
Adjudication

Authorisations

The Commission has the function, through the authorisation process, of adjudicating on proposed mergers and certain anti-competitive practices that would otherwise breach the Trade Practices Act.

Authorisation provides immunity from court action, and is granted where the Commission is satisfied that the practice delivers offsetting public benefits.

Determination

Adelaide Brighton Limited

In relation to its proposed acquisition of Cockburn Cement Limited (A90682) and its proposed acquisition of shares in Adelaide Brighton Cement Limited (A90683)

- Determinations issued 30 April 1999.

On 30 March 1999 Adelaide Brighton Limited (ABL) made two applications for authorisation in respect of the following transactions:

- ABL proposed to acquire all the issued capital of Cockburn Cement Limited from Rugby Holdings plc; and
- ABL proposed to acquire the remaining 49 per cent shareholding in Adelaide Brighton Cement Limited (ABCL) that it did not own, currently held by Australian Cement Holdings Pty Limited (ACH). ABCL holds the key production assets of ABL including the Birkenhead, Angaston and Geelong cement plants.

In addition, it was proposed that Rugby would in turn acquire 55 per cent of ABL.

In addition to these acquisitions:

- ABL intends to enter into new cement supply contracts with ACH for the supply of cement in South Australia and Western Australia; and
- ABCL's subsidiary, Northern Cement (NC), proposes to enter into new cement supply contracts with CSR and Pioneer for the supply of cement in the Northern Territory.

The Commission acknowledged that the proposed acquisitions were part of a wider restructuring proposal and therefore considered the likely effects of the wider proposal when considering whether to grant authorisation.

The Commission identified a number of public detriments.

- The supply agreements proposed between ACH and ABL may deter new entry and constrain competition to some degree in Western Australia, South Australia, and the Northern Territory.
- The merger of ABL and CCL in Western Australia would significantly raise concentration in the WA cement market, reducing the number of competitors from three to two.
- The south-west WA lime market would see the exit of Swan.
- The closure of the Geelong plant would result in job losses.

It also identified significant public benefits.

- ABL's increased independence is likely to increase its competitive behaviour.
- Rugby's acquisition of ABL will provide ABL with access to Rugby's international experience and financial strength, improving ABL's competitiveness in the Australian cement industry.
- ABL will achieve rationalisation benefits through the closure of the Geelong plant

and rationalisation between CCL and ABL in Western Australia.

On balance, the Commission concluded that the public benefits were likely to outweigh the detriments.

The parties also made adjustments to the proposal and offered undertakings to the Commission to address its competition concerns.

- ABL and Rugby signed s. 87B undertakings that the ABL acquisition of CCL would not be concluded without the ABL acquisition of ABCL and the Rugby acquisition of ABL taking place simultaneously.
- ABL signed an undertaking to adjust BGC's current contract for clinker supply to ensure that BGC would be able to compete effectively with the merged ABL/CCL.
- The new Western Australian cement supply contract between ABL and ACH was adjusted in order to increase the influence of imports on pricing in Western Australia.

On 30 April 1999 the Commission granted authorisation to the two applications.

Australian Stock Exchange Limited

In relation to the capital liquidity requirements of proposed business rule 1A (A90657)

- Draft determination issued 30 March 1999.
- Final determination issued 28 April 1999.

The Commission has considered an application for authorisation lodged by Australian Stock Exchange Limited (ASX) in relation to revised capital liquidity requirements, under proposed business rule 1A, for its participating organisations.

Proposed rule 1A sets a minimum amount of 'core liquid capital' for each participating organisation at \$100 000. The new capital liquidity requirement is based on an assessment of the risks inherent in the activities undertaken, rather than on the legal structure or balance sheet liabilities of the participating organisation.

The Commission noted that only ASX participating organisations may conduct stockbroking businesses and trade on the securities market of ASX. The proposed capital liquidity requirements would therefore have an anti-competitive effect in that they would represent a barrier to entry to firms seeking to provide stockbroking or securities services. However, the Commission did not receive any submissions expressing concern at the level of capital required.

The Commission considered that there was public benefit in ASX setting a minimum capital standard for participating organisations that covers the inherent risks of the activities of these organisations.

It also considered that by ASX adopting capital liquidity requirements comparable with international standards, compliance costs should be reduced for foreign security firms seeking to participate in ASX's securities market and for Australian brokers seeking to participate in overseas securities markets.

On 30 March 1999 the Commission issued a draft determination proposing to grant authorisation.

On 28 April 1999 it issued a final determination granting authorisation until 28 April 2004.

Clay Brick and Paver Association of New South Wales

In relation to a scheme to increase the number of trained bricklayers in NSW (A90676)

- Draft determination issued 7 April 1999.
- Final determination issued 11 May 1999.

On 23 September 1998 the Clay Brick and Paver Association of New South Wales lodged an application for authorisation of a proposal to charge a levy on its members of \$1.00 per thousand bricks sold. The levy is to be used to establish a Group Training Company, which has the aim of encouraging and assisting host employers with the employment of apprentice bricklayers.

The Commission concluded that, while the \$1.00 levy would increase the price of bricks to

consumers, public benefit would flow from the proposed arrangements through:

- an alleviation of skill shortages in the NSW bricklaying trade, allowing for an increase in the number of skilled tradespeople capable of offering high quality work to consumers;
- an alleviation of cyclical fluctuations in the laying rates, with sharp increases in bricklaying costs during periods of high demand for scarce bricklayers; and
- a reduction in the time required to complete building projects due to a more readily available supply of skilled bricklayers.

The Commission concluded that the public benefits likely to result from the arrangements would outweigh the anti-competitive detriment.

