
Enforcement

Restrictive trade practices

Seven Network Limited, Nine Network Australia Pty Limited, Golden West Network Pty Limited and ors

Anti-competitive agreements (s. 45), exclusive dealing (s. 47)

Following a breakdown in negotiations, on 24 October 1996 the Commission instituted proceedings in the Federal Court Sydney against Seven Network Limited, Nine Network Australia Pty Limited, Golden West Network Pty Limited (GWN), Territory Television Pty Ltd, Amalgamated Television Services Pty Ltd, related companies and five individuals. The Commission alleges that the companies breached ss 45 and 47 of the Trade Practices Act.

The Commission alleges that in about the latter half of October 1995 the Nine Network and the Seven Network made an overall agreement not to pursue their interest in acquiring a second commercial television licence for regional WA and Darwin respectively.

On 31 October 1995, GWN entered into an exclusive 15-year program supply agreement with the Nine Network. GWN operates the sole commercial television station in regional WA and is associated with the Chairman of the Seven Network.

On 1 November 1995, Territory Television, a Nine Network subsidiary which operates the sole commercial television station in Darwin, entered into an exclusive 10-year program supply agreement with Amalgamated Television Services, a Seven Network subsidiary.

The Commission alleges that the object of these three agreements was to hinder or prevent potential entrants from acquiring any second commercial television licences for Darwin and

for regional WA, and therefore to enable Territory Television and GWN to be in a position to be allocated any second commercial television licences for Darwin and regional WA licence areas respectively.

The Commission alleges that the overall market sharing agreement between the Seven and Nine Networks contains an exclusionary provision and alternatively has the effect of substantially lessening competition for commercial free-to-air television services in the Darwin and regional WA markets. It alleges that the two exclusive program supply agreements amount to exclusive dealing.

Other parties named in the statement of claim are:

- Geraldton Telecasters Pty Ltd, Mid Western Television Pty Ltd and Golden West Satellite Communications, which form part of GWN in regional Western Australia; and
- Westrac Equipment Pty Limited and Australian Capital Equity, which are the ultimate holding companies for GWN.

The Commission alleges that Westrac agreed to pay the Nine Network a significant sum of money for entering into the exclusive program supply agreement, and that Australian Capital Equity guaranteed the performance of Westrac's obligations under the agreement. It also alleges that both Westrac and Australian Capital Equity have been knowingly concerned in contraventions of the Trade Practices Act.

Individuals named in the proceedings are:

- Mr Gary Rice, Managing Director of Seven Network Limited;
- Mr Nicholas Falloon, Finance Director and director of Nine Network;
- Mr William Rayner, a director of Seven Network and the Chief Executive Officer and director of GWN;

- Mr Peter Gammell, a director of the Seven Network and a director of Australian Capital Equity; and
- Mr Robin Waters, a director of Westrac Equipment and Australian Capital Equity.

Each of the individuals is alleged to have been knowingly concerned in the contravention of the exclusive dealing provisions.

The Commission said that it had given ample opportunity for the parties to unwind these agreements. It was seeking declarations, pecuniary penalties and injunctions.

On 25 October 1996, Nine agreed, among other things, to terminate the exclusive program supply agreement between its subsidiary, Territory Television, and Seven. Nine, Territory Television and Mr Falloon also agreed not to contest the Commission's claims and to submit to any orders the Federal Court may make against them in this matter on the basis that the Commission withdraw its claims for declarations and pecuniary penalties. The Commission will continue to seek injunctions.

A directions hearing was held on 22 November 1996. The next directions hearing is on 21 February 1997.

Chadwicks Model Agency Pty Limited, Vivien's Model and Theatrical Management, Priscilla's Model Management Pty Limited and Gordon Charles Management Pty Limited

Price fixing arrangement (s. 45)

On 28 November 1996, penalties totalling \$85 000 were imposed in the Federal Court on four prominent model agencies, a director from each agency and a former employee at one agency for price fixing in breach of s. 45 of the Trade Practices Act.

Penalties were imposed on Chadwicks Model Agency Pty Limited (\$20 000), its director Peter Chadwick (\$10 000); Vivien's Model and Theatrical Management (\$10 000), its director Kevin Smith (\$20 000); Priscilla's Model Management Pty Limited (\$10 000), its director Priscilla Leighton-Clark (\$4000), and former employee Gary Saunders (\$1000); Gordon Charles Management Pty Limited (\$10 000) and its director Gordon Charles Donald (\$5000).

The Commission had alleged that Chadwicks, Vivien's, Priscilla's and Gordon Charles Management made an arrangement either at, or shortly after, a meeting of the Model Agents and Managers Association Inc (MAMA) in May 1995.

The arrangement was to coordinate the enforcement of an agency service fee, that is, a 10 per cent loading on the fee charged for the supply of talent, to be paid by all model agent clients. While numerous clients had paid the agency service fee prior to the arrangement, some of the agencies' clients had refused to pay the agency service fee.

The Court accepted joint submissions between the Commission and each of the respondents regarding injunctions and penalties for breaches of the Act. The joint submissions took into account factors including that consumers had not suffered significant damage as a result of the conduct and that each of the respondents had admitted that their actions were in breach of the Act, saving the Court and the Commission both time and expense.

The Commission noted that the four agencies together accounted for the greater part of the market. It also recognised the facilitation role that the industry organisation, MAMA, had played in the conduct.

The four agencies also gave undertakings to the Commission to implement internal trade practices compliance programs.

