
Enforcement

The following are reports on new and concluded Commission actions in the courts, settlements involving court enforceable (s. 87B) undertakings, and major mergers considered by the Commission. Other matters still before the court are reported in Appendix 1. Section 87B undertakings accepted by the Commission and non-confidential mergers considered by the Commission are listed in Appendix 2.

Restrictive trade practices

Excel Concrete Pty Ltd

Price fixing agreement (s. 45)

On 16 February 1998 Excel Concrete Pty Ltd was ordered to pay a \$500 000 penalty for its involvement in price fixing and market rigging conduct in a Brisbane concrete cartel.

Excel's Concrete Manager, Harry Clark, was also penalised \$50 000 for taking part in cartel meetings. The company was also ordered to pay the Commission's legal costs.

Excel admitted that between December 1993 and April 1994 Clark met regularly with representatives of various concrete companies including Pioneer Concrete (Qld) Pty Ltd, Boral

Resources (Qld) Pty Limited, CSR Limited, Goodmix, Hymix and Rocla. The main purpose of these meetings was to allocate available work amongst the companies in accordance with pre-existing market shares and thereby avoid competing amongst themselves for available work. In addition, Excel was a party to an arrangement or understanding to increase the base price of concrete in the Brisbane market to \$115 per cubic metre.

Justice Davies considered a joint submission from Excel and the Commission and accepted that the orders suggested by the parties were appropriate. The Court found that Excel was involved in price fixing and market rigging conduct in contravention of s. 45 of the Trade Practices Act.

In addition to penalties the Court issued injunctions prohibiting the respondents from engaging in the subject conduct in the future.

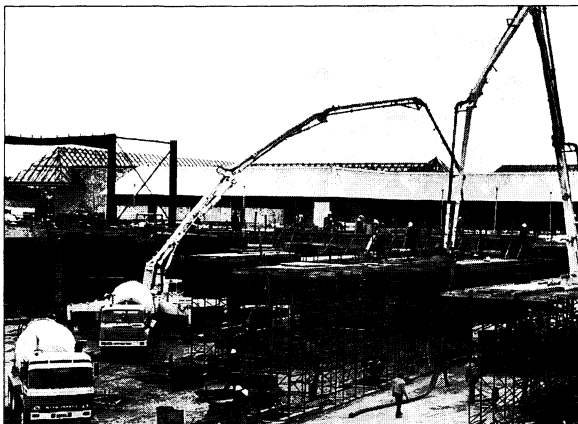
In earlier, related proceedings in late 1994, the then Trade Practices Commission brought an action against Goodmix, Hymix and Rocla which resulted in penalties totalling \$530 000. In December 1995 the Federal Court imposed penalties totalling \$20 million on Pioneer, Boral and CSR for their involvement in the cartel.

Seven Network Limited and Golden West Network Pty Limited

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

On 2 February 1998 the Commission settled court proceedings with Seven Network Limited and Golden West Network Pty Limited.

On 24 October 1996 the Commission brought proceedings against Seven, the Nine Network, Golden West Network and others in relation to



Photography by Arthur Mostead

exclusive long-term program supply agreements. The agreements were between:

- Territory Television (a Nine subsidiary and the operator of the sole commercial television station in Darwin) and Amalgamated Television Services (a Seven subsidiary) for the exclusive supply of Seven programming to Territory Television; and
- Golden West (the operator of the sole commercial television station in regional WA) and Nine for the exclusive supply of Nine programming to Golden West.

The Commission alleged that these agreements were part of an overall market-sharing agreement between Seven and Nine not to pursue their interest in acquiring a second commercial television licence for Darwin and regional WA respectively.

The Commission alleged that the purpose and likely effect of these three agreements was to hinder or prevent potential entrants from acquiring any second commercial television licences for Darwin and regional WA, and that they breached provisions of the Trade Practices Act dealing with exclusive dealing and arrangements affecting competition.

