded that the acquisition would not be likely to substantially lessen competition in the Australian market. The Commission was also satisfied that there would not be a substantial lessening of competition in relation to international travel into and out of Australia or travel distribution in Australia.

The Commission did not oppose the proposed acquisition.

Coles Myer Ltd/Newmart — retail sale of groceries in Western Australia. This matter was raised in September 1995. Coles Myer proposed to acquire Newmart, a Western Australian retail chain.

The Commission considered that the acquisition was unlikely to substantially lessen competition. The acquisition was considered in a national context and also with respect to its impact at the State level. While the six Perth stores in the Newmart chain are reported to turn over more than \$100 million annually, this is estimated to account for only 2.3 per cent of retail grocery sales in Western Australia. The Commission noted that Woolworths is considered to be the market leader in Western Australia and independents also provide significant competition. It was also determined that the acquisition would have minimal effect on grocery wholesaling at either national or State levels.

The Commission did not oppose the proposed acquisition.

Chubb Security Holdings Australia/security business of James Hardie Limited — electronic security installation and servicing, patrol services, guarding services, monitoring.

This matter was raised in December 1995. The Commission considered that the proposed acquisition was not likely to result in a substantial lessening of competition, as in each

of the relevant markets there are a number of national and regional market participants that are in a position to vigorously compete with a merged Chubb and James Hardie. There are also a number of larger customers that are in a position to provide their own security services in the event of price increases by the providers of such services. Furthermore, the barriers to entering the various markets did not appear to be overly significant.

The Commission did not oppose the proposed acquisition.

Chubb Australia Limited/MSS Security Service — electronic security monitoring, patrols, guarding, and electronic security system installation.

This matter was raised in February 1996. In May 1996 the Commission decided not to oppose the proposed acquisition by Chubb Security Holdings Limited of MSS Security as the acquisition was unlikely to have the effect of substantially lessening competition in the market for security services.

The security services that the Commission considered may be affected by this acquisition included electronic security installation and service, monitoring, patrol and guarding services in all States and Territories.

South Australia was the only State where concentration levels were found to reach the Commission's threshold levels under the merger guidelines.

The Commission found that barriers to entry were relatively low in terms of the capital costs required to set up a security business.

As potential customers may not be aware as to the common ownership of the various security businesses, the Commission requested that Chubb, Wormald Security Australia Pty Limited, James Hardie Limited and MSS inform all potential clients that these four entities are part of the Chubb Group.

The Commission will continue to monitor the security industry with particular attention given to South Australia.

Ascom Tele-Nova P/L/Nira Australia Pty Ltd — on-site mobile communications systems. This matter was raised in February 1996. Ascom and Nira's parent companies, Ascom/Ascom UK and Ericsson Radio Systems AB, entered into a joint venture, as a consequence of which the parties proposed to merge. The merger was not considered to pose competition concerns because the parties are small, the level of imports is very high, and several new entrants have successfully entered the market in recent years.

The Commission did not oppose the proposed acquisition.

Sun Coast Gold Macadamias (Aus) Ltd/Macadamia Processing Co Ltd — macadamias. This matter was raised in February 1996. Sun Coast Gold proposed to acquire the business of Macadamia Processing. After conducting market inquiries, the Commission concluded that the proposed merger was unlikely to result in a substantial lessening of competition. The macadamia industry is a growing one with a pronounced export focus and considerable competition in international markets. While the acquisition will result in increased concentration there are a number of competitors processing product with the capability to respond to changes in the market.

The Commission did not oppose the proposed acquisition.

Australian Co-operative Foods/Capital Chilled Foods Pty Ltd — subsidiary of The Bega Co-operative Society Limited — joint venture in market milk processing and distribution. This matter was raised in February 1996. Australian Co-operative Foods Limited and The Bega Co-operative Society Limited proposed to consolidate their market milk processing and distribution businesses in the ACT and South-East New South Wales, but excluding ACF's operation outside this region and Bega Co-operative's dairy food manufacturing facilities.

In determining that the proposed joint venture was unlikely to substantially lessen competition, the Commission noted that the milk industry was undergoing significant rationalisation with

many of the smaller players looking to strategic alliances with a major player in order to ensure sufficient backing to remain viable in the face of larger and better capitalised competitors. Co-operatives have been identified as particularly vulnerable due to their historical problems with accessing capital markets and it is argued that alliances such as the one proposed here will, along with other rationalisation and scale benefits, enable such access on more favourable terms.

The Commission did not oppose the proposed joint venture.

QUF Industries Ltd/Norco/Dairyfields — joint venture — market milk. This matter was raised in February 1996. QUF, Dairyfields and Norco proposed a joint venture in packaged milk operations. It will also produce cream, custard and fruit juice. The Commission considered that, while the acquisition could be viewed as a pre-emptive action in light of future industry regulation, the presence of other significant industry participants would be likely to maintain competition.