Shell Company of Australia

Unconscionable conduct in commercial transactions (s. 51AA), false and misleading representations (s. 53)

On 11 November 1996 the Commission filed proceedings in the Federal Court against Shell Company of Australia, alleging unconscionable conduct against a Shell franchisee and false and misleading representations.

The Commission alleges that Shell misrepresented the nature of the tenure under a Shell FORCE Franchise Agreement. It further alleges that the franchisee, relying on these representations, bought the franchise and

subsequently suffered significant losses as a result of unconscionable conduct by Shell.

The allegations centre on a Gold Coast franchise site operated by Mr and Mrs Bird. Although the franchise agreement contained a one plus five year tenure, the franchisees were advised by Shell that they effectively held an 11-year tenure as the agreement would be extended. It is alleged that Shell later reneged on the additional five-year tenure resulting in a substantial devaluation of the business.

The Commission further alleges that Shell took advantage of its power as franchisor, knowing of the special disadvantage the franchisees were experiencing. The special disadvantages arose from Shell's representations that:

- the franchisees should sell as their future looked bleak;
- the franchisees' price support could be reduced;
- Shell was opening a new service station nearby; and
- Shell may close an ancillary business essential to franchise viability.

It is alleged that the representations above, coupled with the substantial devaluation of the franchise, induced premature termination of the FORCE franchise agreement at substantial loss to the family-run business.

The Commission is taking representative action, seeking compensation for loss or damages, injunctions and declarations.

A directions hearing will be held in Brisbane on 6 December 1996.

Cannon Investments Pty Ltd (trading as Travelshop)

Exclusive dealing (third line forcing) (s. 47), misleading and deceptive conduct (s. 52), false or misleading representations re price (s. 53(e))

After Commission investigation, a WA travel agency, Cannon Investments Pty Ltd trading as Travelshop, acknowledged that it may have

breached the third line forcing and consumer protection provisions of the Trade Practices Act.

Commission investigations revealed that, in August 1996, Travelshop offered flights to London on condition that prospective passengers also acquired travel insurance from nominated insurance companies. This practice, known as third line forcing, is prohibited under the Act. In addition, the prices at which the flights were advertised did not include the additional costs of the travel insurance.

Travelshop cooperated fully with the Commission to resolve the matter by offering a s. 87B undertaking to:

- cease applying conditions to its travel services which may constitute third line forcing, and in future refrain from representing that consumers must obtain travel insurance from another supplier in relation to flights or other services being offered by Travelshop;
- withdraw its current advertising and in future ensure that its advertising provides full details of all conditions applicable to any Travelshop offer;
- publish corrective advertising in each newspaper and publication in which the current advertising originally appeared; and
- institute an internal trade practices compliance/training program.

Mergers

St George Bank Ltd and Advance Bank Ltd

Merger (s. 50)

On 25 October 1996 the Commission announced it would not oppose the proposed merger of St George Bank Ltd and Advance Bank Ltd. It does not consider that the proposed merger will substantially lessen competition.

In fact, the Commission considers that the merger could be pro-competitive as it will allow

the merged entity, with strong operations in both NSW and South Australia, to compete more vigorously with the major banks in these areas.

The Commission said that banks, especially the majors, were shielded from a lot of potential competition because of restrictions in the Bank (Shareholdings) Act and the Foreign Acquisitions and Takeovers Act. It said that mergers such as this one were one of the few ways in which vigorous competition with the major banks could be promoted.

The proposal involves an 'in-market' merger between two banks based in the Sydney metropolitan area, with the significant addition of the BankSA operations. The nature, history and background of St George Bank and Advance Bank are in many ways similar, with similar types of operations and a common history as building societies before conversion to banks. They will be well placed to expand their operations because of the increased size, scope of operations and financial strength resulting from the merger.

In assessing the effect of the merger on competition the Commission has continued to use its approach of assessing mergers on a case-by-case basis, taking into account circumstances which apply at the time.

The Commission does not believe that the new entity could be regarded as a national trading bank. The merged entity's total assets will be about \$40 billion, less than half that of the smallest of the major banks. In addition, the new bank does not have national operations and is not strongly represented in all States and Territories.

The Commission will follow any developments which may flow from this proposal very closely to see what effect it might have on the overall structure of the industry, bearing in mind the restrictions which apply during the currency of the Financial System Inquiry.

This merger does not affect the Commission's long-held view on the importance of having a strong regional bank in each State.

IAMA Ltd and Primac Holdings Limited

Acquisition (s. 50)

On 20 October 1996 the Commission announced that it would not oppose the proposed acquisition of Primac Holdings Limited by IAMA Ltd.

On 13 September 1996, IAMA Ltd announced its intention to make a scrip takeover offer for all the ordinary shares in the capital of Primac Holdings Limited under Part 6 of the Corporations Law. One of the conditions of the takeover offer is that no action is to be taken, or threatened to be taken, by the Commission under the Trade Practices Act which could prohibit IAMA acquiring all or any of the shares of Primac or which might lead to the takeover being challenged later.

The Commission concluded that the relevant market was the retail market for rural merchandise products in Queensland and north coast New South Wales. The relevant market also includes a small amount of wholesale supply. The main product groups are fertilisers, agricultural chemicals and animal health products.

The Commission said that the rural merchandise market in the relevant region appeared to be competitive at the moment, with a significant independent retail sector operating in the Queensland and north coast New South Wales area. Many independent rural merchandise retailers are members of buying groups which seem to give them the buying power necessary to remain competitive with the large chains.

The Commission considered that the proposed acquisition was unlikely to substantially lessen competition in the market.

