
Appendix 2 Public information

This appendix contains:

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

Speeches

Commission Chairman Professor Allan Fels

The dominance inquiry and the role of the ACCC. NSW Farmers' Federation — 24 February 1999

The ACCC and small business. Small Business Coalition — 25 February 1999

Effect of international mergers and takeovers on competition in Australia. Current Affairs Study Centre — 11 March 1999

Easing your merger through the Trade Practices Act. Australian Institute of Company Directors — 18 March 1999

Commission Deputy Chairman Allan Asher

The ACCC's Statement of Regulatory Intent for National Electricity Market transmission. AIC Conferences — 15 February 1999

The Emperor's new clothes: customer service in the computer industry. SOCAP Summit on Computers, IT and Customer Service — 30 March 1999

Commissioner Rod Shogren

The role of the regulator in the wholesale services market. IRR Conferences — 15 February 1999

Telecommunications — is the ACCC doing enough? Allen Allen & Hemsley Twilight Seminars — 30 March 1999

For copies of speeches please contact Michelle Coco on ph: (02) 6243 1133.

Media releases

9/99 Whitegoods proposal will be examined — 5.2.99

10/99 ACCC defends consumers over defective electricity supplies — 8.2.99

11/99 Newspaper industry consultations extended — 9.2.99

12/99 Stronger Westco Jeans compliance program — 16.2.99

13/99 Bunnings to correct misleading country of origin claims — 18.2.99

14/99 Computer buyers' complaints prompt summit — 19.2.99

15/99 Telecommunications access dispute — 22.2.99

16/99 ACCC rejects Telstra's undertakings for mobile services — 22.2.99

17/99 Visy/Stone acquisition 'likely breach' of merger law — 22.2.99

18/99 ACCC cuts Port of Melbourne towage charge increase — 26.2.99

19/99 ACIF code clarifies benchmark for phone advertising — 26.2.99

20/99 ACCC alleges Pauls milk advertising misleading — 2.3.99

21/99 ACCC acts to protect WA small business — unconscionable conduct claims — 2.3.99

22/99 Federal Court stops Pauls 'local milk' claims in NT — 10.3.99

- 23/99 Melbourne airport/Delta car rentals: draft determination — 10.3.99
- 24/99 Email acquisition of Southcorp's whitegoods not opposed — 11.3.99
- 25/99 ACCC accepts acquisition by SCIA subject to conditions — 12.3.99
- 26/99 Nissan to compensate owners of 1998 diesel patrol — 16.3.99
- 27/99 Car rental co to change advertising — 25.3.99
- 28/99 Telecommunications access disputes — 26.3.99
- 29/99 Adelaide Brighton Limited restructuring — 30.3.99
- 30/99 Telecommunications charges in Australia — 31.3.99

Media releases are available from the Director, Public Relations, 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 pre-decision and pre-determination 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 sub-section 51(1) exceptions from the Trade Practices Act are published progressively in the Journal.

Mergers examined under s. 50

The following is a list of mergers examined by the Commission during the reporting period. The list of non-confidential mergers examined by the Commission is periodically updated on a public register held at the Commission.

MCI WorldCom/UUNet Holdings Australia Pty Ltd — market for Internet service providers.

On 17 December 1998 the Commission was notified that MCI WorldCom, through its ultimate subsidiary UUNet Holdings, proposed to acquire all of the issued shares in OzEmail Limited.

On 2 January 1999 the Commission decided that, because MCI has no significant presence in the Internet service provider market in Australia, the proposed acquisition would not raise any competition concerns.

Caterair Australasia Pty Ltd/Ansett Flight Catering Kitchens — national market for the supply of flight catering services or a city-based market for the supply of flight catering services.

On 13 November 1998 the Commission was notified that Caterair was proposing to bid for Ansett Flight Catering Kitchens. The Commission decided on 12 January 1999 that, due to apparently low barriers to entry and two large domestic competitors (Qantas and Cathay Pacific), the merged firm was unlikely to be able to increase prices or profits post acquisition.

AGL Pipelines Limited/Western Mining Corporation Ltd, Goldfields Gas

Transmission — supply of gas transmission services to the Goldfields region of Western Australia; secondary market — supply of electricity generation services in south-west region.