The Commission did not oppose the proposed joint venture.

Unilever/Helene Curtis Industries — haircare products, deodorants and other skincare products. This matter was raised in February 1996. Helene Curtis supplies a range of deodorant and haircare products in Australia (and internationally through its parent company). Unilever currently markets a range of deodorant and haircare products in Australia. Unilever completed the acquisition of Helene Curtis Industries in the United States on 22 March 1996. Among the assets acquired in the transaction were the Australian business and assets of Helene Curtis.

In arriving at its conclusion that the acquisition was not likely to substantially lessen competition, the Commission noted that the merged entity would have a modest share of the supply of haircare products in Australia. In addition, the haircare industry in Australia is characterised by vigorous competition with significant price discounting and the frequent introduction of new brands. Consequently, the Commission did not consider that the

acquisition raised significant concerns in relation to haircare products.

By contrast, the merged entity would have a strong position in relation to the supply of deodorant products in Australia. However, the Commission observed that entry had previously been achieved in the industry and that there were a number of large multinational firms currently operating in the industry that could potentially expand their operations in Australia in response to an exercise of market power by the merged entity. The Commission also observed that the acquisition was unlikely to significantly deter entry in the future.

The Commission did not oppose the acquisition.

Pacific Magazines and Printing

Ltd/Shomega Ltd — web printing services. This matter was raised in March 1996. Pacific Magazines and Printing proposed to purchase shares in Shomega in order to integrate the business divisions of Shomega.

After conducting market inquiries, the Commission considered that the proposed acquisition was not likely to substantially lessen competition. The loss of Shomega was unlikely to deter new participants such as large sheet-fed printers from entering the lower levels of the web printing market. The Commission noted that close substitutes for large-run web printed catalogues are increasingly being offered by newspaper printers.

The Commission did not oppose the proposed acquisition.

St George Bank/Metway Bank — retail banking services. This matter was raised in March 1996. Sydney-based St George Bank Ltd made an offer to acquire Queensland's Metway Bank Ltd. The proposal consisted of an all cash bid which valued Metway Bank at \$790 million. The Commission did not oppose the acquisition but since that time a second bidder for Metway has emerged and the St George deal has not yet been finalised.

The Commission did not oppose the proposed acquisition.

See Suncorp Finance/Metway.

Ford Motor Company/Mazda Motor Corporation

— passenger motor vehicle market. On 6 April 1996 Ford Motor Company and Mazda Motor Corporation agreed that Ford would increase its overseas shareholding in Mazda, subject to the necessary government approvals.

In reaching its decision not to oppose the acquisition of further shares, the Commission took into account the continuing reduction of import tariffs due to the implementation of the 'Button Plan', which has led to a significant increase in imports. In particular, there has been sustained and successful entry by a number of new entrants with imported vehicles in recent years.

The Commission did not oppose the proposed acquisition.

Southcorp Holdings Limited/Coldstream Australasia Limited

— bottled wine, grapes, regional trade in grapes and wine, particular styles of wine. This matter was raised in April 1996. Southcorp Holdings proposed to acquire Coldstream Australasia Limited, a small Yarra Valley wine producer. The Commission considered that the proposed acquisition was unlikely to result in a substantial lessening of competition.

The Commission did not oppose the proposed acquisition.

Liquorland/San Remo

— liquor retailing. Liquorland proposed to acquire several San Remo outlets in Melbourne.

The Commission did not oppose the proposed acquisitions.

Novartis Limited/Sandoz Limited and Ciba-Geigy Limited

— agricultural chemicals and animal health products. This matter was raised in June 1996. Novartis Limited proposed to acquire Sandoz Limited and Ciba-Geigy Limited.

The Commission did not oppose the proposed acquisition.

Mildara Blass/Rothbury Wines Ltd — bottled wine, grapes, regional trade in grapes

and wine, particular styles of wine. Mildara Blass made a takeover bid for Rothbury Wines. The proposed acquisition would not breach the thresholds set out in the draft merger guidelines. The Commission considered that, in the event of the acquisition proceeding, the change in concentration of ownership in each of the possible markets would not be substantial nor were the effects on competition likely to be substantial.

The Commission did not oppose the proposed acquisition.

British Aerospace Australia Ltd/AWA Defence Industries Pty Ltd and the AWA Defence Industries Trust — defence electronics/prime contracting to the Department of Defence. This matter was raised in June 1996. British Aerospace proposed to acquire AWA Defence Industries. Both companies produce, sell and service defence electronics for the Australian Defence Forces.