It will closely monitor any further moves to increase concentration in rural merchandise retailing, particularly in the areas of agricultural chemicals and animal health products.

Chubb Security Holdings Australia Limited and James Hardie Building Services Ltd

Acquisition (s. 50)

On 20 November 1996 the Commission announced it would not oppose the acquisition of James Hardie Building Services Ltd by Chubb Security Holdings Australia Limited.

It appeared to the Commission that there was limited overlap in services provided by the companies. The major area in which the two companies compete is in the provision of fire products and services. It also appeared that there was extensive import competition and low barriers for new entrants to the fire products and services industry.

The Commission considered that there would not be a substantial lessening of competition and decided not to intervene. It will review its decision should further information become available that leads it to believe that competition may be at risk.

Industrial Galvanizers Corporation Pty Ltd and BHP Civil Products

Acquisition (s. 50)

On 2 December 1996 the Commission announced it would not oppose the acquisition of BHP Civil Products by Industrial Galvanizers Corporation Pty Ltd.

BHP Civil Products manufactures and markets steel fabricated products to the civil construction and infrastructure markets in Australia and South-East Asia. Both BHP Civil Products and Industrial Galvanizers supply steel road safety barriers and steel light/power poles, among other products.

The Commission is of the opinion that the acquisition is unlikely to substantially lessen competition.

The markets for these products are relatively small in dollar terms, but the Commission considered the acquisition carefully because of the benefit to the community of a reliable, cost-effective supply of these products.

The Commission concluded that, in the event of higher prices and margins for the supply of steel guard rail or steel light and power poles, there were a number of possible sources of entry. This entry would not require substantial investment.

The Commission considered that, in respect of safety barrier systems, prices for the supply of steel guard rail by the merged business may be constrained by the supply of wire rope safety fence, which is a relatively new product to Australia. Wire rope can substitute for steel guard rail in some instances. It is widely used overseas and market participants generally consider that it will be used increasingly in Australia. The other major manufacturer of steel guard rail in Australia is ANI Arnall, a business unit of the ANI Corporation Limited. A small amount of steel guard rail is imported to Western Australia for distribution by Meneghello Galvanising Services.

Consumer protection

Bryan Hedges

Misleading or deceptive conduct (s. 52), referral selling (s. 57), pyramid selling (s. 61)

On 19 August 1996 the Commission instituted proceedings in the Federal Court Melbourne against Mr Bryan Hedges in relation to a scheme which he allegedly promoted. The Commission is alleging that the promotion of the scheme involved a contravention of the pyramid selling and referral selling provisions of the Trade Practices Act.

The scheme was promoted under the name of 'The Christian Support Pen Friend Club'. The club produced a monthly newsletter which contained the names and addresses of club members as well as news and views relating to a Christian lifestyle.

Full subscriber membership cost \$100 and included a two-year subscription to the newsletter. Affiliate membership cost \$40 and

included a 10-month subscription to the newsletter. The Club offered its members a \$25 commission for each two-year subscription they sold on behalf of the club. The club also offered members a share of the profit which it made from selling the newsletter, based on the number of sales of subscriptions the member made on behalf of the club.

On 17 September 1996 the Commission was granted an interlocutory injunction in the Federal Court against Mr Hedges. The interlocutory orders restrain Mr Hedges from promoting the scheme or any similar scheme, and from making certain alleged misrepresentations about the legality of the scheme and the profitability of participation in it. A directions hearing was held on 22 November 1996. The trial is expected to be held mid-1997.

Product safety

Hungry Jack's Pty Ltd

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

On 18 October 1996 the Commission instituted proceedings against Hungry Jack's, seeking corrective advertising in relation to the sale of 'Shades' sunglasses which it alleged did not meet the relevant mandatory consumer product safety standard for sunglasses because the sunglasses did not carry a mandatory warning. The action sought: a declaration that the sunglasses did not comply with the mandatory standard; an injunction stopping further supply of the sunglasses; orders that Hungry Jack's refund the purchase price of the sunglasses; orders that Hungry Jack's place notices on television, on in-store signs and in newspapers; and payment of the Commission's costs.

The mandatory safety standard for sunglasses and fashion spectacles requires compliance with Australian Standard 1067.1-1990. The main aim of the standard is to ensure that sunglasses and fashion spectacles provide adequate protection against ultra-violet radiation, thereby reducing the risk of damage to eyesight. The standard makes testing compulsory. Sunglasses

that have a luminous transmittance between 3 per cent and 8 per cent must be labelled 'NOT SUITABLE FOR DRIVING'. Luminous transmittance is the amount of light that passes through a lens, expressed as a percentage. Below 8 per cent luminous transmittance there is increased perception time, increasing driver reaction time and the risk of accidents.

The Commission instituted the proceedings as it did not consider Hungry Jack's' corrective actions in a minor alteration to its television advertisements, small newspaper notices and in-store sign amendments were adequate to warn purchasers that the sunglasses were not suitable for driving.

At a directions hearing on 24 October 1996, Hungry Jack's' counsel told the Court it would consent to a declaration that the sunglasses breached the mandatory standard and to cease supplying the sunglasses without appropriate labelling but would contest the need for further corrective advertising. By 31 October 1996, Hungry Jack's had corrective signs containing the information sought by the Commission displayed in its stores.

The matter was heard on 1 November 1996 and judgment given on 5 November 1996.

