
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 growing importance of conflict management. Conference on Commonwealth Government disputes — 22 April 1999

The ACCC: e-commerce and telecommunications regulation. Australian Information Industry Association — 17 May 1999

Advertising and marketing — the Trade Practices Act. NIETL/NORTH Line Network Meeting — 24 May 1999

The grocery industry and the TPA. Australian Food and Grocery Council — 27 May 1999

Small business and the Trade Practices Act. Power in Numbers Congress — 31 May 1999

Australian business and the world market — the role of the ACCC in the face of increasing globalisation. Affairs of State, Victoria — 4 June 1999

Parallel importing. VECCI International Trade Conference — 21 June 1999

Commission Deputy Chairman Allan Asher

E Commerce issues. SA Computer Industry Association — 12 May 1999

Privatisation of public enterprises and utilities and establishment of regulatory

framework. International Conference on Competition Policy and Economic Adjustment — 28 May 1999

Access regimes in the resources industries. Law Council of Australia Resources Law Committee/The Australian Mining and Petroleum Law Association — 9 June 1999

Launch of report and guidelines on undue harassment and coercion in the debt collection. ACCC — 10 June 1999

Commissioner Rod Shogren

International charging arrangements for Internet services: the Apec Study. IIC Telecommunications Forum — 19 April 1999

A review of the ACCC activities of the last year on the structure of costs of telecommunications networks. ATUG Now99 Conference — 20 May 1999

General Manager Hank Spier

The role of the ACCC. 1999 Defence and Industry Study Course — 19 April 1999

For copies of speeches please contact Sharon Clancy on ph. (02) 6243 1133.
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Media releases

52/99 Gas court action — 6.5.99

53/99 High-tar cigarettes withdrawn from sale — 6.5.99

54/99 Action against lawyer highlights risks for legal profession — 7.5.99

55/99 Major challenges in Australian gas — 10.5.99

56/99 Gold Coast businessman jailed for contempt — 10.5.99

Appendix 2

- 57/99 Australia Post asked to delay price increases — 11.5.99
- 58/99 ACCC institutes over motor cycle helmets — 13.5.99
- 59/99 Dispute under section 462 of the Telecommunications Act — 13.5.99
- 60/99 Undertakings by JeansWest — 13.5.99
- 61/99 Danka Australia undertakes corrective action — 13.5.99
- 62/99 Digital data access service: ACCC view — 13.5.99
- 63/99 Misleading telco brochure leads to undertakings — 17.5.99
- 64/99 ACCC declares vehicle access services at Melbourne Airport — 17.5.99
- 65/99 ACCC announces indicative timeframes for telecommunications investigations and inquiries — 17.5.99
- 66/99 Catalogue stationer corrects sales materials — 18.5.99
- 67/99 ACCC issues draft NSW, ACT electricity transmission revenue cap — 18.5.99
- 68/99 Proposed cigarettes divestiture — 19.5.99
- 69/99 ACCC institutes against the Australasian institute — 21.5.99
- 70/99 ACCC to investigate any Australian link to vitamins price-fix — 21.5.99
- 71/99 Cable & Wireless Optus — AAPT — 21.5.99
- 72/99 Consumers to get compensation from illegal loans scheme — 26.5.99
- 73/99 ACCC issues mobile number portability discussion paper — 26.5.99
- 74/99 The Australasian Institute: undertakings — 27.5.99
- 75/99 Principles for the regulation of electricity transmission revenues — 27.5.99
- 76/99 Telecommunications access disputes — 27.5.99
- 77/99 Social and economic needs must be addressed in reform: Asher — 28.5.99
- 78/99 \$A250 000 compensation for Internet domain name consumers after international cooperative action — 1.6.99
- 79/99 Cable & Wireless decision not to proceed welcomed — 31.5.99
- 80/99 ACCC reviews country of origin labelling in healthcare industry — 1.6.99
- 81/99 ACCC draft decision on new passenger charges at Adelaide Airport — 2.6.99
- 82/99 ACCC consults with industry, consumer groups on GST — 2.6.99
- 83/99 ACCC accepts cigarettes divestiture — 3.6.99
- 84/99 ACCC draft decision confirms access to cable broadcasting networks — 3.6.99
- 85/99 ACCC issues guidelines for financial reporting by telco firms — 3.6.99
- 86/99 ACCC clears Waratah acquisition of Hunter Towage — 4.6.99
- 87/99 ACCC institutes against Townsville company — 7.6.99
- 88/99 Franchisees awarded nearly \$300 000 in Snack Food case — 8.6.99
- 89/99 ACCC opposes revised Coke/Schweppes acquisition — 8.6.99
- 90/99 Time running out for Golden Sphere refunds — 9.6.99
- 91/99 Clear guidelines aid debt collectors, consumers — 10.6.99
- 92/99 ACCC policing business on prices — 10.6.99
- 93/99 Telecommunications access disputes — 10.6.99
- 94/99 ACCC alleges breaches of Franchising Code, unconscionable conduct — 16.6.99
- 95/99 McDonald's grilled chicken burger — 17.6.99
- 96/99 ACCC 'concerned' about ASX bid for SFE — 17.6.99
- 97/99 Australia Post agrees to delay price increase — 17.6.99

