
Appendix 2 Public information

This appendix contains:

- lists of:
 - current publications;
 - speeches by Commissioners;
 - media releases; and
- some public registers material.

Publications

The following publications are available free from Commission offices unless otherwise indicated. Publications available on the Commission's website (<http://www.accc.gov.au>) are indicated by an asterisk.

The Commission does not invoice but publications can be purchased by sending a cheque or money order made out to the Australian Competition and Consumer Commission with your order; via a telephone order using Mastercard, Visa or Bankcard; or over the counter at Commission offices.

(Some of the publications listed were published by the Trade Practices Commission, or Prices Surveillance Authority or Federal Bureau of Consumer Affairs.)

Regular publications

ACCC Journal — bi-monthly journal (\$75.00 annual fee, second and following subscriptions to same address \$37.50, \$25.00 student subscription). Six issues per year.

Journal back issues \$10.00 each.

Annual Reports

The first ACCC Annual Report (\$19.95) as well as past Annual Reports of the Trade Practices Commission and Prices Surveillance Authority are available from Government Info Shops.

Guides to the legislation and ACCC procedures

Best and fairest — compliance training package — January 1996 (\$390.00)

Summaries of the Trade Practices Act and Prices Surveillance Act — November 1995 (\$10.00 or \$7.50 for orders of 10 or more)*

The ACCC's approach to mergers: a statistical summary — January 1998 (\$15.00)

Revised merger guidelines — a guide to the Commission's administration of the merger provisions (ss 50, 50A) of the Trade Practices Act — July 1996 (\$15.00)*

Guide to authorisation and notification for third line forcing conduct — February 1998 (\$10.00)*

Guide to authorisations and notifications — a guide on provisions for exemptions from anti-competitive conduct under the Trade Practices Act — November 1995 (\$10.00)*

Advertisements: minimising the risks for publishers (joint publication by the Australian Publishers' Bureau and the ACCC) — February 1998

Rural guideline and the Trade Practices Act — December 1997 (\$10.00)*

Telecommunications industry — ACCC role — an outline — October 1997 (\$10.00)

Telecommunications — competition notice guideline — June 1997*

Advertising and selling — October 1997 (\$10.00)*

Exports and the Trade Practices Act — October 1997 (\$10.00)*

Benchmarks for dispute avoidance and resolution — a guide — October 1997*

Contracted employment services and the Trade Practices Act — September 1997*

Local government and the Trade Practices Act — June 1996*

Small business and the Trade Practices Act — a practical guide for small business — November 1995*

A guide to the Trade Practices Act for the health sector — November 1995 — (\$10.00)*

Access regime — a guide to Part IIIA of the Trade Practices Act — November 1995 (\$10.00)

Access undertakings — a draft guide to access undertakings under Part IIIA of the Trade Practices Act — December 1996
Access undertakings — an overview of Part IIIA of the TPA and the draft undertakings guide — December 1996 (\$10.00 for the two-volume set)

Access pricing principles — telecommunications — guide — July 1997 (\$10.00)*

Section 87B of the Trade Practices Act — a guideline on the Trade Practices Commission's use of enforceable undertakings — August 1995 (\$10.00)*

Section 155 of the Trade Practices Act — a guide to the administration of the Trade Practices Commission's power to require provision of information — November 1994 (\$10.00)*

When goods are defective — a guide to the product liability provisions of the Trade Practices Act — June 1993 (\$10.00)

Unconscionable conduct in commercial dealings — a guide to section 51AA of the Trade Practices Act (\$5.00 each or \$7.50 per set)
Unconscionable conduct in consumer transactions — a guide to section 51AB of the Trade Practices Act — October 1993 (\$5.00 each or \$7.50 per set)

Misleading job ads — how to handle them (manual for classified advertising staff by TPC,

Media Council of Australia and JobWatch) — June 1994. Available from Media Council.

Misuse of market power — Section 46 of the Trade Practices Act — a background paper — February 1990

Business and consumer information sheets and leaflets

News for business: misleading promotional offers — March 1998

The Australian Competition and Consumer Commission — role and functions — February 1998

Small business report — New deal — fair deal — January 1998

Rural industry and the Trade Practices Act — summary — December 1997

News for business — Internet service providers — October 1997

News for business — Disposable cigarette lighters — October 1997

Exports and the Trade Practices Act — October 1997

Scams — Protect your business from them — May 1997

Making markets work — April 1997

Refusal to deal — March 1997*

Warranties and refunds — December 1996*

Authorisations and notifications — July 1996

Fruit juice labelling — June 1996

Warranties — retailers have rights too — May 1996

Know your credit card — March 1996

Product liability — a guide for business — June 1993

The right to safe goods — June 1993

Hold the phone — read this before you buy a mobile — January 1995 (Published jointly by TPC, TIO, Austel, Optus, Telecom and Vodafone)*

Recycling claims for used consumer plastic packaging — April 1995*

Telefraud — new name for an old scam — don't pay for ads you didn't order — January 1994

Don't let your suppliers tell you what to charge — resale price maintenance — November 1990

Product safety guides

Consumer product standards and bans — a compliance guide for suppliers — October 1996

Exercise cycles — 1996 (\$10.00)

Children's nightclothes — 1994

Sunglasses and fashion spectacles — 1994

Children's toys — 1994

Cyclists' helmets — 1992

Children's flotation toys and swimming aids — 1992

Ingredient labelling of cosmetics — 1992 (photocopy only)

Care labelling — 1991

Vehicle jacks, trolley jacks, ramps and stands — 1991

Reports and discussion papers

Acquisitions

Acquisitions and the failing company argument — discussion paper by the TPC and the NZ Commerce Commission — October 1993 (\$3.00)

Airports

Access undertaking — Melbourne Airport: Issues paper — March 1998

Regulation of airport pricing — is the New Zealand approach applicable to Australia? — May 1995 (PSA)

Banking and insurance

ACCC second submission to the Financial System Inquiry — September 1996 (\$25.00)

The social responsibilities of banks — March 1995 (PSA)

Taking advantage — sale of life insurance to Aboriginal people in remote communities — March 1994 (\$10.00) (TPC)

Life insurance and superannuation — information paper on an inquiry by the Trade Practices Commission at the direction of the Minister for Justice and Consumer Affairs — June 1992

Electronic funds transfer — report by the Treasury and the Trade Practices Commission on the operation of the EFT code of conduct — July 1990 (\$10.00)

Bar code scanning (computerised checkouts)

Checkout the price — review of the supermarket scanning code — July 1992 (\$10.00) (TPC)

Building

Home building — consumer problems and solutions — final report of the Trade Practices Commission review — November 1993 (\$15.00)

Competition issues

Non-price competition — October 1995 (\$10.00) (PSA)

Market definition and competition issues in commercial broadcast radio — June 1994 (\$10.00) (TPC)

Submission to the National Competition Policy Review (Hilmer) — April 1993 (TPC) (photocopy only)

Intellectual property

Application of the Trade Practices Act to intellectual property — July 1991 (\$10.00) (TPC)

On-line commerce

The global enforcement challenge — enforcement of consumer protection laws in a global marketplace — August 1997*

Petroleum

Issues paper for the inquiry into the petroleum products declaration — February 1996

Professions

Can the professions survive under a national competition policy? — a joint conference on competition law and the professions — May 1997 (published proceedings \$15.00, audio tapes \$20.00)*

Study of the legal profession — March 1994 (full report \$30.00, summary (photocopy only)) (TPC)

Study of the architectural profession — September 1992 (\$10.00) (TPC)

Utilities

Competitive safeguards and carrier performance 1996-97 — November 1997

National electricity market: Network Pricing Forum (proceedings) — July 1996 (\$35.00)

National electricity market code of conduct — comments and issues arising — June 1996 (photocopy only)

National electricity market code of conduct — issues paper — March 1996

Review of the Victorian electricity industry access arrangements — a report to the Assistant Treasurer — May 1995 (TPC)

Safeguarding the consumer interest in reformed public utilities and complying with the Trade Practices Act — March 1995 (TPC)

Passing on the benefits — Consumers and the reform of Australia's utilities — papers from Trade Practices Commission conference — March 1994 (\$50.00)

Pricing inquiry reports — 1995 and 1996

Petroleum products declaration — August 1996 (\$20.00)

Steel mill products declaration — December 1995 (\$10.00)

Harbour towage declaration — December 1995 (\$10.00)

Welded steel pipes declaration — October 1995 (\$10.00)

Concrete roof tile declaration — June 1995 (\$10.00)

Toothpaste declaration — June 1995 (\$10.00)

Glass container declaration — June 1995 (\$10.00)

Fees and charges imposed on retail accounts by banks and other financial institutions and by retailers on EFTPOS transactions — June 1995 (summary only)

Book prices and parallel imports — April 1995 (\$10.00)

Pricing monitoring reports — 1995 and 1996

Coastal shipping freight rates (no. 3) 1993 and 1994 — December 1995 (\$10.00)

Movements in average air fares 1990-95 — April 1996 (\$10.00)

Movements in average air fares (quarterly reports) — January 1995, May 1995, September 1995, March 1996

Pay TV subscription prices — August 1995 (\$10.00)

Credit card pricing — May 1995 (\$10.00)

Stevedoring costs and charges on terminal handling charges — May 1995 (\$10.00)

Speeches

Commission Chairman Professor Allan Fels

The Trade Practices Act and the health sector. Australian College of Health Services — 27 February 1998

Commission Deputy Chairman Allan Asher

Developing a free and fair trading energy market. International Quality and Productivity Centre — The 1998 Competitive Gas and Electricity Summit — 12 February 1998

The regulator's perspective — what are regulators trying to do? IPART Regulatory Information and Reporting Seminar — 18 February 1998

Convergence of energy — the emergence of new monopolies. International Management Resources — 1998 National Gas Industry Reform — 20 February 1998

Associate Commissioner Rod Shogren

Coping with convergence: the future is now. Pacific Telecommunications Council — 20th Annual Pacific Telecommunications Conference — 12 January 1998

Associate Commissioner Rhonda Smith

The Competition Policy, micro-economic reform and the agriculture and resources sectors. Australian Agricultural and Resource Society — 19 January 1998

For copies of speeches, please contact Leigh Spencer on ph. (02) 6243 1133.