Following the institution of proceedings, Seven terminated its exclusive program supply agreement with Territory Television. Telecasters Australia Limited (a Network Ten affiliate in regional Queensland and northern New South Wales) subsequently acquired the second commercial television licence in Darwin and entered into an agreement with Seven for the exclusive supply of Seven programs to Telecasters for its Darwin operations.

The Australian Broadcasting Authority has invited applications for a new commercial television broadcasting licence for remote and regional WA, with the same licence area as that covered by Golden West. Seven gave undertakings to the Commission to supply to the new licensee all or some of its programs (except for those programs it is legally contracted to supply to Golden West on a short-term basis). Golden West has undertaken not to interfere with, or frustrate the performance of, Seven's undertaking to supply

the new licensee. It has also undertaken not to object to Nine supplying its programs to the new licensee if Golden West does not intend to broadcast those programs itself.

On the basis of Seven's termination of its exclusive supply agreement with Territory Television and its undertakings to the Commission, the Commission agreed to discontinue the Federal Court proceedings against Seven, Golden West and related parties.

Seven and Golden West in their defences to the proceedings denied the Commission's allegations. The undertakings and Seven's agreement to terminate the program supply agreement with Territory Television in Darwin were without prejudice to Seven's and Golden West's denial of liability.

The Commission settled court proceedings with the Nine Network on 25 October 1996 (see *ACCC Journal* 6). In this settlement, Nine undertook to terminate its program supply agreement with Seven in Darwin. It also undertook to terminate its exclusive program supply agreement with Golden West, if Golden West consented, and to offer to supply Nine programs to the regional WA market on reasonable non-discriminatory commercial terms. The Commission said that the settlement with Seven and Golden West made it unnecessary to press for the termination of that agreement.

W D & H O Wills (Australia) Ltd & Brenton Porter

Price fixing arrangement (s. 45A), (s. 45A Competition Code of South Australia)

On 23 February 1998 the Federal Court Adelaide imposed penalties of \$250 000 on cigarette manufacturer WD & HO Wills (Australia) Ltd for its role in an attempted price fix of cigarettes.

The Court accepted joint submissions regarding injunctions and penalty for breaches of the Trade Practices Act by Wills and Mr Brenton Porter of the Fourth Avenue Delicatessen.

The Commission instituted proceedings on 15 December 1997 alleging that Wills'

employees attempted to make a price fixing agreement between Mr Porter and the proprietor of two nearby businesses, at a series of meetings in September and October 1996. The agreement provided for the delicatessen to raise its cigarette prices on certain brands on 10 October 1996 and for the competitor to follow one week later. The competitor was a major discounter whose prices attracted both resellers and cigarette consumers from a wide area.

Justice von Doussa considered the material put forward by the parties and accepted that the orders suggested by the parties were appropriate. Wills was ordered to:

- pay a penalty of \$250 000;
- pay \$30 000 towards the Commission's costs;
- refrain from repeating the conduct;
- revise its existing trade practices compliance program; and
- write to each of its customers in South Australia informing them of their respective obligations under the Act.

Mr Porter also consented to an injunction and will contribute to the Commission's costs.

The Commission acknowledged the cooperation of both Wills and Mr Porter in resolving the matter quickly.

This is the first Commission action under the Competition Code, which applies the restrictive trade practices sections of the Act to individuals. While the individual in this case was not subject to a penalty because the offence occurred during the phasing in of the code when no penalties applied, the Commission warned that in the future individuals involved in anti-competitive conduct would face penalties of up to \$500 000.

Health Partners Incorporated

Exclusive dealing — third line forcing (s. 47(7))

On 22 December 1997 the Federal Court Adelaide held that Health Partners Incorporated, a major South Australian health insurance provider, had engaged in third line forcing conduct constituting exclusive dealing in breach of s. 47(7)(a) of the Trade Practices Act.

Pharmacies affiliated with Health Partners offer retail discounts and prescription benefits to Health Partners' members. Health Partners cancelled a contract with the Goodwood Centre Pharmacy in Adelaide to service its members because the pharmacy had, for its own commercial reasons, left the Chem-mart pharmacy chain. Health Partners informed its members in the relevant area that the Goodwood Pharmacy was no longer an affiliated pharmacy and that another Chem-mart, just up the road, was now affiliated with Health Partners.