The Commission decided not to oppose the acquisition as it was unlikely to result in a substantial lessening of competition. In coming to its decision, the Commission took into account that defence electronics are traded internationally and it would be feasible for more foreign suppliers to set up in Australia. Suppliers of civilian electronics could also produce electronics for the Australian Defence Forces. Further, as the Department of Defence is the ultimate purchaser of all Australian defence electronics it has a substantial influence over most aspects of the production, sale and support of its requirements.

The Commission did not oppose the proposed acquisition.

Suncorp Finance and Insurance/Metway Bank/Queensland Industry Development Corporation/Bank of Queensland — retail banking services, insurance, funds management. In May 1996 the Queensland Government announced a rival bid for Metway Bank Ltd which would see Metway Bank Ltd, Suncorp Finance and Insurance (wholly owned by the Queensland Government), and Queensland Industry Development Corporation (wholly owned by the Queensland Government) merge to form a major Queensland-based financial

services conglomerate which would include retail banking, insurance and funds management. Bank of Queensland Ltd was invited to join the merger.

Since the announcement of the proposal, Bank of Queensland has declined to participate and St George Bank Ltd has increased its offer for Metway Bank.

The Commission did not oppose the proposed acquisition.

See St George/Metway.

Port of Geelong and Ports Pty Limited — port services. The Commission was invited by the Victorian Government to assess the competition consequences of the various bids for the port of Geelong.

The purchaser, Ports Pty Limited (a joint venture company held by Infrastructure Investment Corporation and Primera Pty Ltd, a wholly owned subsidiary of TNT Ltd), gave undertakings to provide access to the port on reasonable commercial terms which are non-discriminatory, and to notify the Commission if it proposed to enter into any substantial new line of business in the port sector which may lead to concerns as to competition in the port or between ports.

The Commission did not oppose the acquisition.

Dow Chemical (Australia) Ltd and Huntsman Chemical Company Australia Pty Ltd — joint venture for the production and marketing of polystyrene. Dow Chemical (Australia) Ltd and Huntsman Chemical Company Australia Pty Ltd proposed to form a joint venture for the production and marketing of polystyrene in Australia.

Under the terms of the joint venture Dow will produce general purpose polystyrene and Huntsman will produce high impact polystyrene. Marketing will be undertaken jointly.

The Commission concluded that polystyrene was a widely traded commodity in the Asia-Pacific region and beyond, and that imports were likely to act as a constraint upon

domestic pricing. It concluded that the joint venture was unlikely to substantially lessen competition.

The Commission did not oppose the joint venture, but will monitor what effects, if any, the joint venture has on pricing in the market.

Carter Holt Harvey/Continental Cup Company Pty Ltd — manufacture and supply of disposable cups and related products in Australia. This matter was raised in July 1995.

There appeared to be strong countervailing power among customers. In addition, there was strong competition from imports.

The Commission decided in July 1996 not to oppose the acquisition.

Impact Manufacturing Limited/G.E. Crane & Sons Limited — manufacture and supply of collapsible tubes in Australia. This matter was raised in September 1995.

The barriers to entry to setting up a manufacturing establishment did not appear to be high. In addition, the level of imports appeared to be a constraint on the operations of Impact after the acquisition. Users of collapsible tubes are also likely to have a degree of countervailing power, as evidenced by their ability to either import or to vertically integrate.

The Commission considered that the acquisition was not likely to substantially lessen competition and decided in February 1996 that it would not oppose the acquisition.

Thomson Sintra Pacific Pty Ltd/GEC Marconi Systems Pty Ltd — manufacture and supply of underwater sonar equipment. This matter was raised in September 1995.

The parties proposed to operate their underwater sonar divisions as a joint venture. Most of the operations of the proposed joint venture were defence related, with the main client being the Commonwealth Department of Defence, although both parties also pursued contracts for oceanography operations relating to oil and gas exploration. Market inquiries indicated that there are a number of alternative foreign suppliers. The Commission also

considered that the Department of Defence was likely to exercise a significant degree of countervailing power.

The Commission decided in May 1996 not to oppose the acquisition.

Sonic Technology Australia Ltd/Hanly Moir Pathology Pty Ltd/Dr Barratt & Smith Pathologists Pty Ltd — provision of pathology services to non-public patients in New South Wales. This matter was raised in October 1995. Under the proposal, the largest pathology provider in NSW, Sonic Technology Australia Ltd (operating in NSW through its wholly owned subsidiary, Douglass Laboratories Pty Limited), sought to acquire the fourth and fifth largest pathology providers respectively, Drs Barratt & Smith Pathologists Pty and Hanly Moir Pathology Pty Ltd.