On 19 August 1998 the Commission was notified that Western Mining was selling its share of Goldfields Gas Pipeline, currently operated by Goldfields Gas Transmission. The Commission considered the matter on a confidential basis on 24 September 1998 and advised the parties that, subject to making market inquiries when the matter became public, it would not take any action in relation to the acquisition.

On 13 January 1999, after making public inquiries, the Commission decided that it would not intervene as this proposed acquisition was unlikely to result in a substantial lessening of competition.

Marsh & McLennan Companies Inc/Sedgwick Group plc — various services in Australia, including the distribution of insurance.

On 18 September 1998 the Foreign Investment Review Board informed the Commission of this multinational acquisition. On 11 December 1998 the Commission decided that the proposed acquisition was unlikely to cross its concentration thresholds and did not oppose the acquisition.

Freight Victoria/V Line Freight Corporation — rail freight transportation services in south-east Australia.

On 1 September 1998 the Commission was informed that V Line Freight Corporation was being privatised. It subsequently liaised with the Victorian Government to identify whether any of the short-listed bidders were likely to raise competition issues.

The successful bidder was Freight Victoria, which is headed by RailAmerica Australia Pty Ltd. RailAmerica operates railroads in the USA and Chile. The Commission took the view that, as Freight Victoria would be a new entrant into the freight industry, its acquisition of V Line Freight did not raise any competition

issues and thus would not be likely to result in a substantial lessening of competition in any market.

Bundaberg Molasses/Maryborough Sugar, Isis Central Sugar Mill — distribution and marketing of molasses.

On 16 December 1998 the Commission was notified that Bundaberg Molasses intended to enter into a joint venture with Maryborough Sugar and Isis Central Sugar Mill for the joint marketing of three molasses manufacturers located in the Bundaberg district.

On 20 January 1999 the Commission decided not to oppose the proposed joint venture.

Pioneer International Limited/Hymix Australia Pty Ltd — the market for the supply of quarrying products and pre-mixed concrete in central Victoria and in various markets along the east coast of Australia.

On 4 January 1999 Pioneer informed the Commission of its proposal to acquire all the shares of Hymix. On 29 January 1999 the Commission informed Pioneer that it would not intervene in this matter since the acquisition was unlikely to result in a substantial lessening of competition in any market.

The Clorox Company/First Brands Corporation — broader market for automotive appearance products or narrower market for automotive protectants.

On 27 January 1999 the Commission was advised that The Clorox Company and First Brands Corporation had entered into a merger agreement under which a direct and wholly owned subsidiary of Clorox would merge with, and into, First Brands, resulting in First Brands becoming a wholly owned subsidiary of Clorox.

The Commission decided on 29 January 1999 that, although the proposed merger was likely to cross the Commission's competition thresholds, the proposed increase in market share resulting from the merger would be minimal. Further, while the precise level of imports into the market was unknown, barriers to entry appeared low.

Smorgon Steel Pty Ltd/Australian National Industries Limited — the national markets for the manufacture and supply of steel

billet, rod feed (and associated products), deformed bar, merchant bar, grinding media and roofbolt, rockbolt.

On 7 October 1998 the Commission was notified that Smorgon was proposing to acquire ANI Limited by way of takeover offer. On 3 February 1999 the Commission decided not to oppose the proposed acquisition, subject to Smorgon making an undertaking in relation to a proposed new Australian Standard. The Commission was concerned that a proposed new Australian Standard for reinforcement bar would be likely to have the effect of keeping imported reinforcement bar out of Australia.

Royal and SunAlliance Insurance Group plc/Tyndall Australia or HIH Winterthur Ltd — national general and life insurance markets.

On 25 January 1999 the media reported that Royal and SunAlliance was proposing to buy either Tyndall or HIH. The Commission decided on 3 February 1999 that neither proposal was likely to cross its concentration thresholds and therefore decided not to oppose the proposed acquisitions.

PPG Industries Australia Pty Limited/Akzo Nobel Pty Limited — the market for the supply of packaging coatings in the national market.