The Commission intervened in this matter at the request of Goodwood Centre Pharmacy, with the support of the Pharmacy Guild, in order to obtain findings of fact so as to establish a precedent for small businesses in the health sector, and to facilitate a private follow-up action by the Goodwood Centre Pharmacy for its loss or damage. The Commission instituted proceedings on 27 August 1996.

The Court held that this conduct was serious and that it was in the public interest that it should be marked with the Court's disapproval. The Court made findings of fact which will enable the affected pharmacists to take their own action for damages. The Commission did not seek penalties. Health Partners was ordered to pay the Commission's costs.

Simsmetal Ltd, Babister & Jaksa

Market sharing arrangement (s. 45), misuse of market power (s. 46)

On 5 February 1998 the Commission instituted proceedings in the Federal Court against Simsmetal Limited, alleging attempted market sharing and misuse of market power in the

South Australian steel scrap market. The Commission also alleged that two of Sims' senior employees, John Babister and Peter Jaksa, aided and abetted Sims in the misuse of its market power.

The Commission alleged that during 1995 Jaksa, on Sims' behalf, attempted on two occasions to make an anti-competitive arrangement with one of Sims' competitors in South Australia. One of the principal provisions of the attempted arrangement was that Sims and the competitor would not compete for each other's clients. The Commission further alleges that, after these attempts failed, Sims used its market power to damage the competitor by targeting his two major clients.

Boral Limited and Boral Besser Masonry Ltd

Misuse of market power (s. 46)

On 6 March 1998 the Commission instituted proceedings in the Federal Court Melbourne against Boral Limited and Boral Besser Masonry Ltd, alleging predatory pricing and misuse of market power.

The Commission alleges that the companies used their market power to reduce the prices at which they offered to supply concrete masonry products in Melbourne for the purpose of:

- eliminating or substantially damaging C&M Bricks Pty Ltd (a competitor in the Melbourne market);
- preventing the entry of C&M Bricks Pty Ltd and others to the Melbourne market; or
- deterring C&M Bricks Pty Ltd (and other manufacturers of concrete masonry) from engaging in competitive conduct in the Melbourne market, or other concrete masonry product markets in Australia.

It alleges that the predatory pricing was extensive and covered key concrete masonry products such as 10.01s, 15.01s, 20.01s, pavers and render bricks over a lengthy period of time.

The Commission is seeking a penalty, a declaration that the companies engaged in the alleged conduct, injunctions requiring the companies to implement a corporate compliance program, and findings of fact.

Mergers

Montell Australia and ICI's polypropylene business

Acquisition (s. 50)

On 23 December 1997 the Commission announced it would not oppose the acquisition of ICI's polypropylene business by Montell Australia.

The merger will leave Kemcor as the only other local supplier of polypropylene in Australia.

The Commission took into account Montell's submission that competitively priced polypropylene was potentially available for sale in Australia from overseas plants in the region and that, due to the development of Montell's plant operational knowledge, most of the specialty grades of polypropylene currently supplied by ICI would continue to be available domestically.

The Commission concluded that the proposed merger would not substantially lessen competition.

Guinness Plc and Grand Metropolitan Plc

Merger (s. 50)

On 20 January 1998 the Commission announced it would not intervene in the worldwide merger between Guinness Plc and Grand Metropolitan Plc.

Guinness is involved in the production, marketing and sales of spirits and beers around the world. It is also involved in publishing and hotels. Through its wholly owned subsidiary United Distillers, Guinness owns a number of leading spirit brands such as Johnnie Walker, McCallums, Dewars, Real McCoy and Vickers.

In Australia, Guinness spirits products are distributed by its local subsidiary United Distillers (Australia) which also distributes Stolichnaya under an agency agreement.