The Commission concluded that, should the acquisitions proceed, the resulting concentration levels in the market for the provision of pathology services to non-public patients would not exceed the threshold levels established in the Commission's draft merger guidelines. The Commission's inquiries also identified that there are a number of pathology providers of significant size operating in NSW and ACT, as well as smaller providers, able to compete effectively with the merged entity.

In December 1995, the Commission decided not to oppose the acquisition.

CSR Readymix Roads Group/Emoleum (Australia) Limited — regional markets for bound pavements and pavement services. This matter was raised in November 1995.

The parties proposed to merge their asphalt and sprayseal businesses to form a 50/50 joint venture. The customers are likely to be local and State Governments tendering for infrastructure works and are thus likely to have a degree of countervailing power. In addition, barriers to entry are not high and there are no restraints on access to materials required.

The Commission did not oppose the acquisition.

Infratil Australia Ltd/Ascot Pty Ltd consortium/port of Portland — supply of

port and land services for various cargoes within various geographic market boundaries. This matter was raised in November 1995.

The Commission was concerned that ownership of the port would put the operator in a position to prejudice competing service providers or end users. These concerns were addressed through appropriate undertakings being provided by the acquirers to:

- provide for non-discriminatory access to the port of Portland to current and future users;
- provide for notice of any intention to vertically integrate into the provision of other services at the port of Portland; and
- preserve existing and potential inter-port competition by requiring advance notice of any linkages between the port of Geelong joint venture and any other competing port through ownership or involvement in any other significant business.

The Commission did not oppose the acquisition and the Infratil/Ascot consortium was the successful bidder.

BHP/Tubemakers of Australia — steel tubing products. This matter was raised in December 1995. BHP announced it was making an offer to increase its shareholding in Tubemakers of Australia from 48.5 per cent to 100 per cent.

Tubemakers is one of three major steel distribution companies in Australia and is also a manufacturer of steel tubing products. The Commission considered it was likely that customers of BHP could consider importing steel products and that this may act as a competitive constraint in the market in which Tubemakers operates.

The Commission did not oppose the acquisition.

Austereo Limited/Radio Newcastle Pty Ltd — Stations 2KO FM and NX FM — sale of advertising on commercial radio in Newcastle licence area. This matter was raised in December 1995. Austereo proposed to acquire Radio Newcastle which operated the two FM stations in Newcastle.

The Commission did not oppose the acquisition.

TNT/IIC/assets of the port of Geelong, Victoria — supply of port and land services for various cargoes within various geographic market boundaries. This matter was raised in January 1996. The Victorian Government requested that the Commission assess the competitive effects of the purchase of the port by prospective bidders.

On 3 April 1996, the Commission determined that the acquisition would not substantially lessen competition subject to the parties giving undertakings to:

- provide for non-discriminatory access to the port of Geelong to current and future users;
- provide for notice of any intention to vertically integrate into the provision of other services at the port of Geelong; and
- preserve existing and potential inter-port competition by requiring advance notice of any linkages between the port of Geelong joint venture and any other competing port through ownership or involvement in any other significant business.

The Commission did not oppose the acquisition and TNT/IIC were the successful bidders.

O'Brien Glass Holdings Pty Limited/assets of Moller Industries Pty Ltd (in receivership) — replacement autoglass manufacture. This matter was raised in March 1996.

O'Brien was the second largest producer of replacement windscreens in Australia and proposed to buy the assets of the largest producer which had gone into receivership. The Commission was concerned that the acquisition would lead to further concentration in the market and enhance O'Brien's already substantial market power.

The Commission opposed O'Brien's acquisition of the assets of MIPL directly through the receiver and also opposed O'Brien's participation in an auction of MIPL assets.

Carter Holt Harvey/Forwood Products Pty Ltd — sawn softwood timber, heavy structural timber, wood panel products. This matter was raised in April 1996.

Forwood Products was a business owned by the SA Government. Its primary activity was the processing and sale of sawn softwood timber. The Commission took the view that there is a regional market for sawn softwood timber.

The Commission determined not to oppose the acquisition due to continuing competition from two large competitors in the region but reserved the right to make further market inquiries if it discovered evidence to the contrary.

Mt Hotham Ski Resort/Falls Creek Alpine Resort — provision of ski facilities. This matter was raised in May 1996.

Based on its previous inquiries made in relation to the ski industry, and after inquiries made after the public announcement of the proposal, the Commission decided not to oppose the merger.

Boral Ltd/Rocla Concrete — supply of pre-mixed concrete in Brisbane metropolitan market. This matter was raised in June 1996.

Amatek Ltd advised the Commission that it intended to sell Rocla, its pre-mixed concrete division. Barriers to entry did not appear to be high. In addition, most customers were large contractors and government works. Rocla did not appear to be a particularly vigorous competitor prior to the acquisition.