In his reasons for decision, Justice Carr said:

Viewing the evidence overall, I find that it is likely that there is a substantial (or at the very least a significant) number of the respondent's customers who, having bought these sunglasses without being warned that they were not suitable for driving, may wear them while driving. I have already held that in those circumstances there is a significant risk of an accident occurring when they drive from bright sunlight into a shady or dark area. I do not think that sufficient has been done to warn those customers.

Justice Carr noted that it was the Commission's case that over 150 000 pairs of the sunglasses had been supplied without the 'NOT SUITABLE FOR DRIVING' warning.

Referring to Hungry Jack's' first corrective television advertisements, Justice Carr commented:

I have viewed two television advertisements for the Shades promotion broadcasted on behalf of the respondent in the earlier stages of that promotion. I have also viewed what appears to

be identical television advertisements with what the respondent describes as a 'pull through' ... comprising a message to the effect that Shades are not suitable for driving. That message is shown very briefly and in very small print. I doubt whether, had I not been looking for it, I would have noticed the warning. I discount heavily the effect, if any, which that modification to the television advertising may have made.

He described Hungry Jack's' newspaper advertisements as 'such small advertisements'.

The Federal Court accepted undertakings by Hungry Jack's not to supply sunglasses which are not marked as required by the standard and to refund consumers the cost of sunglasses sold since 1 September 1996 which were not marked 'NOT SUITABLE FOR DRIVING'.

The Federal Court ordered Hungry Jack's to:

- publish four corrective advertisements a week for two weeks on the television stations which ran the original promotion;
- place a corrective advertisement measuring three classified columns by 20cm (about four times larger than the original advertisements) in a major daily newspaper in Victoria, Queensland, South Australia, Western Australia, South Australia, the ACT and Northern Territory;
- display a sign at least 50cm by 30cm carrying the corrective advertisement in each store that supplied the sunglasses, until 30 November 1996; and
- pay the Commission's costs.

Luggage straps

Non-compliance with mandatory consumer product safety standard (s. 65C(2))

During its survey of mandatory consumer product safety standards, the Commission's Brisbane Office located stocks of luggage straps which did not carry permanent warning labels.

To conform with the requirements, each luggage strap is required by regulation to have permanently attached to it the following labelling: 'WARNING, AVOID EYE INJURY,

DO NOT OVERSTRETCH, STRAP MAY REBOUND'.

The Commission contacted the retail chain immediately to ascertain the supplier of the items. Subsequently the retail chain coordinated a program to remove all stocks from sale to the public. It also agreed to place prominent signs in all outlets advising customers that the items had not carried a permanent warning label and that purchasers could obtain a refund for the item. The supplier contacted all its retail outlets to buy back the offending goods.

This matter was resolved quickly with the prompt cooperation of both the retailer and the supplier.

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. Next directions hearing 13.12.96.

Mobil Oil Australia Limited, BP Australia Limited, The Shell Company of Australia Limited & anor, 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 ACCC filed a further amended statement of claim on 3.4.95. Respondents filed written submissions in response for the Court's consideration. On 9.9.96 Ryan J handed down his decision striking out the statement of claim and directing any further statement be filed within 30 days. New statement of claim filed by ACCC on 7.10.96. Mobil filed new strike-out application on 8.11.96. Notice of motion re strike-out to be heard 28.11.96.

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.

Federal Court consolidated this and ACCC v National Mutual Life Association of Australasia Ltd (QG No. 77 of 1994) on 12.3.96.

National Mutual admitted that certain conduct alleged in the statement of claim contravened s. 52 of the Act and that it was indirectly involved in the conduct through its agent. National Mutual and the Commission agreed to a settlement. 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. Next directions hearing 13.12.96.

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 specialised services other than on commercial terms. Next directions hearing 14.11.96. Parties jointly consented to take part in Court-authorized mediation prior to trial. Parties met in mediation on 18.11.96. This option is being pursued further.

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.

27.9.96 timetable made for completion of respondents' affidavits in defence. Spender J directed that the matter be set down for trial despite outstanding issues concerning third party discovery.

J McPhee & Son (Australia) et al., s. 45. Alleged price fixing, and attempted price fixing, arrangements. Proceedings instituted in the Federal Court Melbourne 20.12.95. 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 heard and a further amended statement of claim has been filed. Further and better particulars have also been served on the ACCC. Respondents have applied to have the Judge hearing the strike-out application discontinue hearing the matter. The respondents have also sought to cross claim against a number of ACCC witnesses.

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. Joint submissions on liability and penalty for nine respondents received the consent of the Court on 28.11.96. The Court ordered injunctions and pecuniary penalties against each of the submitting respondents. The pecuniary penalties and costs were: Chadwicks Model Agency \$20 000 (\$12 500 costs), Peter Chadwick \$10 000, Vivien's \$20 000 (\$12 500 costs), Kevin Smith \$5000, Priscilla's Model Management \$10 000 (\$10 000 costs), Priscilla Leighton-Clark \$4000, Gary Saunders \$1000, Gordon Charles Management \$10 000 (\$15 000 costs), Gordon Charles Donald \$5000. Each of the submitting corporate respondents gave s. 87B undertakings to implement compliance programs.

Directions for remaining two respondents set for 6.2.97.

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. Directions hearing 23.5.96.

Directions hearing 13.9.96 at which first (Cromford P/L) and fifth (Mr Kim Jones) respondents were ordered to file and serve all affidavits and verified list of documents by 4.10.96. ACCC ordered to file and serve affidavits in reply to sixth, seventh, and eighth respondents by 18.10.96. Fourth respondent (Mr Neville McDonnell) has withdrawn his defence.