- 98/99 Federal Court rules on motor cycle helmets — 17.6.99
- 99/99 Telecommunications access disputes — 21.6.99
- 100/99 Australian Stock Exchange — 21.6.99
- 101/99 ACCC issues facilities access code — 22.6.99
- 102/99 Carriers to bear own local number portability cost — 23.6.99
- 103/99 Allgas Energy — interim authorisation — 23.6.99
- 104/99 ACCC affirms its decision to reject Telstra's interconnect proposal: Telstra's prices should be halved — 24.6.99
- 105/99 NSW specialist power market group welcomed by ACCC — 25.6.99
- 106/99 Time running out for CDRC callers to get refunds — 25.6.99
- 107/99 Small Darwin real estate agency aided by ACCC action — 25.6.99
- 108/99 ACCC extends Central West Pipeline consideration — 28.6.99
- 109/99 \$3 million first payment from waterfront trust fund — 29.6.99
- 110/99 Federal Court orders helmet recall — 29.6.99
- 111/99 Real estate agents' fees in the ACT now fully negotiable — 30.6.99
- 112/99 Price fixing and collusion draws penalties for compressor supplier — 29.6.99

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.

Atco Controls Pty Ltd /Plessey Ducon — Australian market for the supply of lighting capacitors and motor run capacitors.

On 24 February 1999 the Commission was notified, after a complaint was received from another market participant, that Atco Controls had acquired the capacitor manufacturing business of Plessey Ducon.

The Commission decided on 28 April 1999 not to oppose the acquisition as it appeared likely that imports would act as a competitive constraint on the merged firm and also that there was potential for new entry into the market.

QBE Insurance Group Ltd/Mercantile Mutual Investment Management Limited — general insurance and managed funds markets.

On 23 April 1999 the Commission became aware that QBE Insurance Group Ltd was intending to form a new insurance joint venture with Mercantile Mutual to be called QBE Mercantile Mutual. The new entity is intended to manage most of the Australian intermediary sourced general insurance operations of both companies.

On 28 April 1999 the Commission decided not to oppose the proposed joint venture as it did not cross the Commission's concentration thresholds.

Zeneca Pharmaceuticals Australia Pty Limited/Astra AB — the market for human pharmaceutical products in Australia.

On 5 March 1999 the parties notified the Commission that there was a proposed offshore acquisition by Zeneca Group (domiciled in UK) for all the issued shares in Astra AB (domiciled in Sweden). The merged entity is to be known as AtraZeneca plc and will be domiciled in the UK.

On 29 April 1999 the Commission decided not to oppose the proposed acquisition as the Commission's concentration thresholds were not crossed and therefore the proposal would not lead to a substantial lessening of competition in the relevant market.

Envotec Pty Ltd/Amcor Limited — the national market for the manufacture and wholesale of envelopes.

The Commission was notified on 31 March 1999 that Envotec proposed to acquire Amcor's envelope manufacturing division.

On 30 April 1999 the Commission decided not to oppose the proposed acquisition. The envelope market consisted of three major competitors, Amcor, Spicer and Envotec, with Amcor owning 42 per cent of Spicer. Market inquiries indicated that imports appeared to be a competitive constraint on Australian manufacturers. The Commission concluded that the acquisition was unlikely to substantially lessen competition.