The Commission did not oppose the acquisition.

RG Capital Broadcasting Pty Limited/Coast Rock FM Pty Limited — local market for advertising on commercial broadcast radio in the NSW Central Coast radio licence area. This matter was raised in June 1996.

Coast Rock was formerly owned by Sunshine Broadcasting, a subsidiary of the Seven Network. The sale came about as a result of the Australian Broadcasting Authority requiring the Seven Network to sell its radio and

television assets on the Central Coast of NSW under the Broadcasting Services Act.

The Commission determined that the acquisition would be unlikely to have the effect of substantially lessening competition, particularly as there would be no change in concentration in the market.

The Commission did not oppose the acquisition.

Australian Radio Network Pty Ltd acquisition of Montclair — market for advertising on commercial radio within the Adelaide radio licence area. This matter was raised in July 1996.

ARN purchased all of the shares in Montclair's subsidiaries which operated two commercial radio stations in Adelaide, 5ADD and 5DN. ARN owned 10 radio stations around Australia but none in Adelaide prior to the acquisition. The level of concentration in the market remained unchanged.

The Commission did not oppose the acquisition.

National Power Consortium/Hazelwood Power Corporation Ltd — electricity. This matter was raised in June 1996 when the Commission was approached by the Victorian Government which proposed to put the Hazelwood plant out to tender. Three consortia submitted bids for Hazelwood and the Commission examined each of them.

The Commission was concerned about potential anti-competitive effects arising out of cross-ownership of electricity industry assets. In particular, it might give rise to opportunities to 'game' the market through access to confidential strategic information. The consortia addressed these concerns to the Commission's satisfaction. In addition, Victorian State legislation limits the extent to which an active participant in the Victorian electricity industry can acquire ownership in additional assets.

In light of this, the Commission decided not to oppose the acquisition of Hazelwood by the National Power Consortium which was made up of Pacificorp, Destec Energy and Commonwealth Investments.

Media Monitors Australia Pty Ltd acquisition of Croll Communications Pty Ltd — press and electronic monitoring. This matter was raised in July 1996.

The acquisition triggered the Commission's concentration thresholds but barriers to entry were not substantial.

The Commission did not oppose the acquisition.

Joint venture between Mr W Beavis, Mr S Ayoub and Mr S Gilles to form All Sports Management (All Sports) — management/agency services to athletes. This matter was raised in August 1996. It involved a joint venture of rugby league player agents to form a new company. Market inquiries suggested that there is a considerable number of market participants and All Sports would have a limited presence in the relevant market.

The Commission did not oppose the joint venture.

Santos and Parker & Parsley Australasia Pty Ltd — acquisition of oil and gas interests.

In March 1996, Santos Limited acquired certain oil and gas interests from Parker & Parsley Australasia Pty Ltd.

The Commission was concerned the acquisition may be likely to result in substantial lessening in competition.

During its inquiry, a number of industry participants raised concerns about the increase in concentration resulting from the Santos acquisition. However, the Commission was not able to obtain sufficient evidence on which to take the matter further.

The Commission still has concerns about competition in gas markets in central and eastern Australia. However, it decided not to pursue the acquisition.

South Australian Co-operative Bulk Handling and SA port facilities — acquisition. The South Australian Government advised the Commission of its intention to offer South Australian Co-operative Bulk Handling (SACBH) the first right of purchase of bulk

handling facilities at various ports in South Australia.

The South Australian Government is proposing legislative arrangements to provide reasonable access to the facilities for all current and potential users, together with a framework to safeguard competition and establish a workable procedure for resolving disputes.

The Commission did not oppose the acquisition.

Australis Media and Optus Vision — satellite distribution joint venture. Under the proposed joint venture Australis Media and Optus Vision will share satellite infrastructure for the distribution of their pay TV programs.

The joint venture was considered in the context of a deed that was previously entered into between Australis and a subsidiary of Publishing and Broadcasting Limited (PBL) as a result of PBL providing certain funding guarantees as part of Australis' recapitalisation plans. Under the deed, PBL was granted certain rights of first and last refusal over certain Australis programming assets and a right to consent to certain modifications of Australis' programming agreements, and Australis was required to use its best endeavours to enter into a joint venture in relation to satellite infrastructure services.

The joint venture and the PBL deed raised a number of issues for consideration because PBL now has interests in two competing pay TV operators.

The Commission noted that, under the joint venture, Australis and Optus Vision would share satellite infrastructure but would continue to compete in terms of pricing, marketing and program content.

The arrangements will come into place from 1 July 1997 when restrictions are removed on the provision of satellite pay TV services by parties other than the two current licensed satellite operators (Australis and Continental Century).

The Commission decided not to oppose the joint venture.