Directions hearing 15.11.96 at which first (Cromford P/L), second (Columbus Merchants P/L trading as Australian Film and Pipe Manufacturers) and third (Anross Building Materials P/L) respondents were ordered to file and serve a verified supplementary list of documents by way of further and better discovery by 6.12.96. ACCC ordered to file and serve any affidavits in reply to the affidavit of the fifth (Mr Kim Jones) respondent by 11.12.96.

Next directions hearing 14.2.96.

NW Frozen Foods and ors, s. 45. Alleged price fixing agreements in frozen food wholesaling in Tasmania. Penalties and injunctions 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 settled on 11.9.96. Appeal heard 20.11.96. Judgment reserved.

Health Partners, ss 47(6), 47(7). Alleged third line forcing conduct. Proceedings instituted 27.8.96. Directions hearing 10.9.96. Trial date tentatively set for 2-4.4.97.

Excel Concrete Pty Ltd, s. 45. Alleged price fixing and market sharing in the southern Queensland concrete market. Proceedings instituted 27.9.96. ACCC seeking penalties and injunctions. Directions hearing 25.10.96. Next directions hearing first available date after 31.1.97.

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), Stafftoy Pty Limited (trading as Thrifty Car Rental), s. 45. Alleged price fixing conduct in relation to car rental in the Northern Territory. Proceedings instituted 2.10.96. First directions hearing held 30.10.96. Next directions hearing 20.1.97.

Consumer protection

Venture Industries Pty Limited and Collings Construction Company Pty Limited, 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 sought special leave to appeal the decision to the High Court. Special leave refused on 30.9.96.

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] ...'.

Proceedings for contempt against sixth respondent, Penny Kioussis, commenced 6.9.96. It is alleged that Penny Kioussis encumbered real property, and thereby breached an undertaking made to the Supreme Court that until the determination of the proceedings, or until further order, she would not take any steps to encumber, sell or dispose of real property without first giving two days notice in writing.

Next directions hearing 6.12.96.

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.

Further timetable set on 6.11.96. Next directions hearing 12.12.96.

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. Consent court orders finalised 31.10.96. Awaiting disbursement of frozen funds to consumers.

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. Respondents have failed to file defences. Branson J of the Federal Court will hear the matter, uncontested, on 11.11.96. ACCC seeking substantial damages on behalf of 26 consumers, in an action brought under Part IV of the Federal Court Rules.

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. 22.11.96 by consent order the Federal Court declared that the cash back offer by Marigny breached ss 52 and 53(g) of the Trade Practices Act.

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 listed for 27.11.96.

Nationwide News Pty Ltd, ss 53(e), 53(g), 54. Alleged false or misleading representations in relation to a promotion offering 'free' mobile phones, where conditions required payment of associated charges. Criminal proceedings instituted in the Federal Court Sydney 13.9.95.

Trial held 21–26.7.96. Judgment delivered 8.8.96. Heerey J found Nationwide guilty under s. 53(g) of six charges of making misleading representations as to the effect of the conditions attaching to the mobile phone offer. 30.8.96 penalty of \$120 000 imposed. Nationwide also ordered to pay ACCC's costs.

In addition to the charges of which Nationwide News was found guilty, alternate charges had been brought against Nationwide in relation to the promotion under ss 53(e), 53(g) and 54 which were dismissed following the findings on 8.8.96. Charges of aid and abet against SmartCom Telecommunications Pty Limited in relation to ss 53(e) and 54 also dismissed.

Nationwide appealed both liability and penalty to the Full Federal Court. Appeal heard 28.11.96. Judgment reserved.

Anstar Holdings Pty Ltd, ss 52, 53(bb), 64. Alleged misleading or deceptive conduct in relation to invoices for unsolicited advertising. 10.7.96 proceedings instituted in the Federal Court Brisbane against Patrick O'Keeffe and Anstar Holdings Pty Ltd. ACCC is seeking injunctions and other orders. Directions hearing 23.8.96. Hearing for interlocutory injunction 26.9.96. Interlocutory injunction not granted.

Stephen Gregory Wyer, Optell Pty Ltd, Geoffrey Allan Beckett, Clinton Wade Andela, ss 52, 53(aa)(bb)(c)(d)(f), 64. Alleged misleading and deceptive conduct in relation to business registers and consultancies. 9.8.96 proceedings instituted. 15.8.96 Finn J granted consent orders against Mr Wyer restraining him from carrying on the OSA and SAR schemes, freezing moneys obtained through the schemes and ordering him to forward any moneys obtained through the schemes to the ACCC or to the Court. 26.8.96 Finn J gave interlocutory orders against Optell and others preventing them from carrying on the register and consultancy businesses, and ordering them to forward to the ACCC moneys received in relation to the businesses. ACCC seeking permanent injunctions and other orders for corrective action.

Directions hearing 6.9.96. Finn J ordered to file and serve a defence by 27.9.96. Proceeding transferred to Brisbane. Directions hearing 25.10.96. Kiefel J ordered respondents to file notice of appearance and defence. Respondents' representation obtained order to cease to act. Respondents currently unrepresented. 19.11.96 Spender J ordered notice of appearance and defence. Appearance filed as required on 19.11.96. Defence required by 13.12.96. Spender J gave ACCC leave to file motion for judgment in default and indicated to the parties that if a defence was not filed by 13.12.96 the motion would be heard and orders would be given in the form of the ACCC's application.

Golden Sphere International Inc, s. 61. Alleged promotion of pyramid selling schemes.