GPU Powernet Pty Ltd/Transmission Pipelines Australia.

On 10 March 1999 the Commission was notified that Transmission Pipelines Australia (TPA) was being privatised by the Victorian Government. GPU PowerNet proposed to acquire TPA.

On 7 May 1999 the Commission decided not to oppose the proposed acquisition, as market inquiries indicated that the co-ownership of the electricity and gas transmission networks was unlikely to substantially lessen competition. However, the Commission considered that there was some potential for gas and electricity businesses to compete and any proposed co-ownership of gas and electricity transmission assets in the future would need to be considered carefully on a case-by-case basis.

Lennox Global/James N Kirby Pty Ltd — the supply of components used in the refrigeration and HVAC industries.

On 9 April 1999 the Commission was notified that Lennox, a US-based group of companies with interests in heating ventilation and air conditioning products, proposed to merge with James N Kirby, an Australian manufacturer and distributor of engineering and refrigeration products.

On 12 May 1999 the Commission decided not to oppose the proposed merger.

Vivendi SA/United States Filter Corporation — national market for the provision of water and waste water treatment plants to municipal customers.

On 19 April 1999 the Commission was notified that Vivendi proposed to acquire all of the shares in USF, which is the ultimate holding company of the Australian companies US Filter (Australia) Pty Limited and USF Filtration Limited.

The Commission decided on 14 May 1999 not to oppose the proposed acquisition as it would not cross the Commission's concentration thresholds.

GE Capital International Holdings Corporation/Avco Financial Services Ltd — regional or State-based markets for credit cards and personal loans. National markets for general insurance, life insurance and mortgage guarantee insurance.

The Commission was notified on 27 May 1999 that GE Capital proposed to acquire all the shares in Avco Financial Services.

The Commission decided on 8 June 1999 not to oppose the proposed acquisition as it was unlikely to cross the Commission's merger thresholds.

Ensign Services (Aust) Pty Limited/Central Linen Services — the laundry and linen service market in South Australia.

On 14 July 1997 the Commission was notified that the South Australian Government was seeking to privatise Central Linen Services (CLS). As part of the sale, the South Australian Government will award the preferred bidder a contract to provide laundry and linen services to all South Australian public hospitals. CLS was the principal provider of laundry and linen services to public hospitals and nursing homes in South Australia. On 3 March 1999 the Commission was informed that Ensign was selected as the preferred tenderer for Central Linen Services.

The product market is defined as the market for laundry and linen services for health care and hospitality. The acquisition of CLS by Ensign would result in three remaining providers in the health care and hospitality market.

On 17 June 1999 the Commission decided not to oppose the proposed acquisition. Market inquiries indicated that there were few concerns about the effect the proposed acquisition was likely to have on competition.

Doubleday Australia Pty Ltd — proposed acquisition of Time Life Australia Pty Ltd.

On 27 May 1999 Doubleday Australia notified the Commission that it proposed to acquire Time Life Australia. Doubleday and Time Life are product distributors of books, CDs and tapes.

On 23 June 1999 the Commission informed the parties that it would not be opposing the merger as it did not cross concentration thresholds. Other factors considered were the large number of competitors and increasing sources of supply in the relevant markets.

PMP Communications Limited/Gordon & Gotch Limited — magazine publication and distribution in Australia.

On 11 June 1999 the parties notified the Commission that PMP Communications proposed to acquire from Gordon and Gotch Australia Limited and Gordon and Gotch Limited certain assets comprising Gordon & Gotch's magazine distribution business in Australia.

The Commission decided on 30 June 1999 not to oppose the proposed acquisition as there would be no increase in concentration in the market share of PMP or Gordon & Gotch and there appeared to be alternative sources of distribution for the smaller publishers in the market.

Asea Brown Boveri Pty Ltd/ALSTOM Australia Ltd — market for the supply of power generation equipment, including gas turbines, steam turbines, generators, and heat recovery steam generators.

On 10 June 1999 the merger parties indicated to the Commission that ABB and ALSTOM were intending to merge their respective global power generation businesses as part of a global merger.