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 following is a list of s. 87B matters placed on the public register in 1996. (The register was first listed in the Trade Practices Commission *Bulletin* 74, February 1994.)

Mobil Oil Australia Limited, s. 50. Proposed acquisition of Amgas and Coodax would be likely to have the effect of substantially lessening competition in the supply of petroleum products in a number of markets for petroleum products in WA.

16.1.96 undertaking to make the Kwinana terminal available for use by independents on reasonable commercial terms, in the event that Mobil does not require the terminal for its own use.

Atticus Pty Ltd (trading as Mobile Pool Care (Qld)), s. 47. Exclusive dealing in relation to franchising licensing agreements for swimming pool maintenance and repair.

17.1.96 undertaking to amend the conditions of its future sales of franchises and franchise licensing agreements, and to notify all franchisees, agents and employees of the company of the terms of these undertakings.

Austcomm Tele Services Pty Ltd, s. 52. Misleading and deceptive conduct in the marketing and promotion of its telecommunications reselling service.

21.2.96 undertaking to cease engaging in the conduct, to send corrective letters to customers, and to establish a compliance program.

Danny Ehrenfeld (Managing Director of Rational Enterprises Pty Ltd), ss 47(6), 52,

53(c), 53(g), 63A. Promotion of pre-approved credit.

28.2.96 undertaking to implement a corporate compliance program involving key management and operational staff using the Commission's Best & Fairest package. The undertaking included commissioning three-monthly audits to assess the effectiveness of the compliance program for 12 months.

St John Ambulance Australia WA Ambulance Service Inc., ss 52, 53(c), 53(g). Misleading promotion of 'Phone Saver' offer to its members.

7.3.96 undertaking to cease offering the Phone Saver service, to pay to members all monies held in trust as a result of discounts received from the scheme, to refund to members any pensioner discounts forgone as a result of entering into the Phone Saver scheme and to implement a compliance program with an independent audit to be conducted of effectiveness of the program.

Port Adelaide Wool Company Pty Ltd, s. 52. Misleading or deceptive conduct in relation to the supply of wool.

13.3.96 undertaking to pay the Commission's costs of \$100 000 according to a court order.

Doug Hall Poultry Pty Ltd, Australian Quality Egg Farms Ltd, ss 52, 53. Misleading claims about the actual content of Omega 3 fatty acids in Megga Eggs.

13.3.96 undertaking to withdraw Megga Eggs from sale immediately, to conduct analysis of the eggs and report the results to the Commission, and to ensure that packages and containers did not misrepresent the actual level of Omega 3 fatty acid contained.

Taranza Pty Ltd (producer of the Omega Egg), ss 52, 53. Misleading claims on packaging about the actual Omega 3 fatty acids content of Omega Eggs.

3.4.96 undertaking to cease using the name 'Safe Eggs', adopt a standard testing procedure to determine the Omega 3 content of the eggs,

cease making misleading health benefits claims, and issue corrective advertising.

Radio Rentals Limited, ss 52, 53(e). Alleged misleading and deceptive price of refrigerators through the use of the word 'Now' in 'Easter Specials' promotion, when it was the regular price and there was no actual saving.

26.4.96 undertaking to cease the conduct, offer refunds to purchasers, publish apologies (both in-store and in newspapers) and implement a national three-year compliance program.

Universal Press, s. 52. Misleading or deceptive conduct in selling advertising in three regional community business and street directories in Tasmania on the basis that substantially more households would receive a directory than actually did, and that the directories were annual when at least one was current for only nine months.

1.5.96 undertaking to provide full refunds to customers who advertised in the directories where they believe they have been disadvantaged by the company's conduct, and to place a public apology notice in certain Tasmanian newspapers. The company also undertook not to misrepresent the distribution of its directories or the length of time its directories were in circulation.

Ultra Tune Australia Pty Limited, ss 51AA, 52, 53(g). Unconscionable conduct in relation to supplying a franchisee with a software package without disclosing it had a lock-out code, and asking the franchisee to sign a revised franchise agreement before supplying the password.

8.5.96 undertaking to continue to provide the necessary passwords to franchisees supplied with the software package for the currency of their agreements; fully inform franchisees about the existence or effect of any conditions before supplying the new software package; and not place franchisees under unconscionable pressure when negotiating the terms of their franchise agreements, the need for a new or revised franchise agreement, and for the provision of any computer system. The company also undertook to institute a compliance program and a complaints handling

system, and to apply to become subject to the Franchising Code of Practice.

Ansett Australia Limited, s. 52. Misleading or deceptive conduct in relation to an Ansett Australia Frequent Flyer promotion.