5.9.96 proceedings instituted against Golden Sphere International Inc, Pamela Joy Reynolds and Victor Michael Cottrill. 6.9.96 Court granted ex parte interim injunctions against the respondents, freezing their assets. 1.10.96 Court ordered interlocutory injunctions against the respondents restraining them from further promoting the scheme, and allowed ACCC to amend its application to begin a representative proceeding. 15.11.96 directions hearings directing interlocutory steps. Next directions hearing 7.2.97.

Participants of the Golden Sphere scheme had until 11.11.96 to opt out of the ACCC's representative proceeding. Approximately 1700 participants notified the Federal Court of their intention to opt out. ACCC staff estimate the total number of participants in the Golden Sphere scheme to exceed 8000. It is possible therefore that the ACCC may end up representing a group as large as 6000 people.

5.11.96 ACCC obtained registration of certain orders of the Federal Court of Australia in the Supreme Court of the Republic of Vanuatu. This effectively restrains the respondents from dealing with any assets within the Republic of Vanuatu. Application to have registration of the Federal Court judgment in the Supreme Court of Vanuatu set aside made on 27.11.96. Application to be heard in Vanuatu on 25.2.97.

Network Ten Limited, s. 53A. Alleged false representations in relation to land sales at Maryvale, Queensland. 23.8.96 ACCC began representative action. Directions hearing 27.9.96. Directions hearing 22.11.96 dealt with by consent orders setting out dates for applicant (20.12.96) and respondent (17.1.97) to file and serve affidavits which each party intends to rely on at trial. Further directions set for 14.2.97. Federal Court callover on 22.11.96 in which two weeks at the end of March 1997 have been set aside to hear the matter.

Top Snack Foods Pty Limited, ss 52, 59. Alleged misleading conduct in relation to selling franchises for the distribution of confectionery. 23.9.96 proceedings instituted in the Federal Court Sydney against Top Snack Foods Pty Limited, one of its directors and two of its employees. ACCC seeking injunctions and

other orders. 4.11.96 Hill J of the Federal Court granted leave for the ACCC to amend its statement of claim in order to seek compensation under s. 87 on behalf of five franchisees who allegedly lost financially and personally as a result of TSF's conduct.

Matter listed for directions on 20.12.96.

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. Based on market inquiries, the Commission considered that the acquisition was unlikely to have the effect of substantially lessening competition in the market.

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 Portland 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/Moller Industries Pty Ltd — 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/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/Croll Communications Pty Ltd — press and electronic monitoring. This matter was raised in July 1996.

The acquisition of Croll by Media Monitors triggered the Commission's concentration thresholds but barriers to entry were not substantial.

The Commission did not oppose the acquisition.

Mr W Beavis, Mr S Ayoub and Mr S Gilles — joint venture 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/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/SA port facilities — acquisition of bulk handling facilities at SA ports. 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/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 on 4 October 1996.

St George Bank Ltd/Advance Bank Ltd — banking merger. The proposal involved an 'in-market' merger between two banks based in the Sydney metropolitan area, with the significant addition of the BankSA operations.

The Commission did not consider that the proposed merger would substantially lessen competition. In fact, it considered that the merger could be pro-competitive as it would allow the merged entity, with strong operations in both NSW and South Australia, to compete more vigorously with the major banks in these areas.

It did not believe that the new entity could be regarded as a national trading bank.

In assessing the effect of the merger on competition the Commission continued to use its approach of assessing mergers on a case-by-case basis, taking into account circumstances which apply at the time.

It did not oppose the merger.

IAMA Ltd/Primac Holdings Limited — retail of rural merchandise products. On 13 September 1996, IAMA Ltd announced its intention to make a scrip takeover offer for all the ordinary shares in the capital of Primac Holdings Limited under Part 6 of the Corporations Law.

The Commission concluded that the relevant market was the retail market for rural merchandise products in Queensland and north coast New South Wales. The relevant market also includes a small amount of wholesale supply. The main product groups are fertilisers, agricultural chemicals and animal health products.

Barriers to entry did not appear to be insurmountable and other rural merchandise retailers offered a competitive force.

The Commission considered that the proposed acquisition was unlikely to substantially lessen competition in the market. It did not oppose the acquisition but will monitor any further moves to increase concentration in rural merchandise retailing.

North Australia Pastoral Company/Stockyard Meat Packers — cattle. This matter was raised in April 1996. It concerned a proposed merger between North Australia Pastoral Company, a producer of cattle, and Stockyard Meat Packers, a meat exporter.

The concentration of the industry was such that it was unlikely to trigger the Commission's concentration thresholds in any of the fat cattle, abattoir or meat processing markets. In addition, the food chains in the domestic market have a substantial degree of countervailing power. The Commission stated in April 1996 that it would not oppose the acquisition.

RGC Limited/Cudgen RZ Limited — zircon and chloride-route titanium feed stock. This matter was raised in June 1996. RGC proposed to acquire Cudgen.

Cudgen's subsidiary, Consolidated Rutile (Ltd) and RGC both process feedstock for the production of pigment. In view of the significant countervailing power of the one available consumer of feedstock in Australia and the competitive discipline exercised on the merged entity by its international competitors, the acquisition is unlikely to substantially lessen competition in the market. The Commission stated in June 1996 that it would not oppose the acquisition.

Heinz Australia/Southern Country Foods

— canned meals. This matter was raised in June 1996. Heinz Australia proposed to acquire Southern Country Foods. Both were food manufacturers.