Grand Metropolitan Plc (GrandMet) is a consumer goods company involved in food manufacturing, fast food restaurants, pubs and the production and marketing of distilled spirits. Its major brands include J&B, Smirnoff, Gilbeys, Baileys Irish Cream and Malibu. In Australia, GrandMet brands are distributed by Swift & Moore under an agency arrangement. GrandMet owns 30 per cent of the share capital of Swift & Moore.

The Commission considered that the spirits industry was highly brand oriented and products tended to be marketed as individual brands rather than under the brand name of the supplier. Further, each brand tends to be specific to a particular category, and brand extensions do not usually cross spirit categories.

The merged entity would control a number of category leaders such as Johnnie Walker and McCallums in scotch; Bundaberg (70 per cent of rum sales); Vickers, Gordons, Bombay and Gilbeys in gin; Smirnoff and Stolichnaya (an agency brand) in vodka; and Baileys Irish Cream and Malibu in liqueur. However, the merger was likely to increase concentration only in the vodka and gin categories. The Commission concluded that the effect of the merger on concentration in scotch, which is the largest spirits category, would be minimal.

Under these circumstances, the Commission decided not to take any action in relation to the merger.

Because of the worldwide nature of the merger, the Commission had discussions with competition regulators overseas including the New Zealand Commerce Commission, the United States Federal Trade Commission (FTC) and the Canadian Competition Bureau. On 16 October 1997 the European Commission announced that it had cleared the merger subject to conditions, including the divestment by the merged company of some brands on a regional or Europe-wide basis. On 15 December 1997 the FTC gave tentative approval to the merger after the companies

agreed to divest their worldwide rights to Dewar's Scotch, Bombay Original gin, and Bombay Sapphire gin.

Coles Myer Limited and Davids Limited

Acquisition (s. 50)

On 28 January 1998 the Commission announced it would not intervene in the sale by Davids Limited of four of its supermarkets to Coles Myer Limited. The supermarkets are the Jewel stores at Alice Springs, Northlakes and Casuarina (Darwin) in the Northern Territory and Bundaberg in Queensland.

The Commission considered that the acquisition would result in only a marginal increase in Coles Myer's market share in the Territory from 15 per cent to 22 per cent and an almost negligible increase in its overall market share in Queensland.

Coles Myer will continue to face competition from Woolworths, Foodland and Welcome Mart stores in Alice Springs; from Woolworths and Foodland stores in Darwin; and from Woolworths, Franklins and Four Square in Bundaberg.

The Commission did not consider that the proposed acquisitions were likely to result in a substantial lessening of competition in the relevant markets.

Kellogg (Aust) Pty Ltd and Day Dawn Pty Ltd

Acquisition (s. 50)

On 9 February 1998 the Commission announced that it would not take any action on the proposed acquisition by Kellogg (Aust) Pty Ltd of Day Dawn Pty Ltd.

Day Dawn, a Queensland-based maker of breakfast cereal biscuits and muesli bars, operates mainly as a supplier to the generic and housebrand markets.

The Commission considered that the barriers to entry to the industry were not likely to be high,

as shown by the recent history of new entry to the industry.

After the acquisition, Kellogg would be the second largest player in the nutritious bar market, substantially smaller than Uncle Toby's. While Kellogg would still be the largest participant in the breakfast cereal market, the share to be acquired in the present acquisition was minimal.

The Commission concluded that the acquisition was unlikely to substantially lessen competition in the markets for either breakfast cereal or nutritious bars.

IGT (Australia) Pty Ltd and Olympic Amusements Pty Ltd

Acquisition (s. 50)

On 23 January 1998 the Commission announced it would not intervene in the proposed acquisition of Olympic Amusements Pty Ltd by IGT (Australia) Pty Ltd.

Both IGT and Olympic are manufacturers of electronic gaming machines and related systems. IGT is a wholly owned subsidiary of International Game Technology Inc, an American company which is the world's largest gaming machine manufacturer.

Australia's largest gaming machine manufacturer is Aristocrat Leisure Limited. IGT and Olympic are currently the second and third. There are a number of smaller manufacturers, including some which have only recently entered the Australian industry, for example Konami Australia Pty Ltd and BGI Australia Pty Ltd.