Media releases

- 1/98 'Declaration' of airport services — draft paper — 7.1.98
- 2/98 Wine bottle costs under ACCC focus — 12.1.98
- 3/98 ACCC hearing into mobil telecommunications — 14.1.98
- 4/98 Interim authorisation for Queensland vesting contracts — 15.1.98
- 5/98 Telecoms access code backed — 16.1.98
- 6/98 Guinness/Grand Metropolitan merger: no intervention — 20.1.98
- 7/98 ACCC aid for small business — 21.1.98
- 8/98 ACCC not to intervene in gaming machine acquisition — 23.1.98
- 9/98 ACCC not to intervene in NT/Queensland supermarket sales — 28.1.98
- 10/98 ACCC moves on telecommunications pyramid selling scheme — 2.2.98
- 11/98 ACCC settles with Seven Network and Golden West Network on Darwin and regional WA television program supply — 2.2.98
- 12/98 Proposed ARIA agreement likely to breach law — 3.2.98
- 13/98 TV ads must disclose conditions of offers — 5.2.98

- | | |
|---|---|
| <p>14/98 Coal loading system interim authorisation blocked — 6.2.98</p> <p>15/98 ACCC waterfront investigations — 5.2.98</p> <p>16/98 ACCC files against Simsmetal — 6.2.98</p> <p>17/98 ACCC not to oppose Kellogg's acquisition — 9.2.98</p> <p>18/98 Children's swimming aids, sunglasses importer penalised — 9.2.98</p> <p>19/98 Guide to notification and authorisation for third line forcing conduct — 10.2.98</p> <p>20/98 Cash back offers: ACCC prepares to get tougher — 10.2.98</p> <p>21/98 Gas, electricity competition obstacles remain — 12.2.98</p> <p>22/98 Large majority of mergers pass ACCC scrutiny — 12.2.98</p> <p>23/98 Rural businesses in the spotlight — 13.2.98</p> <p>24/98 Merger threshold changes not necessary at this stage — 13.2.98</p> <p>25/98 Westco consents to court orders in ACCC action — 16.2.98</p> <p>26/98 \$500 000 penalty for concrete price fixers — 16.2.98</p> <p>27/98 Alintagas/Epic — proposed enhancement of DBNGP to supply Kingstream project — 17.2.98</p> <p>28/98 Franklin Mint mail order advertising misled: ACCC — 19.2.98</p> <p>29/98 ACCC not to oppose Continental Cup acquisition — 19.2.98</p> <p>30/98 Rural problems with '13' mobile services: ACCC acts — 19.2.98</p> <p>31/98 Avoiding penalties in publishing — 20.2.98</p> <p>32/98 Government urged to grant Kipper licence — 20.2.98</p> <p>33/98 Recall of children's dressing gowns — 22.2.98</p> | <p>34/98 Major cigarette manufacturer admits attempted price fix — 23.2.98</p> <p>35/98 ACCC to finalise access code — 25.2.98</p> <p>36/98 ACCC rejects Telstra's Internet settlement credit plan — 26.2.98</p> <p>37/98 ACCC not to oppose National Mutual and Lend Lease/MLC joint venture — 26.2.98</p> <p>38/98 ACCC investigates Telstra's commercial 'churn' service — 26.2.98</p> <p>39/98 Transport company, executives found guilty of attempted price fixing — 26.2.98</p> |
|---|---|

Media releases are available from the Media Liaison Officer, Ms Lin Enright on ph. (02) 6243 1108, and from the Commission's Internet website at <http://www.accc.gov.au>

Public registers

The Commission is required to maintain a number of public registers, including documents relating to:

- applications for authorisation of anti-competitive practices;
- notifications of exclusive dealing;
- conferences held on bans or mandatory product recalls;
- Commission responsibilities under Part IIIA of the Trade Practices Act (the access regime); and
- price notifications.

These documents include statutory forms of application, supporting material, submissions by interested parties, related correspondence, the Commission's draft and final determinations and records of predecision conferences.

Such documents are available, or can be made available, for inspection at Commission offices during normal business hours. A fee is charged for photocopies. It is advisable to give prior

notice of a request to see documents as not all are kept in all Commission offices.

The Commission voluntarily maintains summary registers listing merger matters it has considered and of enforceable undertakings given under s. 87B. These summaries and a list of subsection 51(1) exemptions from the Trade Practices Act are published progressively in the Journal.

Mergers examined under s. 50

The following is an accumulated list of mergers examined in 1997. The list of non-confidential mergers examined by the Commission 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 the calendar year 1996 are listed in *ACCC Journal* 8.

Stirling Harbour Services Pty Ltd/towage interests of P&O Maritime Services Pty Ltd — towage services in the ports of Kwinana, Fremantle and Geraldton, WA.

Stirling (which is owned jointly by Howard Smith and Adsteam) acquired P&O's port towage interests in Fremantle, Kwinana and Geraldton.

While the Commission had concerns about the foreclosure of new entry, it took into consideration the pre-existing interests of the parties and the limited duration of the contract for the port of Geraldton.

The Commission advised the parties in January 1997 that it would not oppose the acquisition.

Brambles/Ausdoc Group — provision of document exchange and records management services.

The Commission considered that, despite high market concentration, barriers to entry were not high. It did not oppose the proposed acquisition.

Kimberley Clark Australia Pty Ltd/Scott Paper Company Ltd — tissues and other sanitary products. The Commission was first approached about this matter in June 1995.

As Scott did not have a manufacturing presence in Australia the acquisition of Scott by Kimberly-Clark did not result in any increase in concentration in the relevant markets. The only competition concern was the acquisition of Scott trademarks, licensed to Carter Holt Harvey, by Kimberly-Clark.

After reviewing the licencing agreement the Commission determined that Carter Holt Harvey had secured rights over the relevant trademarks for a considerable period of time. Indeed for some intellectual property rights Carter Holt Harvey would have perpetual non-exclusive rights. The Commission decided that the terms of the licence agreement meant that Carter Holt Harvey would retain control over the trademarks for a sufficient period of time as to negate any anti-competitive effect.

The Commission decided in February 1997 to take no action in relation to the proposed acquisition.

Pharmacia & Upjohn (Aust) Pty Ltd/Procter & Gamble Pharmaceuticals Pty Ltd — manufacture and supply of a number of specialised pharmaceuticals. This matter was first raised with the Commission in February 1996.

Pharmacia & Upjohn proposed to acquire from Procter & Gamble the patents and distribution rights pertaining to a number of drugs.

There appeared to be no effective overlap between the existing products of Pharmacia and those acquired from Procter. Even in the two product categories where Pharmacia and Procter drugs are, or can be, used to treat the same condition, they did not appear to the Commission to be truly competitive for price and medical reasons.

The Commission decided in March 1997 not to oppose the acquisition.

Kemcor Olefins Pty Ltd/plastics business of Hoechst Australia Ltd — supply of HDPE resin in Australia. The Commission was first approached about this proposed acquisition on a confidential basis in May 1996.

Plastic resins are generally traded as commodities. There are substantial Australian imports and exports of HDPE, and it is likely imports act as a constraint on domestic pricing. The competitiveness of imports has been further improved since 1 July 1996 when tariffs were reduced to 5 per cent.

There are also some uses of HDPE for which some degree of substitutability with other plastics and other materials exists.

The Commission decided in July 1996 not to oppose the acquisition and announced in March 1997, after the transaction had become public, it would take no action in regard to it.

Carlton & United Breweries Ltd/Goldchill Brewery — beer. This was first raised with the Commission in August 1996.

Until the Goldchill facility began production in Darwin, all beer for the Northern Territory was shipped from other States. While the Goldchill brewery gives CUB production capacity in the Northern Territory, long-term practice has indicated that freighting beer into Northern Territory outlets is a viable alternative for retailers.

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

Luxfer Gas Cylinders/CIG Gas Cylinders — manufacture and supply of high pressure gas cylinders. This proposed acquisition was first raised with the Commission in January 1997.

Luxfer advised that CIG is currently the only domestic manufacturer of high pressure gas cylinders. The remainder of the market, approximately 50 per cent, is supplied by imports. The acquisition by Luxfer of CIG is effectively new entry into the Australian market

for the supply of aluminium and steel high pressure gas cylinders.

In addition, the fact that imports are approximately 50 per cent of the total market means that it is highly unlikely that the merged firm would be able to exercise market power to increase prices and/or profits.

The Commission decided in February 1997 not to oppose the acquisition.

Concorde International Travel Pty Ltd/Metro Travel Pty Ltd — supply of international and domestic airline tickets to travel agents and to consumers. This matter was raised with the Commission in January 1997.

Although the merged firm will have a substantial share of consolidation business in Australia, market inquiries identified that the following factors were likely to exercise a competitive constraint on the merged firm in the market in which it competes:

- the supply of consolidation services to retail travel agents by Jetset and Consolidated Travel, and some smaller consolidators;
- in respect of domestic airline ticket sales, the direct supply by airlines to consumers;
- the availability of supply of tickets to accredited retail agents from airlines via IATA;
- for non-IATA agents, the opportunity to be accredited by IATA or join a retail franchise or buying group; and
- the ability of retail groups, having substantial buying power, to vertically integrate into consolidation for their own internal purposes.

In view of these competitive constraints, the Commission concluded that the proposed acquisition was unlikely to substantially lessen competition in the market in which Concorde and Metro compete.

The Commission decided in February 1997 not to oppose the acquisition.

Pacific BBA Limited/Melwire Pty Ltd — manufacture, wholesale and distribution of industrial flooring products in Australia. This matter came to the Commission's attention in February 1997.

The acquisition has not resulted in a large increase in concentration in this market. The merged entity will continue to face competition from the largest participant in the market, BHP Building Products, and a number of mid-size participants.

Barriers to entry to the industry did not seem to be insurmountable. There appeared to be few technical constraints facing a potential new entrant to the relevant market, with the required machinery and equipment being relatively easily obtainable.

The acquisition did not increase vertical integration in the industry. There may be potential substitutes for the relevant products for some uses. The industry in Australia appears to be characterised by a significant degree of countervailing power. The acquisition seemed unlikely to lead to price increases in the relevant market.

The Commission decided in February 1997 not to oppose the acquisition.

ARCO Chemical Australia Pty Ltd/Business of Olin Australia Ltd — toluene diisocyanate (TDI) and aliphatic diisocyanate (ADI). This matter was first raised with the Commission in December 1996.

TDI and ADI are not produced in Australia. ARCO, Olin and four or five others import TDI and ADI into Australia. The Commission considered that, even if the proposal proceeded, the importation of TDI and ADI is not a concentrated industry and barriers to entry are low.

The Commission decided in February 1997 not to oppose the acquisition.

Brook Crompton Betts Pty Limited/Webster Manufacturing Limited — national market for the manufacture and supply of alternating current (AC) electric

motors. This matter was raised with the Commission in December 1996.

The Commission considered that the ability of the merged firm to raise prices and profits following the proposed acquisition was likely to be constrained by a number of factors. The level of imports appeared to be well above 10 per cent, and market participants, both competitors and customers, indicated that there was potential for the market share of imports to rise even higher.

In the Commission's view, the merged firm was also likely to be constrained by the countervailing power of customers which manifests itself in their ability to manufacture many of the motors that are currently sourced from Brook Crompton Betts and Webster.

The Commission decided not to oppose the acquisition in February 1997.

Westfield Holdings Limited/Galleria & Innaloo shopping centres — regional shopping centres in Perth. This matter came to the Commission's attention in October 1996.

The Commission was concerned that the price of regional retail shopping space in Perth was already quite high due primarily to the relative shortage of it in Perth.

But given the close and more immediate competition between regional shopping centres in north Perth and south Perth, it was unlikely that Westfield would be able to increase prices and profits beyond current levels.

Also with the proposed re-entry of David Jones into Western Australia, the Commission considered that there was a possibility that the market may expand if David Jones elected to set up stores in smaller shopping centres rather than existing regional shopping centres. This seemed more likely given that Myer stores were already established as anchor tenants in each of the regional shopping centres in Perth.

The Commission decided in February 1997 not to oppose the acquisition.

Australian Radio Network Pty Ltd/Radio Blue Mountains Broadcasters Pty Limited

— market for advertising on commercial broadcast radio in Katoomba area. The Commission was first approached in relation to this matter in January 1997.

Radio Blue Mountains Broadcasters operated ONE FM, the holder of the commercial radio broadcast licence for the Blue Mountains area of NSW. The acquisition would result in a modest increase in concentration owing to the overlapping service areas of ONE FM (Katoomba) and 2WS FM (Western Sydney) since ARN already controlled the 2WS licence. However, the acquisition was unlikely to result in a substantial lessening of competition.

The Commission decided not to oppose the acquisition in January 1997.

Australia-New Zealand Direct Line/Union Shipping Group Limited

— trans-Tasman containerised and break-bulk cargo (sea freight). The Commission was first informed of this matter in January 1997. The proposed merger would combine the trans-Tasman shipping operations of the parties in the form of a joint venture.