The Commission found that as there was very little competitive overlap between the types of products sold by each party, it was unlikely that the acquisition would result in a substantial lessening of competition. The Commission noted that Heinz would replace Southern Country Foods as a vigorous competitor in the canned meals/'hot packs' market where there are a number of strong competitors including Kraft, Campbells and Simplot.

In July 1996, the Commission announced that it would not oppose the merger.

Foxerco Pty Ltd/Avalon Airport — airfield services in Victoria and aircraft maintenance services. This matter was raised in June 1996 when the Commonwealth advised that it intended to sell Avalon Airport in Victoria, together with its aircraft maintenance business, ASTAAS Pty Ltd. The acquirer was a consortium of Linfox Transport (Aust) Pty Ltd and Serco Aviation Services Pty Ltd.

The Commission took the view that it was unlikely that the acquisition would have a substantial effect on competition in any markets, due to the existing capacity and availability of airport services at Melbourne Airport. The Commission announced in October 1996 that it would take no action in relation to the proposed acquisition.

Swissair Associated Companies Ltd/Allders International Duty Free Group

— retail supply of full-range duty free and sales tax free goods in regional markets. This matter was raised in July 1996. Swissair completed the acquisition of shares in Allders worldwide duty free business in UK, and the Australia operations of Swissair, Downtown Duty Free and City International were merged with Allders duty free stores as a result.

There are two sectors of the duty free market in Australia — sales from duty free shops in central business districts and shopping centres, and sales from duty free concessions at

international airports. The Federal Airports Corporation currently administers the operation of duty free concessions, and requires that airport concession holders compare prices with those duty free goods sold at off-airport stores.

Swissair submitted that the relevant market for consideration of the acquisition is international, and that its pricing behaviour will be constrained by the activities of other duty free retailers at overseas destinations, such as New Zealand, Singapore and Europe. There is also some suggestion the future owners of privatised airports in Australia may increase the number of duty free concessions available at airports, in line with international trends of allowing a number of duty free retailers to compete at an airport complex. The concentration of ownership in airport concessions resulting from the acquisition may therefore not be long term.

In addition, consumers are able to buy duty free products at their overseas destination and on in-flight retail services. They are also able to buy some products stocked by duty free stores from domestic retailers offering goods sales tax free, most notably cameras, electrical goods and jewellery. These substitutes may constrain Swissair's pricing behaviour post-acquisition.

In October 1996, the Commission decided to take no action regarding the acquisition. However, a submission was put to the Federal Airports Corporation regarding the possible effects of the acquisition on prices in Australia, and the possibility of requiring duty free concession holders to conduct international price comparisons.

DMG Radio Australia Pty Limited/Festival City Broadcasters Limited/Broadcast Media Group Pty Limited — advertising on commercial broadcast radio in Adelaide and several regional areas. These matters were raised in August 1996. DMG Radio Australia proposed to acquire Festival City Broadcasters and Broadcast Media Group.

The acquisitions did not result in an increase in concentration in the relevant markets because they represented a new entry to the Australian commercial radio broadcasting industry. There was also no overlap between the operations of the two target firms.

In September 1996 the Commission stated that it would take no action in regard to the acquisitions.

Traveland International Pty Limited/Travelstrength Holdings Pty Limited — retail travel agency. This matter was raised in October 1996. Traveland proposed to purchase the retail operations of Travelstrength from Tek Travel Holdings Limited on 1 November 1996.

The retail leisure travel agency sub-market is characterised by the presence of a large number of relatively small organisations. Consequently, the acquisition by Traveland will not have a significant impact on the level of concentration in the sub-market. In addition, in the corporate travel agency sub-market, the acquisition will not result in a change in concentration.

The Commission announced in October 1996 that it would take no action in relation to this matter.

The Gates Rubber Co. (NSW) Pty Ltd/Nationwide Rubber Enterprises Pty Ltd — automotive rubber hoses. This matter was raised in September 1996. Gates Rubber Co. proposed to acquire Nationwide Rubber Enterprises.

The market for the supply of automotive rubber hoses is characterised by a high level of import competition, relatively low barriers to entry and a small number of buyers. Most importantly Gates was an importer with no domestic manufacturing operations.

The Commission announced in October 1996 that it would take no action in relation to this matter.

Arakella Pty Ltd (trading as Group Newsagency Supplies)/Vicstat Pty Ltd as trustee of the Victorian Newsagent Supplies Business Trust — stationery wholesaling services to newsagents in Victoria. This matter was raised in September 1996. Arakella (trading as Group Newsagency Supplies) proposed to acquire the assets of Vicstat as trustee of the Victorian Newsagent Supplies Business Trust.

New large retailers targetting the small commercial and home market, and competing directly with newsagents, are likely to act as a pricing restraint for stationery wholesalers. The unitholders of Group Newsagency Supplies are also likely to be affected by an increase in price or margins.

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

Adia Australia Pty Ltd/Ecco Holdings Pty Ltd — employment agency services. This matter was raised in August 1996.

Adia and Ecco will merge as part of a global merger of their respective Swiss and French parent companies. Adia and Ecco both supply services for recruitment of permanent and temporary staff.

In view of the low market share of the merged firm and the apparently low barriers to entry and expansion, the Commission decided in October 1996 not to oppose the acquisition.

Chubb Security Holdings Australia Limited/James Hardie Building Services Ltd — fire products and services. This matter was raised in November 1996.

Chubb Security Holdings Australia Limited proposed to acquire James Hardie Building Services Ltd.

It appeared to the Commission that there was limited overlap in services provided by the companies. The major area in which the two companies compete is in the provision of fire products and services. It also appeared that there was extensive import competition and low barriers for new entrants to the fire products and services industry.