The Commission considered that IGT would face continued competition from Aristocrat and the smaller manufacturers.

Market inquiries indicated that purchase decisions in relation to gaming machines were largely based on the machines' expected player appeal. Purchasers considered that there would be enough manufacturers to choose from after the acquisition.

Under these circumstances, the Commission decided not to take any action in relation to the proposed acquisition.

Concerns were raised about the proposed acquisition in light of an exclusive agreement between IGT and Tattersalls in Victoria. This agreement was notified to and considered by the Commission in 1996. The Commission decided that, while it would not intervene in the current acquisition, it would keep the notification under review.

National Mutual and Lend Lease/MLC

Joint venture (s. 50)

On 26 February 1998 the Commission announced that it would not oppose the proposed merger of the Australian and New Zealand life insurance and funds management businesses of National Mutual and Lend Lease/MLC.

After examining a number of possible markets in the financial services industry the Commission concluded that, even if narrow market definitions were adopted, the merger would not breach the Commission's merger concentration thresholds.

Usually, if:

- the market share of the merged entity is above 40 per cent; or
- the combined market share of the four largest market participants is above 75 per cent and the share of the merged entity is above 15 per cent;

then the merger is likely to merit detailed consideration.

The Commission found that, if the relevant markets were considered to be wholesale funds management, life insurance, superannuation and retail investment products, the market shares and concentration ratios would be as follows.

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	Wholesale funds management	Life insurance	Superannuation	Retail investment products
National Mutual	4.1%	11.0%	6.5%	11.5%
Lend Lease/MLC	<u>5.3%</u>	<u>11.0%</u>	<u>7.3%</u>	<u>8.8%</u>
Merged entity	7.4%	22.0%	13.8%	20.3%
Pre-merger aggregate of top 4	31.4%	55.0%	40.3%	43.1%
Post-merger aggregate of top 4	35.2%	60.0%	46.8%	50.3%

Sources: Assirt, AIMA and ISC

On the basis of these and other concentration figures, the Commission concluded that the merger was unlikely to substantially lessen competition in any relevant market.

The Commission noted that AMP, which will be the merged entity's largest competitor in many areas, currently has a shareholding of just over 7.5 per cent in National Mutual Holdings Limited, which does not entitle AMP to board representation. In the Commission's view, AMP's shareholding in National Mutual does not have significant competitive implications for the present merger proposal.

Consumer protection

Unilever Australia Limited

Misleading or deceptive conduct (s. 52), false or misleading representations about origin of goods (s. 53(eb))

On 22 December 1997 the Federal Court Adelaide ordered that Unilever Australia Limited be restrained for two years from publishing any statement that John West tuna is caught in South Australian or Australian fishing waters, unless that statement also specifies that John West tuna is **also** caught in waters outside Australian fishing waters and is imported.

The Court found that Unilever had engaged in misleading and deceptive conduct in relation to

various representations concerning the country of origin of its John West tuna products.

The John West Christmas 1995 'Best Selections' newsletter and its Port Lincoln wharf television commercial concerning tuna slices were found to be misleading as they represented that the tuna in John West tuna slices was caught from Port Lincoln in South Australia when it was actually caught outside Australian waters and processed in Thailand.

In the John West Christmas 1995 and March 1996 newsletters, Unilever represented that the tuna in John West tuna was caught in South Australian waters when a significant proportion of it was caught outside Australian fishing waters.

The Court did not find that the Advance Australia label and statements such as 'Product of Australia' and 'Product of Port Lincoln Tuna Processors Pty Ltd South Australia' used on John West tuna cans were misleading or deceptive.

The court adjourned the matter for submissions on costs.

Toys "R" Us (Australia) Pty Ltd

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

On 23 December 1997 the Federal Court Sydney accepted undertakings from children's toy retailer Toys "R" Us (Australia) Pty Ltd, resolving proceedings brought by the Commission in October 1997.