The main barrier to entry to the trans-Tasman shipping market has been the existence of the trans-Tasman labour accord, although it is being dismantled at present and will cease to be a barrier in the future. However, the Commission considered that barriers to entry for new participants were likely to still be present in the form of capital costs.

Despite the barriers, there appeared to be a substantial amount of competition from other participants and the Commission concluded that the merger would be unlikely to lessen competition.

The Commission decided to take no action in regard to this matter in February 1997.

Bunge Cereal Foods Pty Ltd/Defiance Mills Limited

— national market for the manufacture and supply of premixes/south-east Australian market for the manufacture and supply of flour and a number of regional markets for the manufacture and supply of

bread. This matter was first raised with the Commission in February 1997.

The Commission concluded that the proposed acquisition was unlikely to lead to a substantial lessening of competition in either the flour or bread markets. The main reason was that there was little overlap in the flour operations, and no overlap in the baking operations, of Bunge and Defiance. Bunge's flour and bread operations were limited to Victoria and southern NSW, whilst Defiance's operations were in Queensland, northern NSW and Sydney, Tasmania and Western Australia.

The only overlap appeared to be flour milling in the south-east Australian flour market and the national market for the supply of premixes. Accordingly, the Commission is undertaking limited market inquiries into the manufacture and supply of premixes.

Bunge submitted that the takeover would have a pro-competitive effect as it would create a 'third force' in milling and baking in Australia. Bunge claimed that if the takeover proceeded, the combined Bunge/Defiance would be able to compete more effectively with Goodman Fielder Limited and George Weston Foods Limited.

The Commission decided in March 1997 that it would not oppose the proposed acquisition.

Caroma Industries/Fowler Bathroom Products division of James Hardie Industries

— toilet bowls and basins. The parties first raised this acquisition with the Commission in December 1995.

The two parties were the only suppliers in Australia, and the acquisition would have left the merged entity with some 90 per cent of the market. Imports made up the rest of the market.

There are two levels of the market: commodity vitreous china products, and luxury products with greater design and styling. Commodity products represent 80 per cent of total sales and tend to drive production; however, luxury products offer greater profit margins. Toilet pans and cisterns must comply with a range of Australian standards, most notably the requirement of dual flush cisterns, and factories

must obtain accreditation from Standards Australia.

Imports to the market are generally sourced from two regions: commodity products from factories in Asia, and luxury products from European and American manufacturers. Some commodity importers face barriers in selling their products without dual flush cisterns, as they do not manufacture these. Luxury importers do not import commodity products to such a small retail market as Australia.

The lower production costs of Asian manufacturers are likely to bring about increased imports to the Australian market soon. Major plumbing distributors also indicated a willingness and capacity to import products to the market, and claimed that potential imports at the commodity level constrained price increases at present.

The Commission considered that the potential for imports, and the potential for plumbing distributors to exercise countervailing power by importing, may constrain the activities of the company post acquisition. Further, production in this market has seen a steady trend toward globalisation. Caroma also agreed to withdraw representatives from the Standards Committee.

The Commission decided in March 1997 not to oppose the acquisition.

Adelaide Brighton Cement Ltd/Western Australian distribution business of

Melcann — production and distribution of bagged cement in Western Australia. This matter was first raised with the Commission in January 1997.

Adelaide Brighton Cement did not mix and distribute dry-mix products in Western Australia before the acquisition. In addition, Melcann appeared to have a negligible market share in the supply of bagged cement in Western Australia. The Commission decided in February 1997 not to oppose the acquisition.

Huhtamaki Oy/Pacific World Group — manufacture and supply of paper and plastic food packaging. This was first raised with the Commission in February 1997.

On balance, the acquisition was unlikely to substantially lessen competition because Pacific World Group was only a small player and its activities were largely complementary to that of Polarcup, owned by Huhtamaki Oy. Moreover, barriers to entry in most segments of the market were low, the level of concentration moderate, and import competition was significant for some sectors of the market.

The Commission decided in March 1997 not to oppose the acquisition.

Mercantile Mutual Insurance Australia Limited/Trade Indemnity Australia —

general insurance. This acquisition was first raised with the Commission in March 1997.

The proposal did not trigger the concentration thresholds in the Commission's merger guidelines. The Commission decided in March 1997 not to oppose the proposed acquisition.

Village Roadshow/Austereo — sale of advertising on commercial broadcast radio.

This acquisition was raised with the Commission in March 1997.

Village sought to purchase the 47 per cent of Austereo that it did not already own. As the proposed acquisition would not change control of Austereo, there was no issue for the Commission to examine. The Commission decided in March 1997 not to oppose the acquisition.

ICI Australia Operations Pty Ltd/Auseon Ltd — PVC and plastic resins. This joint

venture was first raised with the Commission on a confidential basis in October 1996.

Plastic resins are generally traded as commodities. There are substantial Australian imports of PVC and it is likely imports act as a constraint on domestic pricing. The competitiveness of imports has been further improved since July 1996 when tariffs were reduced to 5 per cent.

The Commission decided in October 1996 that the joint venture was unlikely to substantially lessen competition. The parties proceeded with the joint venture and made the matter public in May 1997.

Westfield Holdings Limited/Chermside Shopping Centre — regional shopping centres in Brisbane. This acquisition was raised with the Commission in December 1996.

Prior to the acquisition Westfield owned Toombul Shopping Centre, Strathpine Shopping Centre and Indooroopilly Shopping Centre, all in Brisbane's northern suburbs. In addition to Chermside, there are five other regional shopping centres in Brisbane's metropolitan area.

The Commission found that the ownership of Brisbane regional shopping centres was highly concentrated. The acquisition would leave Westfield with four out of the nine Brisbane regional shopping centres. However, there is significant planned expansion of other Brisbane shopping centres and there is immediate competition to Westfield from Brookside Shopping Centre in Brisbane's northern suburbs.

The Commission decided in May 1997 to take no action in relation to the acquisition.

Queensland X-Ray Services/practice of Queensland Diagnostics Pty Ltd at Mater Hospital Townsville — radiology services in Townsville. The acquisition was first raised with the Commission in January 1997.

The Commission considered that private and public radiology practices appeared to compete for both private and public out-patients and also private in-patients (in certain circumstances). There was also evidence of direct competition between private and public radiology practices, particularly in Brisbane, and the potential for greater competition in Townsville between QXS and the Townsville General Hospital.

The Commission decided in February 1997 not to oppose the acquisition.

Novus Petroleum Limited/Santos Ltd/Gas field interest owned by WMC Resources Limited — extraction of natural gas in Western Australia. This acquisition was first raised with the Commission in February 1997.

WMC proposed to sell its 30 per cent interest in the East Spar gas field to Novus Petroleum,

subject to preferential purchasing rights held by existing joint venture partners, Ampolex, Apache Oil and Santos.

In the context of the limited market share of the East Spar joint venture and the parties' existing gas interests, the Commission considered that an acquisition of WMC's gas assets by Novus or any of the preferential purchasers would be unlikely to substantially lessen competition in the market for the supply of gas in Western Australia.

The Commission decided in March 1997 not to oppose the acquisition. Santos subsequently exercised this right and acquired WMC's 30 per cent interest in East Spar, as well as some other gas assets.

NRG Australia Limited/part interest in Energy Developments Limited — environmentally sound electricity generation. This acquisition of shares was first raised with the Commission in February 1997.

NRG was already a minority shareholder in EDL and the acquisition would take its interest to only 35 per cent. The generation capacity of EDL is small and the generation capacity of NRG cannot readily compete with other large Eastern States' generators.

The Commission decided in March 1997 that it would not oppose the acquisition.

Purity Supermarkets/Caterers Market Pty Ltd — wholesale supply of bulk food. This acquisition was first raised with the Commission in February 1997.

Caterers Market was a small but active wholesale supplier of bulk dryfood packs to the foodservice industry in southern Tasmania, providing a full delivery service. Purity operated a cash & carry outlet in Hobart but was active in the area of general food service and supply. In southern Tasmania, Caterers Market was the second largest of some nine suppliers, the largest (Allfoods) having 45 to 50 per cent of the market, and was likely to provide a substantial competitive constraint on Purity.

The Commission decided in May 1997 not to oppose the acquisition.

Austrim Limited/Calum Group — textiles. This proposed acquisition was first raised with the Commission in February 1997.

The acquisition of two companies in the Calum Group would leave Austrim as a major supplier of car upholstery in Australia. However, inquiries indicated that there were other suppliers of automotive fabrics, and there were a number of firms which were capable of commission laminating imported fabrics.

The Commission decided in May 1997 not to oppose the acquisition.

NRG Australia Limited/CMS Energy/Macquarie Bank Limited/Loy Yang Power — electricity in Victoria. This privatisation was first raised with the Commission in February 1997.

The Commission considered the proposed acquisition of Loy Yang Power by a consortium consisting of CMS Energy, NRG Energy and the Macquarie Bank. Loy Yang Power is the largest coal-fired electricity generator in Victoria. The Commission considered whether NRG's participation in the consortium would have any competition implications, given its existing electricity generation interests in Queensland. The Commission took the view that, as a major proportion of the output of NRG's generation units in Queensland was contracted to a particular user, it would not oppose NRG's acquisition of an interest in the Victorian generator at this time. Nevertheless, the Commission reserved the right to consider the implications of inter-regional ownership linkages between generators further when the national grid is established.

The Commission advised the Victorian Government in March 1997 that it would not oppose the sale of Loy Yang Power to this consortium.

Legrand Australia Pty Ltd/Minitronics Pty Ltd — emergency lighting. This acquisition was first raised with the Commission in March 1997.

The proposed acquisition was effectively a new entry by Legrand into the market for the manufacture and supply of emergency lighting. Legrand had a negligible market share whilst Minitronics appeared to be the market leader.

The Commission decided in March 1997 not to oppose the acquisition.

Medical Defence Union/Medical Defence Society of Queensland/Medical Protection Society of NSW — medical profession indemnity. This proposed merger was first raised with the Commission in March 1997.

The Commission did not oppose the acquisition for the following reasons.

Barriers to entry to the medical defence industry did not appear to be substantial. The only possible source of barriers to entry would be the loyalty of doctors to a particular medical defence organisation (MDO). However, the services provided by the parties could be provided easily by other MDOs.

Neither the Medical Provident Society nor the Medical Defence Society of Queensland offered claims-based insurance previously. It was unlikely that the acquisition would remove any vigorous or effective competitors from the market.

It was also unlikely that prices would rise appreciably because of the relatively low barriers to entry and the availability of substitute MDOs.

The Commission stated in June 1997 that it would not oppose the merger.

Adelaide Brighton Ltd/Barro Group Pty Ltd/Independent Cement & Lime Pty Ltd — bulk cement market in the Eastern States. This acquisition of shares was first raised with the Commission in April 1997.

There were two elements to this proposal. One was a purchase of the minority interests in Independent Cement and Lime and the other was a supply arrangement whereby Independent Cement and Lime would be the only distributor of Adelaide Brighton Cement in Victoria and southern New South Wales.

Consequently Adelaide Brighton Cement would withdraw from the distribution of cement in these areas.

The acquisition would raise the Barro and Adelaide Brighton interests from about 46 per cent and 38 per cent to 50 per cent each. This is unlikely to substantially lessen competition because the two companies already control Independent Cement and Lime.

The Commission announced that it would not oppose the proposal after it conducted market inquiries during May 1997.

Smorgon Steel Pty Ltd/Welded Mesh Pty Ltd — reinforced steel and mesh products. This acquisition was first raised with the Commission in April 1997.

While the proposed acquisition would increase the level of concentration in State markets, there were a number of constraints that would operate on Smorgon post-acquisition.