On 19 January 1999 the Commission was notified that, as part of a worldwide transaction, PPG was proposing to buy Akzo Nobel's packaging coatings business. On 4 February 1999 the Commission informed the parties that it would not intervene in this matter since the acquisition was unlikely to result in a substantial lessening of competition in the relevant market.

Adsteam Marine Limited/Holyman Limited — the companies operate in two different markets — market for marine transport and market for the provision of marine support services to the Australian international shipping industry.

Commission staff observed in the press on 6 February 1999 that Adsteam Marine Limited might be considering a merger with Holyman Limited, as part of a business restructure in which Holyman was engaging. On 15 February

1999 the Commission decided not to intervene in the proposed acquisition as the companies operated in different markets.

Taubmans Pty Limited/White Knight Paints Pty Limited — national market for the manufacture and supply of architectural and decorative paint.

The Commission was notified on 16 February 1999 that Taubmans was proposing to acquire White Knight Paints. White Knight Paints had a relatively insignificant share of the national market for the manufacture and supply of architectural and decorative paint. Also, there are two substantial competitors to the merged firm, Wattyl and Dulux, in the relevant market.

Accordingly, on 17 February 1999 the Commission decided the proposed acquisition was unlikely to raise an issue under s. 50 of the Act.

Rexel SA/Metal Manufactures Limited — market for Statewide wholesale distribution of electrical products.

On 3 December 1998 the Commission received advice that Rexel SA proposed to acquire from Metal Manufacturers the assets of its MM Electrical Merchandising and Construction & Power Cables Divisions.

On 25 February 1999 the Commission opposed the merger on the basis that it would substantially lessen competition in the State markets for the wholesale distribution of electrical products, which was characterised by relatively high barriers to entry and high concentration.

Mobil Oil Australia Limited/The Shell Company of Australia Limited — refining of petroleum products.

On 15 September 1998 Mobil and Shell lodged a submission with the Commission, proposing a joint venture of their refining assets and a new company to be jointly owned by the two petroleum manufacturers.

The Commission was concerned that the proposed joint venture would increase market concentration in refining, with likely flow-on effects to downstream marketing. It was also concerned that imports, at 3 per cent of the market only, would not be a significant

constraint on the reduced competition. On 23 October 1998 it advised the parties of its preliminary view that the proposed joint venture was likely to result in a substantial lessening of competition.

Shell and Mobil began discussions with the Commission about undertakings to overcome its concerns. Although the Commission did not reach a final position on the proposed undertakings, it was uncertain that the undertakings could resolve its competition concerns.

On 21 January 1999 Mobil Oil Australia Limited and Shell Australia Limited announced that their proposed joint venture would not proceed.

Visy Industries Pty Ltd/Stone Container Australia Pty — supply of corrugated boxes. Visy Industries Pty Ltd proposed to acquire Stone Container Australia Pty. Visy and Stone compete in the corrugated boxes market, which is highly concentrated. There are three main players, with Visy and Amcor being the larger and vertically integrated suppliers.

The Commission was concerned about the likely impact on prices and quality of service if Stone was removed from the market, particularly in an industry with substantial barriers to new entry. Market inquiries indicated that Stone's presence had resulted in more competitive prices and service in the market, particularly with respect to small to medium sized users of corrugated boxes.

The Commission concluded that the acquisition was likely to result in the removal of a vigorous and effective competitor from the market, and that it was likely to breach the merger provisions of the Act.

Email Limited/Southcorp Limited — manufacture of whitegoods. Email Limited proposed to acquire Southcorp Limited's whitegoods business.

Email and Southcorp are major Australian manufacturers of whitegoods products. Both companies submitted that rationalisation of the Australian industry was necessary to achieve international competitiveness in an increasingly globalised industry.

The Commission considered the effects of globalisation in this industry and in particular

the presence of imports in the major product markets.

Although the Commission considered that the acquisition would result in a high degree of concentration, it concluded that the continued presence of a significant competitor in Fisher & Paykel, together with existing and potential import competition within the major product markets, was likely to ensure that the merger did not result in a substantial lessening of competition.

On 11 March 1999 it announced that it would not oppose the proposed acquisition.

Service Corporation International Australia Pty Limited/Cremations Newcastle (Australia) Holdings — supply of funeral services in Newcastle.