8.5.96 undertaking to remove from circulation the publications containing the promotion, place corrective advertising in its magazine, to allocate AAFF points for economy and discount economy travel to members who can prove they took Singapore Airlines flights or are booked to travel on Singapore Airlines up to 30 June 1996, and to include a reference to AAFF terms and conditions on frequent flyer application forms. Ansett also undertook to continue to update, develop and implement a compliance program.

Port of Portland Pty Limited, Ascot Investments, Infratil Australia Limited, s. 50. Proposed acquisition of port of Portland would be likely to have the effect of substantially lessening competition in the supply of port services.

22.5.96 undertaking to allow access to land transport and freight forwarder operators to the port and its facilities. The consortium also undertook not to conduct any business which uses the port for the movement of goods or produce, without reasonable advance notice to the Commission, and not to acquire any interest in the port of Geelong or the port of Adelaide without giving the Commission reasonable advance notice.

Paul Marsh Publications Pty Ltd, ss 64(2A), 53(bb), 51AA, 52. Demanding payment for advertising which an Aboriginal community claimed not to have authorised.

22.5.96 undertaking to cease any conduct which leads to the placing of advertising without the authorisation of clients, to modify its practices by engaging each of its clients on contract, and to establish a compliance program.

Heart Smart Eggs producers, ss 52, 53. False or misleading representations in relation to the health and nutritional benefits of eating Heart Smart Eggs.

24.5.96 undertaking to cease using the name 'Heart Smart Eggs', adopt a standard testing procedure to determine the Omega 3 content of the eggs, cease making misleading health benefits claims, issue corrective advertising, and pay the Commission's costs.

Safe Eggs producers, ss 52, 53. False or misleading representations in relation to the health and nutritional benefits of eating Safe Eggs.

14.6.96 undertaking to cease using the name 'Safe Eggs', adopt a standard testing procedure to determine the Omega 3 content of the eggs, cease making misleading health benefits claims, and issue corrective advertising.

National Mutual Life Association of Australasia Limited, ss 47(6), 52, 53, 55. False or misleading representations and exclusive dealing in relation to a promotion of its Lifestyle Protection policies.

19.6.96 undertaking to maintain and update its compliance education programs.

Rhone Merieux Australia Pty Ltd, s. 48. Resale price maintenance in relation to veterinary products, in particular the flea control product Frontline.

19.6.96 undertaking to institute a compliance program; send a letter to all veterinary surgeons in Australia providing trade practices compliance information, twice over a two-year period; and fund an industry-wide education program to promote greater awareness of trade practices.

Chubb Security Holdings Australia Pty Ltd, s. 52. Misleading or deceptive conduct in relation to the level of supply of mobile security services.

24.6.96 undertaking to maintain sufficient staff levels including adequate back-up resources; maintain procedures for monitoring patrol attendances, inspection recording; advise clients of shared nature of service and exceptional circumstances in which services may not be provided; offer 2.5 per cent compensation to Perth metropolitan clients; fully refund

significantly underserved clients; and establish a trade practices compliance program.

TNT Limited, Ports Pty Limited, Infrastructure Investment Corporation Limited, Primera Pty Ltd, Geelong Port Pty Limited, s. 50. Acquisition of port of Geelong.

26.6.96 undertaking to allow non-discriminatory access to port of Geelong to current and future users, notify the Commission of any intention to vertically integrate into the provision of other services at the port, and to give advance notice of any linkages between the joint venture and any other competing port through ownership or involvement in any other significant business.

University Building Society, s. 47(6). Tying of loans and building insurance.

26.6.96 undertaking not to engage in conduct which might cause borrowers from Keystart to believe that they are obliged to take out building insurance with one of the insurance companies nominated by Keystart; to send letters to borrowers who have taken out mortgage protection insurance with Lionheart clarifying earlier information provided to them and informing them that an association exists between UBS, Lionheart and St James; and to implement a trade practices compliance program.

Prentice Hall, s. 52. Misleading or deceptive conduct in relation to the publication of guides offering free access to the Internet.

3.7.96 undertaking to recall the guide to correct the offending representations; publish corrective advertisements in major Australian newspapers; offer refunds to customers of either the guide or registration fee; and introduce a Commission approved compliance program, and a complaints handling system consistent with the Australian Standard.

Hamilton Island Enterprises Limited (HIE), Hamilton Island Limited, ss 51AA, 52. Unconscionable conduct in commercial transactions and misleading and deceptive conduct in relation to a Hamilton Island concessionaire.

12.7.96 undertaking to conduct management seminars on the Trade Practices Act and to develop a compliance manual for all company management staff.

Vita Pacific Pty Ltd, s. 53(eb). False or misleading representations regarding place of origin of bedding ensembles.