The opportunity for market participants to import cheap steel feedstock (rod and bar) has significant influence on prices in the market. Import opportunities also diminish the capacity for BHP and Smorgon Steel to exercise market power associated with their vertical integration as domestic manufacturers of feedstock.

With regard to barriers to entry, set-up costs are low, and access to the necessary machinery not limited. Some market participants expressed concern that they were denied access to competitive supplies of domestic feedstock by the divisional transfer policies of BHP and Smorgon, the two largest steel producers. However, these difficulties are somewhat tempered by the establishment of minimills by ANI's Comsteel and Albion Steel, and the ready availability of imports.

There is also a high degree of substitution with the products in the relevant market, including structural steel, manufactured in Australia by BHP and increasingly imported. Large customers, which account for 50 per cent of sales by the parties, are increasingly multi-national construction companies, with the knowledge and contacts to import their steel reinforcement requirements, or to adapt their

construction techniques to incorporate alternative materials. Neither they, nor other market participants, expressed any concerns that Smorgon Steel would be in a position to increase prices or profits post-acquisition.

The Commission decided not to oppose the acquisition in May 1997.

Clariant/Hoechst Australia — specialty chemicals. This merger was first raised with the Commission in April 1997.

The parties proposed to merge their specialty chemical operations. Clariant Australia and Hoechst Australia both supplied specialty chemicals, including masterbatches. Masterbatches are used by manufacturers of plastic products to give their products certain desired properties, such as colour.

The merged entity would be a substantial supplier of masterbatches. However, inquiries indicated that there were other suppliers of masterbatches and barriers to entry were not high.

The Commission decided in April 1997 that it would not oppose the acquisition.

Polymer Corporation (Aust) Pty Ltd/Full Cycle Plastics Pty Ltd — recycling of HDPE waste products. This proposed merger was first raised with the Commission in April 1997.

Both parties recycled post-consumer HDPE waste, particularly plastic milk bottles. Both also purchased a substantial amount of HDPE milk bottles collected in Australia. Inquiries indicated that the industry was relatively small and that barriers to entry did not appear to be high.

The Commission decided in May 1997 not to oppose the proposed merger.

Australian National Industries Limited/National Castings Pty Ltd — steel and alloy iron cast products. This acquisition was first raised with the Commission in April 1997.

National Castings has foundries in Perth and Launceston. ANI operates a division named

ANI Bradken with foundries in Queensland, Victoria, Adelaide and Perth. Both parties manufactured steel and alloy iron cast products for the mining, rail transport, utilities and other industries.

The Commission found that, although ANI Bradken would have a substantial share of the manufacture of steel and alloy iron castings, Australian foundries faced vigorous competition from imports, particularly in terms of prices. This import competition was likely to prevent the merged firm from increasing its prices or margins.

The Commission concluded that the acquisition was unlikely to substantially lessen competition and decided in June 1997 not to oppose the acquisition.

Tecalemit Australasia Pty Ltd/PJ King Pty Ltd — tubular engine components. This acquisition was first raised with the Commission in May 1997.

Although the market appeared to be highly concentrated and the merged entity would have a substantial share of the market, automotive manufacturers also had considerable countervailing power and the acquisition was unlikely to affect prices.

The Commission decided in June 1997 not to oppose the proposed acquisition.

Westpac Banking Corporation/Bank of Melbourne Limited — banking products. This proposed merger was first raised with the Commission in April 1997.

The Commission had concerns that the increased concentration in the transaction accounts market as a result of the merger could result in increased charges in transaction accounts.

On 25 July 1997 the Commission announced it would not oppose the proposed merger, after significant undertakings by the parties.

The undertakings maintain various existing benefits for BML customers, including extended trading hours and certain fee exemptions for BML personal current account holders.

The undertakings make access available on reasonable commercial terms to small and new competitors in Victoria, including interstate based regional banks, building societies and credit unions, so long as they carry on business in Victoria.

On the basis of the undertakings, the Commission decided not to oppose the merger.

A more detailed assessment of the merger, on which the Commission's decision is based, is available from the Commission's Internet home page.

Nautilus Australia/Legend Marine Services Australia Pty Ltd — supply of general ships' provisions to vessels. This merger was first raised with the Commission in April 1997.

This merger was unlikely to breach the Commission's merger concentration thresholds in the relevant market. Furthermore, the barriers to entry, as well as the barriers to expansion by the major wholesalers and retailers, did not appear to be high.

The Commission decided in June 1997 to take no action in relation to the merger.

Australian Provincial Newspapers/Australian Posters — outdoor advertising. This proposed acquisition was raised with the Commission in April 1997.

The acquisition would result in APN being the largest outdoor advertising company but on the basis of a national outdoor market, the acquisition did not cross the Commission's concentration thresholds. The merged company would be constrained by competition from other outdoor companies, substitution from other advertising media, and potential new entry into the market.

The Commission announced in May 1997 that it would not oppose the acquisition.

CSR Limited/Mackay Refined Sugars Pty Limited — refining and supply of refined sugar. The proposed joint venture was first raised with the Commission in May 1997.

The joint venture covered purchasing, refining, storage, distribution and sale of refined sugar domestically and internationally. Milling assets were not part of the joint venture.

In 1993 the Trade Practices Commission refused to grant authorisation to a proposed joint venture between CSR and MRS because it was not satisfied that the joint venture would result in a public benefit substantial enough to outweigh its anti-competitive effect.

In the ACCC's view, significant developments in the industry since 1993 had increased the effectiveness of imports as a competitive constraint on domestic refiners.

CSR and MRS provided the Commission with an enforceable undertaking that the joint venture would make existing import facilities in Western Australia available, at cost, to other Australian refiners and importers.

On 30 July 1997 the Commission announced it would not intervene in the proposed joint venture.

Merck Sharp and Dohme (Australia) Pty Ltd/Rhone Merieux Australia Pty Ltd — animal health products. This matter was first raised with the Commission in May 1997.

The proposal involved the merger of the animal health businesses operated by Merck Sharp and Dohme (Australia) Pty Ltd and Rhone Merieux Australia Pty Ltd. Merck Sharp and Dohme markets a range of broad-spectrum anti-parasite treatments through its Merck AgVet Division.

The Commission concluded that, although the two companies were competitors in the Australian animal health products industry, there was little or no overlap of their respective businesses in market sectors within that industry.

On 13 June 1997 the Commission announced that it would not intervene in the proposed merger.

Allied Colloids (Australia) Pty Ltd/Imdex Limited — supply of synthetic flocculants. This matter was first raised with the Commission in May 1997.

The proposal involved the acquisition of the chemical division of Imdex Limited by Allied Colloids (Australia) Pty Limited.

Allied Colloids and Imdex are involved in the supply of synthetic flocculants to the Australian market. Synthetic flocculants are used extensively in mineral processing, pollution control, paper making, water treatment, crude oil recovery and other industries requiring the separation of solids from liquids.

The Commission formed the view that, although Allied Colloids may have a substantial share of the Australian supply of synthetic flocculants, import competition was likely to prevent the merged firm from increasing its prices or margins.

On 20 June 1997 the Commission announced it would not intervene in the proposed acquisition.

Simplot Australia Pty Limited/I&J Foods Limited — frozen fish and other food for the retail sector and food services sector. This merger was first raised with the Commission in May 1997.

The Commission recognised the high cost of launching a new brand in this industry. However, major retailers are also likely to encourage, and may even facilitate, entry by an independent brand.

In the longer term, relative ease of entry to the generic end of the market, together with the possibility of market entry by a large competitor in response to price increases in branded product, may limit the ability of the merged firm to sustain substantial price increases.

After the merger became public the Commission conducted market inquiries and advised the parties in August 1997 that it would not oppose the merger.

Procter and Gamble Australia Pty Ltd/Tambrands Inc — tampons and sanitary pads. This acquisition was raised with the Commission in June 1997.

As a result of a US merger of parent companies, Procter and Gamble Australia,

which distributes sanitary pads, will also distribute Tambrands tampons. There did not appear to be a significant increase in market share as a result of the transaction because of the specialisation of the parties prior to the proposal and the distinct product markets.

The Commission decided in June 1997 not to oppose the merger.

Air New Zealand Limited/Jetset Travel and Technology Holdings Pty Ltd — retail travel agency services. This matter was first raised with the Commission in June 1997.

The proposal involved the acquisition by Air New Zealand Limited of a further 50 per cent ownership interest in Jetset Travel and Technology Holdings Pty Ltd.

Jetset is a retail travel agent, tour wholesaler and a consolidator of airline tickets to retail agents. Under the proposed acquisition Air New Zealand will own and control Jetset. The Commission expects that Air New Zealand will maintain its preferred supplier arrangements with both Ansett and Qantas.

The Commission concluded that the proposed acquisition was unlikely to substantially lessen competition.

On 18 July 1997 the Commission announced it would not intervene in the proposed acquisition.

Bucyrus (Australia) Pty Limited/Marion Power Shovel Pty Limited — supply of surface mining equipment. The proposed acquisition was first raised with the Commission in June 1997.

The parties supply surface mining equipment to coal and iron ore miners for the removal of overburden. Overburden is the earth which covers the mineral being mined.

It appeared to the Commission that the merged firm would face competition from the world market leader, which would constrain it from exercising market power. The Commission also took into account the fact that second-hand draglines were available to be imported from the United States, and that mining contractors

were increasingly using electric shovels rather than draglines for overburden removal.

On 11 August 1997 the Commission announced it would not intervene in the proposed acquisition.

Bradmill Textiles Pty Ltd/Birkmyre Pty Ltd/Brella Pty Ltd — outdoor textiles. This acquisition was first raised with the Commission in June 1997.

In the relevant market, Bradmill claimed to be constrained by imports of outdoor textiles, which amount to 6 per cent annually. The acquirer also claimed that it would be more vulnerable to overseas competition with the reductions in tariffs and that Brella and Birkmyre were not vigorous competitors. Bradmill also emphasised the need to merge to compete internationally with new high volume manufacturers being established in Asia.

After conducting market inquiries, the Commission decided in August 1997 not to oppose the proposed acquisition.

Novartis Crop Protection Australasia Limited/crop protection products business of Merck Sharp & Dohme (Aust) Pty Ltd — crop protection products. This acquisition was first raised with the Commission in June 1997.

Novartis is in the top four crop protection product suppliers in Australia. Merck has less than 1 per cent of the overall market. If crop protection is viewed as a single market, the merger falls below the Commission's merger guideline thresholds. In reality, it is more likely that several discrete markets exist for different types of crop protection products but the two firms have only a small level of overlap in their product range and in any plausible smaller market (e.g. insecticides for cotton) the concentration thresholds would not be breached.

The Commission decided in July 1997 not to take any action in relation to the proposed acquisition.

Phoenix Energy Pty Limited/Woodada gas field of Consolidated Gas Pty Limited — gas extraction. This acquisition was first raised with the Commission in June 1997.

Phoenix Energy, a part of the Devereaux Group which also owns Griffen Coal, proposed to acquire an interest in the Woodada gasfield, which supplies the Perth area via the WA Natural Gas pipeline. The Woodada gasfield provides a very small proportion of the gas in WA.

The Commission decided in August 1997 to take no action in relation to the acquisition.

Radio Canberra Pty Ltd/Radio station 2CA — advertising on commercial broadcast radio in Canberra. This acquisition was first raised with the Commission in July 1997.

Prior to the acquisition the Austereo/ARN joint venture owned or operated three of the four commercial radio stations in Canberra, in contravention of the Broadcasting Services Act. Radio Canberra previously owned 2CC, the only other AM radio station in Canberra.