On 7 April 1999 the Commission issued a draft determination proposing to grant authorisation.

On 11 May 1999 it issued a final determination granting authorisation for three years to allow the industry to monitor the effectiveness of the scheme.

Australian Payments Clearing Association Limited

In relation to the minor variations of the regulations and procedures for the High Value Clearing System (A90617-9)

- Determinations issued 28 April 1999 and 16 June 1999.

On 21 December 1998 and 22 April 1999 the Australian Payments Clearing Association Limited (APCA) applied for minor variation to authorisations in respect of the regulations and procedures for the High Value Clearing System (HVCS).

The Commission concluded that the proposed amendment to bring the netting rules in the HVCS in a contingency within the protection of the *Payments Systems and Netting Act 1998* was likely to slightly enhance the public benefit provided by the arrangements by adding to their security and integrity.

It noted that the amendment to voting rights within electoral groups for management

committee representation would change the value of votes of members within the four relevant groups. However, it also noted that the potential for anti-competitive decisions by the management committee would be lessened by HVCS participants' right of appeal to the APCA board.

On 28 April 1999 the Commission issued a determination granting authorisation to these variations until 23 April 2008.

The Commission also concluded that the proposal to establish the HVCS Advisory Council would enable organisations that participate in payment transfers related to the high value clearing cycle, but which do not qualify for HVCS membership, to have input to relevant APCA forums and decision making bodies.

The requirement that HVCS participating members have dial-up back-up communications capability to ensure connection to the allocated back-up SWIFT access point appeared to the Commission to be prudent.

On 16 June 1999 the Commission issued a determination granting authorisation to these variations until 23 April 2008.

Revocation

Real Estate Institute of the ACT

In respect of the publication of a maximum scale of fees and charges (A90437)

On 2 September 1986 the former Trade Practices Commission granted authorisation to an application lodged by The Real Estate Institute of the Australian Capital Territory (REIACT) in relation to Article 21 of REIACT's Articles of Association which concerns the publication of a maximum scale of fees and charges.

On 20 July 1994 the Commission notified REIACT of its view that there had been a material change of circumstances since authorisation was granted, in particular:

- a 1992 PSA inquiry report recommended a degree of deregulation in the industry,

including the deregulation of agents' fees and the removal of authorised maximum scale fees;

- in submissions to that inquiry the Real Estate Institute of Australia and certain of its affiliated State institutes strongly advocated the deregulation of agents' fees;
- the NSW State Government had deregulated agents' fees, and reviews were being conducted in Western Australia, Queensland and Victoria;
- the ACT Government had begun a review of *The Agent's Act 1968*;
- mutual recognition legislation now affected all jurisdictions; and
- a fee higher than the maximum scale fee was being charged where a property was auctioned, and the practice of auction of residential property in the ACT had grown significantly since 1986.

The ACT Consumer Affairs Bureau's submission expressed the view that the current



system had failed to fulfil its intended purpose to encourage competition in the industry and to ensure that consumers were not charged excessive fees.

Based on information supplied in the Bureau's submission, together with the findings of the PSA report, the Commission concluded that the maximum scale of fees no longer delivered any net public benefit.

On 5 May 1999 the Commission issued a determination revoking the authorisation, to become effective on 1 July 1999.

Notifications

Notifications considered

Optus Internet Pty Ltd

Citibank Ltd (N90653-4) (Allowed to stand)

Supply of Internet product at a discount to Citibank customers, and supply of banking product at a discount to Optus Internet customers (third line forcing).

Optus Mobile Pty Ltd

Optus Networks Pty Ltd (N90650-51) (Allowed to stand)

Offer of discount to persons by Optus Mobile and Optus Networks on condition they subscribe to telephony services or products from Optus Networks or mobile products or services from Optus Mobile (third line forcing).

Home Building Society Ltd (N70077)

(Allowed to stand)

Supply of home loan at a discount on condition customers acquire home and contents insurance (third line forcing).

Police and Nurses Credit Society Ltd

(N70076) (Allowed to stand)

Appointment by PNCS of 10 franchisees who are required to purchase insurance and consumables from suppliers nominated by PNCS (third line forcing).

Nyka Nominees Pty Ltd
Stylistic Enterprises Pty Ltd
Gold Peaks Pty Ltd (N90656-8)
(Allowed to stand)

Supply of petrol at a discount on condition customers have purchased groceries from participating stores (third line forcing).

Caltex Aust Petroleum Pty Ltd
(N70076) (Allowed to stand)

Supply of petrol at a discount on condition that customers have purchased from participating stores (third line forcing).

IINET Technologies Pty Ltd (N70078)
(Allowed to stand)

IINET offer to BankWest customers a choice of two Internet access accounts at discounted rates (third line forcing).

South State Fuel Pty Ltd
Entheo Pty Ltd (N40333-4)
(Allowed to stand)

Supply of petrol on condition customers have purchased groceries from participating stores (third line forcing).

Access Plus Communications Pty Ltd
(N90659) (Allowed to stand)

Proposes to offer customers a discount in relation to telecommunications services on condition that the customer also acquires electricity from Powercor (third line forcing).

Tim Tubb
Quarramos Pty Ltd
John Vanson Pty Ltd
Derrico Nominees Pty Ltd (N40335-7)
(Allowed to stand)

Supply of petrol at a discount on condition customers purchase groceries from participating stores (third line forcing).

Suncorp Metway Group (N50099,
N90660-76) (Allowed to stand)

Supply of financial services at a discount to customers on condition they obtain services from other members of Suncorp Metway Group or outside providers (third line forcing).