16.7.96 undertaking for three years to not supply a bedding ensemble labelled or otherwise represented as containing items made in Australia where such items are not made in Australia; relabel reserve stocks of the bedding ensembles held by the company; notify K-Mart, and any other retailer to whom the bedding ensembles had been sold or supplied, of the undertakings and make best efforts at its own cost to relabel, replace or recall the bedding ensembles; and continue to participate in the corporate compliance program established for the Pacific Dunlop group.

Wild Gear Pty Ltd, Mountain Designs Pty Ltd, Outdoor Designs Pty Ltd, Glyndahigh Pty Ltd and Pack Imports Pty Ltd, s. 48. Resale price maintenance in relation to supply of 'Mountain Design' outdoor adventure products.

17.7.96 undertaking to delete or strike through the proviso in the offending clause (or any clause with similar effect) in any franchise agreements it issues, review all franchise and supply agreements used by each company in the group to ensure the agreements do not contain clauses that breach the Trade Practices Act, develop a Commission-approved compliance education program, and apply for registration with the Franchising Code Council Ltd and adhere to its code of conduct.

Hugo Boss Australia Pty Ltd, s. 48. Resale price maintenance in relation to supply of prestige men's clothing.

23.7.96 undertaking to develop a trade practices compliance program.

Pricotech Leisure Brands Pty Ltd, s. 53(eb). False or misleading representations in relation to the place of origin of barbecues.

6.8.96 undertaking to, for three years, use only the representation 'Designed and manufactured in Australia using Australian and imported parts' in relation to the origin of its barbecues; to provide refunds to affected customers; and to place corrective advertising in Australian newspapers.

Berrivale Orchards Ltd, ss 52, 53(a). Misleading labelling on two of its juice products.

4.9.96 undertaking to place corrective advertising in newspapers, and to adhere to a corporate compliance program.

Mayne Nickless Pty Ltd, s. 52. Misleading representations that goods would be transported by air when they were transported by road.

3.9.96 undertaking to send letters of apology to relevant customers who used the Ipec Priority Express service during the 12 months to June 1996, offering \$50 refunds or credits; publish apology notices in newspapers, providing a contact for queries; and develop trade practices compliance training and educational activities.

Northern Food Service Pty Ltd, s. 45. Price fixing arrangements in relation to frozen foods in Tasmania.

10.9.96 undertaking to provide trade practices compliance training, as well as a comprehensive compliance manual, to its employees, servants or agents; and to examine its practices and policies to ensure they comply with the Trade Practices Act. The undertaking follows the imposition of pecuniary penalties and injunctions by the Federal Court (see *ACCC Journal* no. 3, p. 18).

Telstra Corporation Limited, ss 52, 53, 64(2A). Misleading and deceptive conduct in relation to a wiring repair plan.

16.9.96 undertaking to cease charging for the plan; and to use its best endeavours to refund to current and non-current customers the amount paid for the plan since 1992, including placing advertisements in newspapers asking non-current customers to contact Telstra regarding a refund.

Jones Stroud (Aust.) Pty Ltd (trading as J&J Cash), ss 52, 53. Misleading conduct in relation to country of origin labelling of baseball caps.

16.9.96 undertaking to place corrective advertising offering refunds; develop and implement a trade practices compliance program for executive directors and staff; and implement checking procedures to prevent the re-occurrence of similar labelling problems.

Harvey Fresh Ltd, ss 52, 53. Misleading and deceptive conduct and false representations in relation to labelling on orange juice products.

18.9.96 undertaking to cease using the label 'Orchard Fresh' on any future packaging; place corrective advertising in a WA newspaper; and implement a trade practices compliance program.

TNT Australia Pty Limited, s. 52. Misleading representations that goods would be transported by air when they were sometimes transported by road.

30.9.96 undertaking to remove the word 'air' from some of its freight divisions, write to customers advising them of the changes, offer free freight satchel to affected customers, and develop a trade practices education program for its staff.

Sub-section 51(1) exemptions

Under s. 51(1) of the Trade Practices Act, statutory exemption from 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. Statutory exemptions 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* will progressively update this list throughout the year.

New South Wales

Sydney Organising Committee for the Olympic Games Amendment Act 1996

Dairy Industry Act 1996

Victoria

Electricity Industry (Amendment) Act 1996

Water Industry Regulations 1995

Queensland

Competition Policy Reform (Queensland — Exemptions) Regulation 1996

South Australia

Cooper Basin Ratification Act 1975

Dairy Industry Act 1992

Industries Development Act 1941

Roxby Downs (Indenture Ratification) Act 1982

Stony Point (Liquids Project) Ratification Act 1981

Tasmania

Electricity Supply Industry Act 1995

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

Western Australia

North West Gas Development (Woodside) Agreement Amendment Act 1996