The Commission considered that it was necessary to compare the competitive effect of this outcome with the likely effect on competition if 2CA had been acquired by a third party. It was unlikely that these two outcomes would differ greatly in their effects, given the relatively weak position of AM radio. It may even provide greater competition in the market, because with the two AM stations in common ownership the stations may have an incentive to alter their programming to maximise their joint audience. To the extent that this draws listeners away from FM, it would encourage competition with the FM stations. Similarly, the joint venture's announced intention to alter the programming of the two FM stations may bring about greater competition with the AM stations.

Due to the lower prices of Canberra television advertising compared to some other markets, it could be argued that television is a substitute for radio advertising in Canberra, depending on the target audience.

The Commission considered that the acquisition was unlikely to substantially lessen competition and decided in July 1997 to take no action.

Waterfall Quarries Pty Ltd/Maldon Quarries business of Leech Earthmoving Pty Ltd — crushed rock and aggregates (quarry materials) for road maintenance and construction. This acquisition was first raised with the Commission in July 1997.

The Commission considered that if there was a substantial market wider than the immediate area (central Victoria), then there was likely to be substantial competition from existing participants and the acquisition would not lessen competition.

The Commission decided in August 1997 to take no action in relation to the acquisition.

Du Pont Australia Ltd/Titanium dioxide and polyester film businesses of ICI Plc — titanium dioxide pigments. This acquisition was brought to the Commission's notice in July 1997.

Du Pont and ICI are the two largest producers of titanium dioxide in the world. However, they are minor producers in Australia and the acquisition will have minimal impact on the structure of the industry in Australia.

The Commission considered that the acquisition would be unlikely to substantially lessen competition and decided in August 1997 to take no action.

Mildara Blass Limited/Cellarmasters Pty Ltd — production and sale of bottled wine. The Commission first became aware of this acquisition in August 1997.

The acquisition did not trigger the concentration thresholds in the Commission's *Merger Guidelines*. Although Mildara Blass will be in a strong position in the direct selling segment of the market, the industry is undergoing a period of rationalisation. The Commission concluded that the acquisition was unlikely to substantially lessen competition but it will continue to monitor the industry.

The Commission decided in August 1997 to take no action.

Netcomm Limited/Banksia Technology Pty Ltd — computer modems. This merger was first raised with the Commission in August 1997.

Netcomm/Banksia will be the leading supplier of modems in Australia with a very substantial market share. However, the Commission found that competition from imported modems was likely to be an effective check on the exercise of market power by the merged entity. In addition, the Australian market is growing rapidly.

The Commission therefore concluded that the proposed acquisition was unlikely to substantially lessen competition and decided in August 1997 not to take any action.

Austereo Ltd/PMFM 94.5 FM — commercial radio advertising in Perth. This matter was first raised with the Commission in November 1996.

Austereo proposed to acquire PMFM from JMB. The acquisition would bring Austereo's ownership of commercial radio stations in Perth to three (out of five). To comply with s. 54 of the Broadcasting Services Act, Austereo proposed to sell 6MMM as soon as possible after the acquisition.

Austereo offered the Commission undertakings regarding the prompt sale of 6MMM (within six months of the acquisition). The other two stations are in common ownership (Southern Cross), so the acquisition would not change concentration (measured by the number of licences held), but simply rearrange ownership and bring a third party into the market (because the BSA restriction prevents the other existing licensee in Perth from buying 6MMM). This is provided 6MMM is sold in an 'at arms length' manner.

In this regard, the Commission was concerned that 6MMM should not remain part of the MMM network. Austereo offered, and the Commission accepted, an undertaking that it would not licence the Triple M trademark to the new owner of 6MMM or any other radio station

in the Perth licence area or provide such services as sales representation, programming (except syndicated programs) and promotion to the new owner of 6MMM. Austereo must also require that the new owner of 6MMM change the call sign as a condition of the sale of 6MMM. Austereo must give the Commission seven days notice of any proposal to acquire an interest in 6MMM (after the sale) or any other radio station in Perth.

The Commission accepted Austereo's undertakings and the acquisition proceeded on 1 September 1997.

Foxtel/Australis Media — pay TV. This proposed merger was first raised with the Commission in July 1997.

On 14 October 1997 the Commission sought a Federal Court injunction to prevent the proposed merger on the grounds that it was likely to damage competition in the local telephony and pay TV markets because it would weaken the capacity of Optus to compete. The Commission alleged that the merger would give a combined Foxtel/Australis Media a high market share, a factor of paramount importance in the pay TV industry, particularly with respect to an operator's ability to obtain and retain programming.

The parties indicated that they intended to proceed with the merger in the absence of the Commission seeking an injunction.

The Commission raised its concerns with the parties and sought undertakings that they would not take further steps to complete the merger without advance notice to the Commission. The parties would not give the undertakings requested. Accordingly, the Commission took court action.

On 17 November 1997 Australis Media announced that it had received notices from News Limited and Telstra (the Foxtel partners) of their intention to terminate the merger. On 20 November 1997 the Commission was advised that the merger was terminated.

The Court gave the Commission leave on 24 November 1997 to file a notice of discontinuance of the proceedings and ordered by consent that each party pay its own costs.

Infratil/Port of Portland — supply of port services at Portland, Victoria. This acquisition was first notified to the Commission in March 1997.

On 6 March 1996 Infratil and Ascot Investments acquired the Port of Portland from the State of Victoria, with each partner having a 50 per cent shareholding. The acquisition was examined by the Commission at the time and, subject to several undertakings, was not opposed. These undertakings were signed by both parties.

Infratil subsequently proposed to increase its holding to 100 per cent. The Commission considered that this proposal would not change control of Port of Portland. Since it did not oppose the joint venture acquisition of Port of Portland when Infratil already had a controlling interest, the Commission concluded that the proposal by Infratil to increase its holding to 100 per cent did not warrant further examination. The existing undertakings would be varied to reflect the new arrangements.

The Commission decided in July 1997 not to oppose the acquisition.

CSR Limited/Excel Pty Ltd — pre-mixed concrete in Brisbane. This proposed co-production agreement was first notified to the Commission in April 1997.

CSR's rationale for entering this particular arrangement with Excel was that it had entered a bid for a large construction contract, then discovered that it could not deliver pre-mixed concrete as efficiently as Excel's nearby plant. It began purchasing concrete from Excel for the contract, then considered that it could achieve greater efficiencies if it closed down its own plant in the same area and sourced wholly from Excel. The parties agreed on a batching rate, and an arrangement to 'swap' aggregate at other plants — Excel will supply all aggregate required for the concrete it will produce for CSR, on the condition that it acquires a reciprocal amount of aggregate from CSR at other plants.

The Commission considered that the particular arrangements between CSR and Excel at the Murrarie plant were not likely to substantially

lessen competition. The arrangement is a singular commercial agreement in a metropolitan market where there are many other competitive participants. The parties will not be coordinating their activities in any other area.

However, the Commission will closely scrutinise any further proposals between competitors in this market, to ensure that a proliferation of such 'tolling' agreements does not have the effect of market sharing or price fixing.

The Commission decided in May 1997 not to oppose the arrangements.

Avery Dennison Australia Group Holdings Pty Limited/Unistat Pty Limited — self-adhesive labels. This acquisition was first notified to the Commission in April 1997.

The acquisition did not appear to trigger the Commission's concentration thresholds. In addition, barriers to entry were low and there was a moderate amount of import competition.

The Commission decided in June 1997 not to oppose the acquisition.

Taubmans Pty Limited/Bristol Paints — paint manufacturing. This merger was first notified to the Commission in May 1997.

The Commission considered that the proposed Taubmans/Bristol merger would create a third major player in the market to compete with Dulux and Wattyl. The merged firm would be the third largest paint supplier in all States except Queensland where it would be second behind Dulux.

Dulux and Wattyl were the largest manufacturers of paint in Australia with approximately 40 per cent and 28 per cent of the market for architectural and decorative paint in Australia, respectively. Taubmans and Bristol had market shares of approximately 14 per cent and 8 per cent, respectively. Dulux and Wattyl enjoyed a competitive advantage over both Taubmans and Bristol, with a national presence and significant market shares in every State. Taubmans was relatively weak in Victoria/Tasmania and South

Australia/Northern Territory. Bristol was a significant player only in Victoria/Tasmania.

Dulux and Wattyl each had strong brand names — the former had Dulux, Berger, British Paints and Cabots and the latter had Solver, Pascol and Wattyl. The merged firm would have two strong brands, Taubmans and Bristol, with which to compete with the market leaders.

Further, Bristol's plants were somewhat older than Taubmans' plant which was one of the most efficient in Australia. Although the capital costs of constructing a paint manufacturing plant were not high, the merged firm could reduce total paint manufacturing costs by rationalising production. Bristol distributed paint from its manufacturing plants in Victoria and Queensland. Taubmans had a national distribution system delivering from a NSW manufacturing site. The parties said the merger would enhance the distribution capacities of the merged firm.

The small paint manufacturers, such as Bristol, generally follow the prices of the major paint manufacturers. The Commission expected the merged firm would have the motive to compete because it would be the smallest of the three major paint manufacturers, with the incentive to increase its market share by challenging Dulux and Wattyl.

The Commission believed the proposed merger of Taubmans and Bristol may well be pro-competitive rather than substantially lessening competition. The Commission announced in July 1997 that it would not oppose the merger.

SGS Pathology Queensland Pty Ltd/JJ Sullivan & NJ Nicolaides & Partners — pathology services to private patients in Queensland and northern NSW. This acquisition was first notified to the Commission in May 1997.

The Queensland pathology market is highly concentrated, with a CR4 (combined market share of four largest participants) of more than 90 per cent. However, SGS did not own any pathology businesses in Queensland or northern New South Wales before the acquisition.

Therefore the acquisition did not change the level of market concentration.

The Commission concluded that the acquisition was unlikely to substantially lessen competition and in May 1997 decided not to oppose it.

Radio Canberra Pty Limited/Radio station 2CA — market for advertising on commercial radio in Canberra. The Commission was first advised of this acquisition in July 1997.

Radio Canberra Pty Limited acquired radio station 2CA from the Austereo/ARN joint venture on 30 June 1997. Before the acquisition, there were four commercial radio licences in Canberra. Radio Canberra owned 2CC, the only other AM radio station. The two FM stations were owned by the Austereo/ARN joint venture. The acquisition changed ownership of radio stations in the hands of the joint venture and Radio Canberra respectively from 3:1 to 2:2. The Commission considered it necessary to compare the competitive effect of this outcome with the likely effect on competition if 2CA had been acquired by a third party.

The Commission concluded that it was unlikely that these two outcomes would differ greatly in their effects, given the relatively weak position of AM radio. It considered that the acquisition might even provide greater competition in the market, because common ownership of the two AM stations would provide them with an incentive to alter their programming to maximise their joint audience. To the extent that this drew listeners away from FM, it would encourage competition with the FM stations. Similarly, the Commission considered that the joint venture's recently announced intention to alter the programming of the two FM stations might bring about greater competition with the AM stations.

Barriers to entry were absolute because there were only four commercial radio licences in Canberra. The Australian Broadcasting Authority is progressively introducing new FM licences, but it is unclear when new licences will be issued in Canberra.

With regard to the availability of substitutes, it could be argued, due to the lower prices of

Canberra television advertising compared to some other markets, that television is a substitute for radio advertising in Canberra, depending on the target audience.

The Commission considered that the acquisition was unlikely to substantially lessen competition and in July 1997 decided not to oppose it.

Media Monitors Australia Pty Ltd/certain assets of MediaTrak — broadcasting media monitoring. This acquisition was first notified to the Commission in July 1997.