CNH is a holding company which controls the operations of David Lloyd Funerals and Evans Funerals Services in Newcastle, plus the Beresfield Crematorium and Macquarie Memorial Park (cemetery and crematorium) in Newcastle.

The Commission was concerned that SCIA would acquire control of the only crematorium in Newcastle and the surrounding areas and that it may take advantage of its monopoly position to disadvantage its competitors in the Newcastle funerals market. It concluded that the proposed acquisition was likely to contravene s. 50 of the Act.

In order to address the Commission's concerns, SCIA gave the Commission a court enforceable undertaking to operate the Beresfield Crematorium and Memorial Park Crematorium separately to its funeral businesses.

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 lists s. 87B matters placed on the 1999 public register in the reporting period. (The register was first listed in the Trade Practices Commission *Bulletin* 74, February 1994.)

Smorgon Steel Group Ltd, s. 50.

Acquisition in the national market for the manufacture and supply of reinforcement bar.

28.1.99 undertaking to abstain from voting on the proposed Australian Standard for reinforcement bar until the earlier of either the expiry of the Tempcore patent or release by the Commission in writing.

Epson Australia Limited, ss 52, 53(c).

Misleading representations in relation to claimed page per minute print speeds for certain inkjet printers.

14.1.99 undertaking not to promote page per minute print speeds for printers without appropriate qualification; to instruct resellers to remove existing promotional material for the printers; place an instructive notice on its website; fund an industry information package about printer operation; conduct information seminars for distributors and resellers; offer refunds to affected customers; develop trade practices compliance program.

Bunnings Building Supplies Pty Ltd,

ss 52, 53(eb). Misleading country of origin claims in relation to Australia-made promotion.

15.2.99 undertaking not to misrepresent place of origin in future promotions; make refunds to customers who claim they were misled; institute trade practices compliance program; place corrective advertising in-store, in newspapers and on TV.

Cutco (Australia) Inc., ss 52, 53B.

Misleading representations as to the nature and conditions of advertised jobs.

9.3.99 undertaking to ensure cessation of misleading ads and oral representations; develop a trade practices compliance policy and compliance training, with a senior executive as compliance manager.

Service Corporation International

Australia, s. 50. Acquisition of only crematoria in Newcastle and surrounding areas.

5.3.99 undertaking to operate the acquired crematoria separately to its funeral directing businesses; ensure that no advantage be given to its funeral directing businesses; notify the Newcastle community through a newspaper advertisement of the acquisition; in future advertisements disclose its ownership of those funeral directing businesses.

Metal Manufactures Limited, s. 50.

Acquisition by Pirelli Cables of its energy cables business.

26.3.99 undertaking to release BICC from its obligations under their agreement and not enforce any other obligations of BICC.

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.

Commonwealth

Trade Practices Amendment (Country of Origin Representations) Act 1998 Item 1, Schedule 3

Wheat Marketing Legislation Amendment Act 1998

Australian Postal Corporation Act 1989

Year 2000 Information Disclosure Act 1999

New South Wales

Sydney Organising Committee for the Olympic Games Amendment Act 1996

Totalizator Legislation Amendment Act 1997 No 151

Liquor and Registered Clubs Legislation
Amendment (Community Partnership) Act
1998

Marketing of Primary Products Amendment
(Rice Marketing Board) Act 1998

Marketing of Primary Products Amendment
(Wine Grapes Marketing Board) Act 1997

Dairy Industry Amendment (Trade Practices
Exemption) Act 1998

Farm Produce (Repeal) Act 1996

Competition Policy Reform (NSW) Amendment
(Waste) Regulation 1998

Competition Policy Reform (NSW) Amendment
(Grain Marketing) Regulation 1998

Competition Policy Reform (NSW) Amendment
(SOCOG and SPOC) Regulation 1998

Queensland

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

Competition Policy Reform (Queensland —
Dairy Industry Exemptions) Regulation 1998

Competition Policy Reform (Queensland —
Chicken Meat Industry Exemptions) Regulation
1998

Victoria

Electricity Industry (Amendment) Act 1996

Tasmania

Electricity Supply Industry Act 1995

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

Western Australia

North West Gas Development (Woodside)
Agreement Amendment Act 1996