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

Industrial Galvanizers Corporation Pty Limited/BHP Civil Products — manufacture of steel guard rail and steel light/power poles. This matter was raised in August 1996. Industrial Galvanizers Corporation Pty Ltd proposed to acquire BHP Civil Products. Both BHP Civil Products and Industrial Galvanizers

supply steel road safety barriers and steel light/power poles, among other steel fabricated products.

The Commission found that, in the event of higher prices and margins for the supply of steel guard rail or steel light and power poles, there are a number of possible sources of entry. This entry would not require substantial investment. The Commission considered that the acquisition was not likely to substantially lessen competition. It announced in December 1996 that it would not oppose the acquisition.

Section 87B undertakings

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

The 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 often transported by road.

3.9.96 undertaking to provide refunds, publish corrective advertisements, and improve compliance program.

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. 4, 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 often transported by road.

30.9.96 undertaking to change names of 'Air' courier divisions, improve internal trade practices education, and provide a free courier service to many customers likely to have been adversely affected.

Pacific Optics Pty Ltd, ss 52, 53(a), 53(c), 65C(1). Misleading and/or false representations about the suitability of yellow-lensed glasses for driving, and supplying sunglasses that did not comply with a consumer product safety standard.

16.10.96 undertaking to recall Aerial Vision yellow-lensed glasses, appropriately relabel four

types of sunglasses, refrain from making false or misleading representations about the glasses and sunglasses it supplies, and in future supply only those sunglasses that comply with the consumer product safety standard.

Southern Foodservice Pty Limited, s. 45A. Price fixing arrangements in relation to the distribution of frozen foods in Tasmania.

30.10.96 undertaking to provide trade practices compliance training on a regular basis to all its employees, servants or agents who occupy managerial, sales or buying positions; produce or acquire a trade practices compliance manual and provide a copy to each of its employees, servants or agents; and examine its practices, procedures and policies to ensure that they comply with the provisions of the Trade Practices Act.

The undertaking follows the imposition of pecuniary penalties and injunctions by the Federal Court (see *ACCC Journal* no. 4, p. 18).

Cannon Investments Pty Ltd (trading as Travelshop), ss 47(6), 52, 53(e). False or misleading representations in relation to its advertising, and exclusive dealing in relation to a requirement that customers wishing to purchase a flight to London also purchase travel insurance with a nominated insurer.

13.11.96 undertaking to withdraw its current advertising and in future ensure that full details are provided in its advertising of all conditions applicable to its offers, refrain from representing that insurance from a nominated supplier is compulsory in relation to any of its flights or other services, publish corrective advertising in each newspaper and publication in which the advertising originally appeared, and institute an internal trade practices compliance program.

Abbey Constructions Pty Ltd, ss 52, 53. False or misleading representations in relation to the marketing of its vinyl cladding products business.

13.11.96 undertaking to refrain from representing that all its products carry a Standards Australia licence number when only some of its products carry that licence number,

that Abbey Constructions Pty Ltd was the winner of the Telecom – Queensland Government Business Award in 1993, and that its product is ‘environmentally friendly’ unless that claim is properly substantiated; to put in place internal procedures to ensure that the product it markets, sells and advertises is clearly identifiable; and to implement an internal trade practices compliance program.

Hirere Pty Ltd (trading as Vivien’s Model and Theatrical Management), ss 45A, 45(2)(a)(ii), 45(2)(b)(ii), 76. Price fixing arrangement in relation to the imposition of an agency service fee.

14.11.96 undertaking to develop and implement an internal trade practices compliance program, to remain in force for three years; and to appoint Mr Kevin Smith, a director and shareholder of Vivien’s, as Vivien’s Compliance Officer, with overall responsibility for the company’s trade practices compliance.

Chadwicks Model Agency Pty Ltd, ss 45A, 45(2)(a)(ii), 45(2)(b)(ii), 76. Price fixing arrangement in relation to the imposition of an agency service fee.

14.11.96 undertaking to develop and implement an internal trade practices compliance program, to remain in force for three years; and to appoint a senior executive as its Compliance Officer.

Gordon Charles Management Pty Ltd, ss 45A, 45(2)(a)(ii), 45(2)(b)(ii), 76. Price fixing arrangement in relation to the imposition of an agency service fee.

26.11.96 undertaking to develop and implement a trade practices compliance program, to remain in force for three years; and appoint Mr Gordon Charles Donald as the company’s Compliance Officer, with overall responsibility for trade practices compliance.

Priscilla’s Model Management Pty Ltd, ss 45A, 45(2)(a)(ii), 45(2)(b)(ii), 76. Price fixing arrangement in relation to the imposition of an agency service fee.

27.11.96 undertaking to develop and implement a trade practices compliance

program, to remain in force for three years; and appoint Priscilla Leighton-Clark as the company’s Compliance Officer, with overall responsibility for trade practices compliance.

Turning Point (Aust) Pty Ltd, s. 53(eb). False or misleading representation in relation to the country of origin of boy’s shirts. Shirts which were made in India were inadvertently mixed with a batch of Australian-made shirts and all the shirts were labelled as being made in Australia.

30.11.96 undertaking to ensure that all labelling, packaging, advertising and promotional material correctly represents the products’ country of origin. The company also undertook to review its operations to minimise the risk of mislabelling in the future and to train staff about trade practices issues.

Sub-section 51(1) exemptions from the Trade Practices Act

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

Forestry Act 1959 (s. 46)

Water Resources Act 1989 (s. 231)

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