The Commission's market inquiries indicated that barriers to entry to the industry were low — it cost about \$20 000 to \$50 000 to set up a new media monitoring business. Substitutes were readily available — customers could monitor the media themselves, buy tapes from the broadcaster (ABC only) or get summaries of radio news from the Internet.

The Commission considered that the acquisition was unlikely to substantially lessen competition and decided in July 1997 not to oppose it.

Funeral Services of Australia/Timmins Group — funeral director services in Sydney. This acquisition was first notified to the Commission in July 1997.

The acquisition did not appear to trigger the Commission's concentration thresholds. In addition, FSOA was not vertically integrated with crematoria and cemeteries, like some of its competitors.

The Commission considered that the acquisition was unlikely to substantially lessen competition and decided in August 1997 not to oppose it.

Panavision Inc/Samuelson Group — sale and hire of film equipment. This acquisition was first notified to the Commission in July 1997.

Before the acquisition, Panavision's only activity in Australia was as a supplier of equipment to companies in the Samuelson Group. Therefore the acquisition was a vertical merger. There did not appear to be an upstream (manufacturing) market for film equipment in Australia (major manufacturers are in the USA, Germany,

Austria, France and the UK). The acquisition did not trigger the Commission's merger concentration thresholds.

The Commission decided in September 1997 not to oppose the acquisition.

Telstra Corporation Ltd/Pacific Access Pty Ltd — business advertising services. The Commission first became aware of this acquisition in August 1997.

Telstra outsourced the management and production of its National Directory Services operations to Pacific Access. In doing so, it increased its shareholding in Pacific Access from 50 per cent to 62.5 per cent.

The Commission considered that, with regard to the business directories market, the additional benefit to advertisers shifting to the White Pages from the Yellow Pages would be very minor. Business advertising in the White Pages was likely to be a very small, and perhaps declining, segment of the total market for business directories.

Because the acquisition only involved an increase in Telstra's already substantial shareholding in Pacific Access, and because business advertising in the White Pages was likely to comprise a very small share of total business advertising, the Commission considered that the transaction was unlikely to lessen competition in any substantial market. It decided in September 1997 to take no action in regard to the matter.

Tyco International Pty Ltd/Rondo Building Services Pty Ltd — metal door frames. This acquisition was first brought to the Commission's attention in August 1997.

Rondo is a 50/50 joint venture between CSR Limited and Boral Limited. Tyco is the market leader in the production and supply of metal door frames.

Other Australian metal door frame manufacturers possessed significant excess capacity which ensured they could readily respond to any price increase by the merged firm. In addition, barriers to entry appeared to be low. At least in relation to commercial door

frames, it appeared that there were many metal manufacturers with equipment that could be readily adapted to manufacture metal door frames.

The Commission considered that the proposed transaction was unlikely to substantially lessen competition and decided in September 1997 not to oppose it.

Betatene Limited/certain assets of Western Biotechnology Limited —

beta-carotene. This proposed acquisition was first notified to the Commission in September 1997.

Betatene and Western Biotechnology both cultivate and harvest *Dunaliella Salina* algae, from which they extract and process beta-carotene for distribution to manufacturers of food colouring and dietary supplements. About 87 per cent of beta-carotene supplied in Australia is imported, mainly from large international companies.

Because of the strength of imports, the Commission decided in September 1997 that the acquisition was unlikely to substantially lessen competition.

First Provincial Building Society Limited/Sunstate Credit Union Limited/Northern Building Society Limited —

retail financial services in Queensland. This proposed merger was first notified to the Commission in September 1997.

The Commission examined the proposed merger in the context of the six sub-markets within retail banking services identified during its analysis of the Westpac/Bank of Melbourne merger. These were deposits, home loans, personal loans, small business banking, credit cards and transactions accounts.

The proposed merger did not trigger the Commission's concentration thresholds. In September 1997 the Commission decided that the merger was unlikely to substantially lessen competition in any retail banking market and that it would not oppose the merger.

DMG Radio Investments Pty Limited/Regional Broadcasters Australia Pty Limited —

advertising on commercial radio in various country areas. This acquisition was first brought to the Commission's attention in September 1997.

The Commission considered that the acquisition would not result in any change in concentration in any of the markets because none of the radio stations to be acquired by DMG were in, or overlapped with, the licence areas of the stations they held at the time. In the Commission's view, the acquisition was unlikely to substantially lessen competition in any of the markets.

The Commission decided in September 1997 not to oppose the acquisition.

Brambles Australia Limited/Cockburn Corporation Limited —

general equipment hire in WA and NT. This proposed acquisition was first notified to the Commission in September 1997.

Cockburn had an equipment hire operation in Western Australia and the Northern Territory. Brambles' equipment business, Wreckair, operated Australia-wide.

The Commission considered that a merged Wreckair/Cockburn would face competition from Coates and, to some degree, from specialist operators for each type of product it offered for hire. Further, barriers to entering the markets appeared to be low. In particular, there appeared to be a number of potential sources of entry to the WA and NT markets, namely equipment hire firms operating on the east coast of Australia and equipment manufacturers that might offer their equipment for hire. The Commission considered that the threat of potential competition would constrain the merged firm.

The Commission concluded that the proposed acquisition was unlikely to substantially lessen competition and decided in October 1997 not to oppose it.

US Filter Corporation/Memtec — waste and waste water treatment, microfiltration. This proposed acquisition was first raised with the Commission in September 1997.

The Commission considered that there was a sufficient threat of potential entry in the areas in which the parties competed to inhibit the exercise of market power by the merged firm. Barriers to entry to the industry appeared to be moderate.

The Commission considered that the proposed acquisition was unlikely to substantially lessen competition and decided in October 1997 not to intervene in the matter.

Carlton & United Breweries/Boags Brewery — bulk and packaged beer. This proposed distribution arrangement was first notified to the Commission in September 1997.

Under the arrangements the parties proposed to terminate their pre-existing distribution agreement, where Boags distributed Cascade for CUB in Tasmania, and instead to execute a distribution agreement where CUB would distribute Boags on the mainland.

The proposed new settlement agreement did not appear to pose any competition concerns in the mainland States. In addition, the Commission considered that the termination of the existing Cascade distribution agreement between CUB and Boags might enhance competition between Cascade (now owned by CUB) and Boags in Tasmania.

The Commission decided in October 1997 not to oppose the proposed supply arrangements.

Bristile Holdings Limited/Concrete tile assets of Pioneer Building Products (WA) Pty Limited — manufacture, supply and fixing of clay and concrete roof tiles in Western Australia. This was an authorisation application, first lodged with the Commission in September 1997.

The Commission considered that the acquisition would increase the level of concentration and size of Bristile's share in the market, which would significantly enhance Bristile's ability to exercise unilateral market power or coordinate

actions with the few remaining firms in the market.

Imports were low and were unlikely to be a significant constraint on the pricing policies of the local manufacturers. In addition, the barriers to entry, in particular the substantial excess capacity of the incumbent firms, would make new entry to the industry unlikely.

The Commission had concerns that, following the acquisition, Bristile may be able to exert a considerable degree of control over both clay and concrete tile prices. It was also concerned that Bristile would derive economies of scope which would allow it to force its competitors (BGC and Monier) from the market by lowering concrete tile prices for a period supported by its profits from clay tiles.

The Commission concluded that if the merger were to proceed, Bristile's ability to exercise market power to the detriment of competition would be increased. Further, the competitive detriment that would arise as a consequence of the acquisition would be substantially greater than if Pioneer chose to exit the market and liquidate its business.

On 31 October 1997 the Commission decided to deny the authorisation.

Infratil Australia Limited/Partial shareholding in Sea-Land Australia Limited — container handling. This partial acquisition was first raised with the Commission in October 1997.

Infratil proposed to acquire 15 per cent of Sea-Land Australia's shares. Infratil is an investment company which owns the Port of Portland, Victoria. Sea-Land operates a container terminal at the Port of Adelaide.

The Commission formed the view that there did not appear to be significant potential for the Port of Portland to be used for container handling.

It therefore considered it unlikely that Infratil's acquisition of 15 per cent of Sea-Land Australia would have any competition implications for container handling. It informed the parties in

November 1997 that it would take no action in relation to the proposed acquisition.

John & Pamela Usher (trading as Invictabus)/TigerLine coach operation business of Hobart Coaches Pty Ltd — operation of passenger coach service. This acquisition was first raised with the Commission in October 1997.

The Usher family operates several bus services in Victoria and the Tasmanian Wilderness Travel minibus service and charter operation.

Like all passenger coach services in Tasmania, the main passenger route between Hobart, Launceston and Burnie is regulated by the State Department of Transport. Any increases in fares as a result of the acquisition would be likely to be restricted as a result of these regulations. Barriers to entry in the charter and tour sector are relatively low. There are a significant number of interstate operators that bring coaches to Tasmania regularly.

The Commission decided that the acquisitions were unlikely to substantially lessen competition and that it would take no action in relation to them. The Commission advised the parties in November 1997 that it would take no action in relation to the acquisition.

Toll Holdings Limited/Certain freight businesses of TNT Australia — container sea freight, road freight, refrigerated freight. This acquisition was first raised with the Commission in October 1997.

This acquisition did not trigger the Commission's concentration thresholds. Barriers to entry to relevant markets are low and there is a large number of participants.

The Commission announced in November 1997 that it would take no action in relation to the acquisition.

Professional Services Australia Pty Ltd/Medical Indemnity Protection Society Pty Ltd — occurrence based cover, professional indemnity insurance. This acquisition was first raised with the Commission in October 1997.

The barriers to entry to the provision of occurrence based cover were considered to be low. The licensing requirements of the Insurance Act do not apply to MDOs offering occurrence based cover, nor do the prudential requirements of the ISC.

Whilst the barriers to entry to the provision of general professional indemnity insurance are higher, MDOs constitute a relatively insignificant part of the broader insurance market and the Commission decided that the acquisition was unlikely to substantially lessen competition.

The Commission decided in November 1997 not to take any action in relation to the proposed acquisition.

Motorola International Development Corporation/Partial acquisition of ERG Limited — smart cards. ERG proposed to issue convertible notes and shares (equivalent to 20 per cent of ERG's issued capital) to MIDC. This matter was brought to the Commission's attention in November 1997.

There were no significant competition concerns with this proposal. Competition within this industry appears to be centred on research and development and is conducted by, in general, large, high technology, multi-national firms. Significantly, import barriers appear to be minimal.

The Commission decided in December 1997 that the acquisition was unlikely to substantially lessen competition and to take no action with regard to the matter.

Montell Australia Pty Ltd/Polypropylene business of ICI Operations Australia Pty Ltd — polypropylene resin. This acquisition was first raised with the Commission on a confidential basis in June 1997.

Under the proposed transaction, ICI would exit the polypropylene market altogether, concentrating on the production of its other plastics products LDPE, LLDPE and PVC. While imports of polypropylene amount to less than 9 per cent of the domestic market, exports account for one third of production. In addition, there is a likelihood that, for most

applications, imported polypropylene may become increasingly viable. The parties claimed that the market share of imports was small only because domestic manufacturers met import prices pro-actively.

The Commission decided in December 1997 to take no action in relation to the proposed transaction.

Radio Ballarat Pty Limited/New commercial broadcast radio licence — commercial broadcast radio in Ballarat licence area. The Commission first learned of this proposed acquisition in November 1997.

Radio Ballarat Pty Limited was the successful bidder for a new FM commercial broadcast radio licence in Ballarat. As Radio Ballarat already held two commercial broadcast radio licences in Ballarat it was required to divest one of its existing licences under the *Broadcasting Services Act 1992*.

In a number of previous cases the Commission has accepted s. 87B undertakings in respect of divestiture requirements from radio broadcasters. The Commission considered that it would not be appropriate to seek s. 87B undertakings in this case because, based on information supplied by the Australian Broadcasting Authority, it seemed unlikely that the acquisition would raise significant competition issues.