The Commission alleged that Toys "R" Us misrepresented consumers' warranty rights in relation to refunds for video games and computer software. The alleged misrepresentations were made on signs in Toys "R" Us stores and on stickers attached to video games and computer software packaging. The signs and stickers represented that refunds on computer software and video games would be given only if they were returned in a sealed, unopened package. This effectively led consumers to believe that they were not entitled to a full refund if goods were faulty, did not match description, or were not fit for the purpose made known.

Justice Foster in the Federal Court Sydney accepted undertakings from Toys "R" Us to:

- refrain from displaying misleading 'No refund' signs in its stores; and
- apologise to its customers through in-store signs for engaging in alleged misleading and deceptive conduct in respect of warranty claims.

Toys "R" Us also:

- acknowledged its statutory obligation to provide refunds to affected consumers; and
- gave an enforceable undertaking to the Commission to implement a trade practices compliance program.

The company was ordered to pay the Commission's legal expenses of \$16 000 as agreed.

Westco Jeans (Aust) Pty Ltd

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

On 13 February 1998 Westco Jeans (Aust) Pty Ltd consented to court orders restraining it from making misleading representations about consumers' refund rights.

Westco is a Melbourne based clothing retailer with stores nationally. The Commission instituted proceedings on 19 December 1997 alleging that Westco had misrepresented the statutory rights of consumers to obtain cash refunds, both by signs in certain stores and by oral advice of its staff.

Westco also consented to orders requiring it to:

- place signs in its stores advising consumers of circumstances when cash refunds will be provided;
- print a pamphlet advising consumers of Westco's policy for returned goods and specifying the circumstances in which they are entitled to cash refunds; and
- implement a trade practices compliance program.

The Commission acknowledged the cooperation and assistance of State and Territory consumer protection agencies.

Club 63 Pty Ltd

Misleading or deceptive conduct (s. 52), false or misleading representations (ss 53, 59), pyramid selling (s. 61)

On 4 November 1997 Club 63 Pty Ltd and its sole director, Mr David Parkes, gave undertakings to the Federal Court in relation to a pyramid selling scheme.

The Commission instituted proceedings on 20 June 1997 against Club 63 and Mr Parkes for the promotion of an alleged illegal pyramid selling scheme in Townsville from July 1996.

It also alleged that the club and/or Mr Parkes engaged in certain misleading and deceptive

conduct and made various representations contrary to ss 52, 53(c) and 59 of the Trade Practices Act.

The Commission alleged that Club 63 held out to consumers that after paying a membership fee they would receive financial benefits by introducing others to the scheme. Once the club accepted a membership application, the member received an 'Exclusive Club 63 Membership Card', which purported to entitle them to discounts on retail prices at selected stores in and around Townsville.

The company and Mr Parkes undertook to refrain from engaging in the conduct in the future and to refund moneys to scheme participants over 12 months. They were also ordered to pay the Commission's costs of \$5000.

Mr Alex Sibir

Misleading or deceptive conduct (s. 52), false or misleading representations in relation to land (s. 53A), representation with respect to a future matter (s. 51A)

On 22 December 1997 the Commission instituted proceedings in the Federal Court Sydney against Mr Alex Sibir, a Sydney architect, for false, misleading and deceptive advertising in relation to the promotion of land sales at Peppermint Beach Estate, WA.

The Commission alleges that the following misrepresentations were made in newspaper advertisements and promotional material between at least July and October 1997.

- The land Mr Sibir offered for sale was likely to, or might, in the near future, be subdivided into one-acre lots for residential use.

The Commission alleges that Mr Sibir was aware that the land was zoned 'rural' and that the local planning authority had decided not to support rezoning to enable subdivision of the land into one-acre residential lots.

- The township of Bremer Bay, WA was accessible by driving for approximately 15

minutes and residents of the land could conveniently use facilities at the township.

The Commission alleges that the township is not conveniently accessible, the tracks are unsealed and cannot be accessed other than by four wheel drive. Further, a portion of one track is periodically under water.

The Commission is seeking declarations and orders, including orders that Mr Sibir publish corrective advertisements, offer refunds to affected buyers, and include appropriate qualifying statements in future advertisements.