The Commission decided in December 1997 to take no action in relation to the proposed acquisition.

British Aerospace Australia Limited/Australian Aviation College business of Hawker de Havilland — pilot training services. This matter was first raised with the Commission in November 1997.

The Commission's market inquiries indicated that the merged entity would face competition from other flying schools in Australia. There are numerous flying schools which train students for the general aviation industry. Australian airlines recruit their pilots from the general aviation industry as well as their own cadets. The acquisition did not trigger the

concentration thresholds in the Commission's *Merger Guidelines*.

The Commission decided in December 1997 not to oppose the proposed acquisition.

MLC Limited/Sealcorp Holdings Limited — master trusts. This proposed acquisition was raised with the Commission in November 1997.

The acquisition was a case of vertical integration by MLC, because it operated in both the wholesale and retail funds management markets (the master trust market sits between these) before the acquisition. The Commission's concentration thresholds were not crossed in any relevant market.

Barriers to entry are low and the market has a number of dynamic characteristics including the introduction of retirement savings accounts and choice of super funds to be phased in between 1 July 1998 and 1 July 2000. The Commission's market inquiries indicated that these changes were likely to increase competition in master trusts. Inquiries also indicated that no other market participants appeared to be concerned with the proposed acquisition.

The Commission decided in December 1997 that the acquisition was unlikely to substantially lessen competition and advised that it would take no action in relation to it.

Community Newspaper Group Limited/Hills Gazette (WA) Pty Ltd — provision of advertising services in free suburban newspapers in the Hills area of Perth. This proposed acquisition was first raised with the Commission in November 1997.

The Commission considered that the proposed acquisition would lead to a substantial increase in concentration in the relevant market and would cause the removal of a vigorous competitor from the market.

However, market inquiries indicated that barriers to entry into the suburban newspaper industry were relatively low. Advances in technology, particularly in the area of desk-top publishing systems, appeared to have substantially lowered the cost of setting up a suburban newspaper in recent years. The publishing industry generally has been

characterised by a relatively high level of innovation and technological development.

The Commission decided in December 1997 to take no action in relation to the acquisition.

Nuplex Industries Limited/Australian Chemical Holdings Ltd — alkyd resins, aqueous dispersions. This proposed acquisition was first raised with the Commission in December 1997.

The parties produced a wide range of chemicals. The only overlap with Nuplex's activities lay in the markets for alkyd resins and aqueous dispersions, used mainly in the manufacture of paint.

Typically, paint producers have a significant degree of countervailing power. Some are vertically integrated and already produce some of their own alkyds and aqueous dispersions requirements themselves. The strength of the customers of the merged entity is likely to act as a constraint on its behaviour.

The Commission advised the parties in January 1998 that it would take no action in relation to the proposed acquisition but that it would continue to monitor the industry.

Maxi Cube Limited/Freighters Australia Pty Ltd — semi-trailer manufacture. This proposed acquisition was first raised with the Commission in December 1997.

Maxi-Cube specialised in solid-walled trailers, particularly refrigerated products. Its main rival in this area was FTE. Freighters specialised in curtain-sided trailers, and its main rival was Krueger. The parties submitted that Maxi-Cube and Freighters operated in different markets for the purposes of the Trade Practices Act. The Commission agreed that there were likely to be separate markets for solid wall and curtain-sided trailers.

The information available appeared to indicate that semi-trailer manufacturers faced competition from 'back yard operators' who manufactured relatively simple products and competed on the basis of price. Entry into the more complex products sector appeared to be more difficult.

Market inquiries generally indicated that the merger did not raise concerns because there

was a wide range of other manufacturers of semi-trailers.

The Commission announced in January 1998 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 an accumulated list of s. 87B matters placed on the public register in 1997, and a list of s. 87B matters placed on the 1998 register so far. (The register was first listed in the Trade Practices Commission *Bulletin* 74, February 1994.)

1997

Cue Designs Pty Ltd, s. 53. Misleading representations regarding refunds.

13.1.97 undertaking to withdraw 'Returns Policy' signs from all its stores, issue a returns and refunds policy to its staff, and institute internal training and compliance programs.

Julian Mark Wolfhagen (trading as Tasmania Honey Company), ss 52, 53(eb). Misleading or deceptive conduct, false or misleading representations regarding the origin of a shipment of honey sourced from South Australia that was labelled 'Choice Tasmanian Meadow Honey'.

21.1.97 undertaking not to sell any honey described in any way as having its origin in Tasmania unless that honey has its sole origin in Tasmania.

Network Ten Limited, ss 52, 53A. False or misleading representations in relation to promotion of land sales at Maryland, Queensland.

23.1.97 undertaking to maintain a compliance program which includes the review of all advertorial scripts before broadcast, editorial control over the content of all advertorials, and a complaints handling system.

Johnson & Johnson Pacific Pty Ltd, s. 52. Misleading conduct in relation to a cash back offer on tampons.

10.2.97 undertaking to honour all claims for the cash back; place corrective advertising in State and Territory newspapers; write to all claimants; identify claimants to the Commission; and review its trade practices compliance program.

Optus Networks Pty Ltd and Optus Mobile Pty Ltd, ss 52, 53(g), 53C.

Misleading advertising in relation to its long distance call rates, its Freestyle Weekend package, its mobile phone group plans, and its mobile phone handset packages.

10.2.97 undertaking to refrain from repeating the advertisements; review all proposed Optus bus and billboard advertisements; write to affected members of mobile phone group plans setting out Optus' method of calculation of call charges and offering refunds; specify minimum total costs and conditions in any future promotion of mobile phone handset packages; support the distribution and use of guidelines for the telecommunications industry; implement a trade practices compliance program; and review its internal procedures for the production of promotional material.

Telstra Corporation Limited, s. 46. Misuse of market power through refusal to supply data on reasonable terms.

18.2.97 undertaking to provide access to its customer data for directory purposes, at a maximum specified contract price, for a contract period of five years unless the access seeker requests a shorter term. Undertaking in effect for two years.

Radio Cabs of Wollongong Co-operative Society, s. 45. Anti-competitive agreement to ban taxi drivers from using mobile phones in their cabs.

26.2.97 undertaking to notify all owners and drivers that no action would be taken against them for carrying or using a mobile phone in their cabs; ensure that no driver who carries or uses a mobile phone in his/her cab is denied access to the radio network of Radio Cabs of Wollongong by reason of having carried or used a mobile phone; hold an Extraordinary General Meeting to rescind the rule; and introduce a trade practices compliance program.

Suntrak Enterprises Pty Ltd, ss 53(a), 65C. False or misleading representations about sunglasses.

10.3.97 undertaking to cease the supply or sale of sunglasses which do not meet the standard; tell retailers to stop selling the sunglasses; institute a trade practices compliance program and a complaints handling system.

Kresta Blinds Limited, ss 52, 53(a), 53(e). False or misleading representations about price reductions of its vertical blinds.

17.3.97 undertaking to refrain from advertising price reductions on its goods or services where the original price has been increased in the three months before the promotion; write to affected customers advising them that they may be entitled to a refund; continue to develop its corporate compliance program.

Apollo Optical Pty Ltd, ss 53(a), 65C. False or misleading representations about sunglasses.

18.3.97 undertaking to cease the supply or sale of sunglasses which do not meet the standard; tell retailers to stop selling the sunglasses; continue to maintain its trade practices compliance program and a complaints handling system.

Unki Pty Ltd, ss 53(a), 65C. False or misleading representations about sunglasses.

18.3.97 undertaking to cease the supply or sale of sunglasses which do not meet the standard; tell retailers to stop selling the sunglasses; advertise refunds for their sunglasses that do not meet the standard; institute a trade practices compliance program and a complaints handling system.

STA Travel Pty Ltd, s. 47(6). Attempt to induce NUS Services Pty Ltd to engage in third line forcing in respect of travel insurance.

24.3.97 undertaking to refrain from offering travel or other services on condition that a particular travel insurance is also acquired; institute a corporate compliance program.

GWA International Limited, s. 50. Proposed acquisition of the Fowler Bathroom Products Division of James Hardie Industries Ltd likely to substantially lessen competition in the relevant market.

25.3.97 undertaking to withdraw two of its representatives from the technical committees of the Joint Australian New Zealand Building Standards Policy Board which draft plumbing fixture standards.

Tempel Pty Ltd, ss 53(a), 65C. False or misleading representations about sunglasses.

25.3.97 undertaking to cease the supply or sale of sunglasses which do not meet the standard; institute a trade practices compliance program and a complaints handling system.

Gibson Importing Co. (Aust) Pty Ltd, ss 53(a), 65C. False or misleading representations about sunglasses.

25.3.97 undertaking to cease the supply or sale of sunglasses which do not meet the standard; tell retailers to stop selling the sunglasses; advertise refunds for their sunglasses that do not meet the standard; institute a trade practices compliance program and a complaints handling system; appoint a senior executive to take overall responsibility for the company's trade practices compliance.

Penshire Pty Ltd, ss 53(a), 65C. False or misleading representations about sunglasses.

25.3.97 undertaking to cease the supply or sale of sunglasses which do not meet the standard; tell retailers to stop selling the sunglasses; advertise refunds for their sunglasses that do not meet the standard; institute a trade practices compliance program and a complaints handling system; appoint a senior executive to take overall responsibility for the company's trade practices compliance.

Roadshow Entertainment Pty Ltd, s. 52. Misleading or deceptive conduct in relation to a cash back offer, promoted before Christmas 1996, on Atmosfear 'The Harbingers' video board game, booster tapes, card game and CD-ROM.

26.3.97 undertaking to remove all cash back offer stickers affixed to the products; honour all claims in relation to the cash back promotion for single purchases; publish corrective advertising in major Australian newspapers; implement a trade practices compliance program.

Discount Sunglasses & Accessories Pty Ltd, ss 53(a), 65C. False or misleading representations about sunglasses.

16.4.97 undertaking to cease the supply or sale of sunglasses which do not meet the standard; tell retailers to stop selling the sunglasses; institute a trade practices compliance program and a complaints handling system.

Nobletime Pty Ltd, ss 53(a), 65C. False or misleading representations about sunglasses.

28.4.97 undertaking to cease the supply or sale of sunglasses which do not meet the standard; tell retailers to stop selling the sunglasses; place notices in its stores advertising refunds for their sunglasses that do not meet the standard; institute a trade practices compliance program and a complaints handling system.

Cameron's Management Pty Ltd, ss 45A, 45(2)(a)(ii), 45(2)(b)(ii). Price fixing agreement in relation to an agency service fee for the supply of models.

29.4.97 undertaking to implement a trade practices compliance program.

Optus Vision Pty Limited, s. 52. Misleading or deceptive conduct in relation to a local call campaign.

7.5.97 undertaking to disseminate copies of the Fair Call Guidelines to relevant staff; produce a trade practices 'infomercial' and broadcast it on Optus Vision pay TV channels; ensure that its future advertising about local calls does not breach the Trade Practices Act.

Ridgeback Holdings Limited, ss 52, 55.

False or misleading representations to advertisers about the circulation, distribution and/or production figures of its publications.

7.5.97 undertaking to cease the conduct; ensure that its information about circulation, distribution and/or production figures is accurate; become a member of the Circulations Audit Board in respect of the relevant publications; implement a trade practices compliance program.

Blaze Sunglasses Pty Ltd, ss 53(a), 65C.

False and misleading representations about sunglasses.

10.5.97 undertaking to cease the supply or sale of sunglasses which do not meet the standard; notify retailers to stop selling the sunglasses; advertise refunds for sunglasses that do not meet the standard; institute a trade practices compliance program and a complaints handling system; appoint a senior executive to take overall responsibility for the company's trade practices compliance.

Harvey Norman Holdings Limited, ss 53C,

47(6). False or misleading representations and third line forcing in a promotion of modems.

21.5.97 undertaking to refrain from the conduct; prominently disclose terms and conditions in its advertising of modems, and ensure that all persons associated with the sale of modems on its behalf are aware of these obligations; publish corrective advertising.

Tequila Investments Pty Ltd (trading as

Les Lees), ss 52, 53(g). False and misleading representations in relation to customers' rights of return and refunds.

18.5.97 undertaking to not misrepresent consumers' statutory warranty rights; place corrective advertising; provide information about the Trade Practices Act to staff.

Darwin Radio Taxi Co-operative Limited,

ss 45, 46, 47. Anti-competitive conduct in the taxi services market.

26.5.97 undertaking to implement a trade practices compliance program, including the

appointment of a compliance officer, the distribution of an information manual, and the provision of seminars to directors and members; publish apology notices in *Northern Territory News*.

Media Monitors (WA) Pty Limited, s. 50.

Proposed acquisition of the businesses of News Research and Monitoring Perth Media was likely to substantially lessen competition in the relevant markets.

30.5.97 undertaking to provide monitoring services in respect of the WA press and electronic media to other media monitoring businesses in Australia on reasonable commercial terms.

Meadow Lea Foods Limited, ss 52, 53.

False or misleading representations about the health benefits of its Gold'n Canola products.

9.6.97 undertaking to cease the representations; not make any representations about the health benefits of its Gold'n Canola products without substantiation and qualification; supply to relevant staff a set of guidelines to follow when answering consumer inquiries; send corrective letters to consumers.

Destiny Telecomm International Inc.,

ss 57, 61. Referral and pyramid selling in relation to promotion of a phonecard scheme.

4.6.97, 2.7.97 and 15.7.97 undertaking by 11 individual respondents to refrain from promoting this scheme or similar schemes; and send all participants of the scheme a newsletter explaining the pyramid selling provisions of the Trade Practices Act.

Fosseys, s. 45A. Price fixing arrangement in relation to sale of soft drinks at retail outlet in Fosseys store.

19.6.97 undertaking to develop and enhance procedures to resolve disputes with suppliers, including small businesses.

Foxtel Management Pty Limited, s. 52.

Misleading representations in relation to a special offer for pay TV services.

25.6.97 undertaking to appoint a member of in-house counsel to review all promotions and advertisements for two years; publish corrective advertising and broadcast an educational advertisement on Foxtel channels; implement a trade practices compliance program; and adopt a complaints handling system.

Logic Plus Pty Ltd (trading as Netplus Micro Computers), ss 52, 53(e). Misleading representations in relation to an offer of a 'free' digital mobile phone.

25.6.97 undertaking to cease distributing the pamphlet; refrain from offering 'free' goods or services which are conditional upon the purchase of additional goods or services and where the conditions are not adequately disclosed; implement a trade practices compliance program; and publish corrective advertising.

Petersville Ltd and Peters Foods Australia Pty Ltd (trading as Nestlé Dairy Products), ss 52, 53(a), 55. Misleading representations in relation to the sugar content of its Vitari products.

26.6.97 undertaking to remove the representations from packaging of Vitari not yet sold by the company; request distributors to withdraw any Vitari bearing the misleading labelling; publish corrective advertising; send letters to diabetic and community organisations advising them of the actual level of sugars contained in the product and, where requested, publish a notice in their publications; implement a trade practices compliance program.

Australian Radio Network Pty Limited and Austereo Limited, s. 50. Proposed joint venture involving acquisition of Canberra commercial radio stations.

30.6.97 undertaking to sell radio station 2CA to a company not related to either Austereo or ARN within six months of the acquisition; and, pending the sale of 2CA, to manage the radio station in a way that will maintain its commercial viability.

Tom Wolkenberg Imports Pty Ltd (trading as Sunchaser Sunglasses), s. 53(a).

Misleading representations in relation to the supply of sunglasses.

4.7.97 undertaking to cease the supply of sunglasses which do not comply with the Standard; ask retailers to withdraw the sunglasses from sale; institute a trade practices compliance program; and institute a complaints handling system.

Infratil Australia Limited, s. 50. In relation to acquisition of shares in Port of Portland.

11.7.97 revised undertaking identical to original undertakings dated 22.5.96, but updated to include a reference to Infratil's acquisition of Ascot Investments' 50 per cent shareholding in Port of Portland.

Westpac Banking Corporation and Bank of Melbourne, s. 50. Proposed merger.

25.7.97 undertaking to maintain for three years various existing benefits for BML customers, including extended trading hours and certain fee exemptions for BML personal current account holders; and make access available on reasonable commercial terms to small and new competitors in Victoria, including interstate based regional banks, building societies and credit unions, so long as they carry on business in Victoria.

Mackay Refined Sugars Pty Limited and CSR Limited, s. 50. Proposed joint venture for the purchasing, refining, storage, distribution and sale of refined sugar in Australia and for export.

30.7.97 undertaking to give access to its import facilities on reasonable commercial terms to sugar importers to Western Australia; follow a specific dispute resolution procedure and notify the Commission should an access dispute arise.

Northaut Auto Hire Pty Ltd, ss 45(2)(a) and 45(2)(b). Price fixing arrangements in relation to car rental.

27.6.97 undertaking to compensate affected customers; implement a trade practices compliance program.

AAPT Limited, ss 52, 53(e), 53(g), 55A. Misleading representations in relation to its Smartchat rates.

27.7.97 undertaking to issue corrective advertising; ensure that its staff inform customers of important Smartchat charging features; develop its existing compliance program.

Global Dance Foundation Incorporated, s. 52. Misleading and deceptive conduct in relation to representations about the World Dance Congress.

20.8.97 undertaking to send corrective letters to organisations to which promotional material about the Congress had been sent; place a copy of the letter on its Internet website; implement a trade practices compliance program.

TNT Australia Pty Ltd, s. 50. Proposed management of the Port of Hastings, Victoria.

26.8.97 undertaking to provide access to land transport operators and freight forwarding operators on reasonable commercial terms.

Icenet Pty Ltd, s. 52. Misrepresentations in relation to the provision of Internet access services.

27.8.97 undertaking to offer to terminate the contracts of affected customers; send corrective letters to affected customers and display corrective information on its web page; publish a corrective advertisement in a newspaper; implement a trade practices compliance program.

Austereo Pty Ltd, s. 50. Proposed acquisition of one of more subsidiary radio stations in Perth and then sell Triple M.

28.8.97 undertaking to sell Triple M within six months to an independent third party if the acquisitions take place. Austereo also undertook not to license the station's new owner to use the Triple M call sign, nor to license the owner of any other radio station in Perth to use that call sign.

AU Agency Pty Ltd (trading as Country Fresh), s. 53(eb). Misleading representations in relation to its orange juice.

10.9.97 undertaking to remove incorrect labels; and not to claim that its products are made in Australia unless the concentrate is made exclusively in Australia.

Riviana Foods Pty Limited, ss 52, 53(eb). Misleading representations in relation to origin of rice.

22.9.97 undertaking to issue corrective advertising; review its label designs; and implement a trade practices compliance program.

Garden City Cabs Co-operative Ltd, ss 45, 46. Misuse of market power in relation to its 'five-day' rule.

22.9.97 undertaking to implement a trade practices compliance program.

Australian Gas Light Company, s. 46. Misuse of market power in relation to its proposal to apply a tariff to gas users who were on interim supply arrangements.

24.10.97 undertaking to extend the interim pricing arrangements to these customers until 1 December 1997.

MNB Variety Imports Pty Ltd, s. 65C. Supply of swim aids and sunglasses which did not comply with the relevant mandatory consumer product safety standards.

31.10.97 undertaking not to supply products which do not meet the prescribed consumer product safety and product information standards; to implement a trade practices compliance program; and to implement a staff education program.

The Reject Shop (Aust) Pty Ltd, s. 65D. Supply of cosmetic products which did not comply with the mandatory product information standard for cosmetic products.

11.11.97 undertaking not to supply cosmetic products which do not comply with the prescribed product information standard;

provide to consumers an ingredient list of those products sold within three months of acceptance of the undertaking which did not comply with the standard, if the list is available, and where there is no list available, provide a refund to consumers who purchased those products; implement a trade practices compliance program.

City West Water Limited, ss 52, 55. Supply of blue-green water causing corrosion and potential health effects.

2.12.97 undertaking to write to affected customers, alerting them to signs of blue-green water, its potential health effects and what steps can be taken to reduce copper levels to safe levels; deliver annually to all customers a water quality brochure describing types of water quality problems and steps to mitigate the problem; implement a systematic and random testing program; advise the Office of the Regulator-General and the Commission of the findings of the CSIRO study and, should CWW be the party found responsible, implement the solution suggested by the study.

Toys "R" Us (Australia) Pty Ltd, ss 52, 53(g). False or misleading representations about consumers' statutory rights to refunds for video games and computer software.

19.12.97 undertaking to implement a trade practices compliance program, including the requirement to check all product labelling and information before a product is displayed in the store to ensure it complies with the Trade Practices Act.

1998

Franklin Mint Pty Limited, s 52. Misleading advertising in relation to a promotion of limited edition collector plates.

14.1.98 undertaking to offer refunds to consumers if a survey identifies them as being affected consumers; alter the wording of its limited edition advertisements; implement a trade practices compliance program.

DirectLink Communications Pty Limited, ss 57, 61(1). Referral and pyramid selling

schemes in relation to long distance telecommunications services.

21.1.98 undertaking to stop offering recruitment bonuses to consumers before they become dealers; offer refunds to affected consumers; implement a trade practices compliance program.

Seven Network Limited, ss 45, 47. Exclusive agreement in relation to program supply.

2.2.98 undertaking to supply programs to a new licensee for the regional WA broadcast area.

Golden West Network Pty Limited, ss 45, 47. Exclusive agreement in relation to program supply.

2.2.98 undertaking to not interfere with the undertaking by Seven Network to supply programs to a new licensee for the regional WA broadcast area; to not object to Nine supplying programs to the new licensee if Golden West does not intend to broadcast those programs itself.

Anythoughts Pty Ltd (formerly known as Votel Pty Ltd), ss 53. Misleading television advertising in relation to a mobile phone promotion.

3.2.98 undertaking to broadcast corrective notices; implement a trade practices compliance program.

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

Under s. 51(1) of the Trade Practices Act, statutory exception 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. Exceptions made by regulation are limited to two years. As part of the competition policy reform program, the

Commission is required to provide a cumulative list of such legislation in its Annual Report.

The *ACCC Journal* will progressively update this list throughout the year.

New South Wales

Sydney Organising Committee for the Olympic Games Amendment Act 1996

Competition Policy Reform (New South Wales) Regulation 1996

Dairy Industry Act 1979 — specific authorisation

Totalizator Legislation Amendment Act 1997 No. 151

Queensland

Competition Policy Reform (Queensland — Exemptions) Regulation 1996

Forestry Act 1959 (s. 46 — specific authorisation)

Water Resources Act 1989 (s. 231 — specific authorisation)

Competition Policy Reform (Queensland — Dairy Produce Exemptions) Regulations 1997 (as amended)

Tasmania

Electricity Supply Industry Act 1995

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

Victoria

Electricity Industry (Amendment) Act 1996

Water Industry Regulations 1995

Competition Policy (Gas Supply Contract Exemption) Regulations 1996

Western Australia

North West Gas Development (Woodside) Agreement Amendment Act 1996