Danone International Brands (Australia) Pty Ltd

False or misleading representations (s. 53)

Danone International Brands (Australia) Pty Ltd has given undertakings to the Commission following a misleading cash back offer promotion.

Danone International Brands (Australia) Pty Ltd, the Australian marketing company for Griffins' biscuits, promoted a \$3 cash back offer on a sticker attached to the packaging of 500g packets of Griffins' Variety Sampler biscuits.

But conditions about the offer which were inside the packs revealed that the cash back claim had to include three full barcodes from any packets in the Griffins' range **except** the 500g Variety Sampler pack. The Commission therefore considered the sticker to be misleading.

Shortly after the promotion began, and before the Commission raised its concerns with Danone, Danone became concerned that consumers may not understand which packs qualified for the offer. It therefore took action to remove the stickers from packets on supermarket shelves and in its warehouse, and to honour claims already received which included barcodes from the 500g variety packs.

Following discussions with the Commission, Danone also undertook to honour any further claims from consumers who bought three packets of Griffins' biscuits including one or more of the variety packs (with a limit of one

per household) and to publicise this policy in newspapers. The company also undertook to implement a trade practices compliance program.

The Commission warned that in future it is prepared to move to court in cases of misleading cash back promotions.

Anythoughts Pty Ltd

False or misleading representations (s. 53)

Anythoughts Pty Ltd, formerly called Votel Pty Ltd, withdrew mobile phone TV ads after the Commission expressed concerns that the advertisements were misleading.

In November and December 1997 Anythoughts broadcast three advertisements on Channel 10 Perth that appeared to offer mobile phones at a price but in fact promoted mobile phone and phone service packages at far higher prices.

This was not explained in the 'voice over'. Conditions did appear briefly at the bottom of the screen at the end of the advertisements but could not be read clearly. The print was too small, it was blurred and not displayed for long enough to be read, had it been legible.

Anythoughts withdrew the ads and wrote to affected customers offering refunds to those who may have been misled. It has also undertaken:

- not to advertise in this manner again;
- to broadcast corrective notices on Channel 10 Perth; and
- to implement a trade practices compliance program.

The Commission acknowledged Anythoughts' cooperation in resolving this matter.

DirectLink Communications Pty Ltd

Referral selling (s. 57), pyramid selling (s. 61)

On 2 February 1998 the Commission accepted s. 87B undertakings from DirectLink Communications Pty Ltd, a telecommunications marketer, in relation to alleged referral selling and pyramid selling schemes.

DirectLink markets long distance telecommunications services to home and business users. In its promotion, DirectLink offered to pay bonuses to consumers if, after joining the scheme, they recruited new participants.

The Commission concluded that these recruitment bonuses breached the prohibitions against referral selling and pyramid selling in the Trade Practices Act.

The matter was resolved by DirectLink giving undertakings to provide refunds to affected consumers.

Product safety

MNB Variety Imports Pty Ltd

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

On 4 February 1998 the Federal Court Sydney ordered MNB Variety Imports Pty Ltd, an importer and wholesale supplier of electronic, general and novelty goods, to pay penalties totalling \$25 000 and costs of \$1500 for supplying swimming aids and sunglasses which failed to comply with the relevant mandatory consumer product safety standards.

The Commission instituted two criminal proceedings on 12 December 1996 alleging that the swimming aids and its packaging were not marked in accordance with the Australian Standard AS 1900-1991: Children's Flotation Toys and Swimming Aids. Amongst other things, the product and packaging failed to contain the words, 'WARNING USE ONLY

UNDER COMPETENT SUPERVISION', as required by the standard.

The Commission also alleged that the Sundance style of sunglasses supplied by MNB failed to comply with the field of view, refractive power, density matching and labelling provisions of the Australian Standard AS 1067.1-1990: Sunglasses and Fashion Spectacles.

The company had previously pleaded guilty to committing both offences on 3 April 1997. This was taken into account by the Federal Court in its determination of penalty. Also taken into account was the fact that MNB had committed earlier similar product safety offences under the Trade Practices Act and the Fair Trading Act.