On 30 June 1999 the Commission decided not to oppose the proposed merger as it appeared unlikely to substantially lessen competition for the supply of power generation equipment, including gas turbines, steam turbines, generators, and heat recovery steam generators.

The Coca-Cola Company/Cadbury Schweppes — market for the production and wholesale supply of carbonated soft drinks in Australia.

In March 1999 the Commission opposed a proposal by The Coca-Cola Company to purchase assets of Cadbury Schweppes primarily related to its beverage trade marks in Australia. This original proposal envisaged that The Coca-Cola Company would retain only the Cadbury Schweppes international brands (that is, *Schweppes*, *Dr Pepper*, *Canada Dry*). All other assets would be divested to an undetermined buyer.

The merger parties lodged a revised proposal in April. The revised proposal did not address the Commission's competition concerns arising from the original proposal. In particular, it was concerned that the premium *Schweppes* branded drinks remained a part of the transaction.

The Commission was concerned that the merger would be likely to substantially lessen competition in the Australian carbonated soft drink market.

On 8 June 1999 the Commission announced its opposition to the revised merger proposal.

Waratah/Hunter Towage Services — the Newcastle market for the provision of towage services.

In late 1998 Waratah advised the Commission of its intention to acquire Hunter Towage Services, a consortium consisting of BHP and a number of overseas ship operators.

Following market inquiries the Commission formed the view that the proposed acquisition was likely to substantially lessen competition in the Newcastle market for the provision of towage services.

On 4 June 1999 the Commission announced that it would not intervene in the acquisition on the condition that Waratah provide undertakings concerning the future conduct of the towage business.

British American Tobacco Plc/Rothmans International BV — markets for factory-made cigarettes, roll-your-own tobacco and acquisition of tobacco leaf in Australia.

In March 1999 the Commission concluded that the proposed merger was likely to breach the merger provisions of the Trade Practices Act. It had concerns about the likely impact of

increased market concentration and the merged group's control of major Australian cigarette brands in a market where import competition is negligible and barriers to new entry are substantial.

On 2 June 1999 the Commission accepted a court enforceable undertaking from the merged group to sell a portfolio of cigarette brands, roll-your-own tobacco and cigarette paper brands to Imperial Tobacco.

On the basis of the undertaking the Commission will not intervene in the proposed merger.

Cable & Wireless Optus/AAPT — a number of telecommunications markets.

On 31 May 1999 the Commission noted the Cable & Wireless Optus decision not to proceed with its bid for AAPT.

The Commission had earlier advised Cable & Wireless Optus of its concerns about the effect of the proposed acquisition on competition in a number of telecommunications markets. It had sought and accepted an undertaking from Optus that it would not proceed with the proposed acquisition.

The Commission had concluded the proposed acquisition would result in a substantial reduction of competition in a number of telecommunications markets and the removal of a vigorous and effective competitor.

Adelaide Brighton Limited/Cockburn Cement Limited, Adelaide Brighton Cement Limited

On 30 March 1999 Adelaide Brighton Limited (ABL) made two applications for authorisation in respect of the proposed acquisition of (1) all the issued capital of Cockburn Cement Limited from Rugby Holdings plc; and (2) the remaining 49 per cent shareholding in Adelaide Brighton Cement Limited (ABCL) that it did not own.

The Commission considered the proposed acquisitions in the context of a wider restructuring proposal.

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.

On 30 April 1999 the Commission granted authorisation to the two applications. (See 'Adjudication' chapter for details.)

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

Lay & Sons Organisation Pty Ltd, s. 65(D). Non-compliance with product information standard in relation to sale of clove cigarettes.

30.4.99 undertaking to cease supply of tobacco products which fail legislative requirement; inform all persons supplied and ask that tobacco products be removed from sale and returned to Lay & Sons; refund the full purchase price; and not supply any further tobacco products which fail to meet the product information standard.

The Rugby Group plc, s. 50. Acquisition in the cement and lime industry.

30.4.99 undertaking not to proceed with or complete the Rugby acquisition otherwise than contemporaneously with the ABCL acquisition and the Cockburn acquisition.

Adelaide Brighton Limited, s. 50. Acquisition in the cement and lime industry.

30.4.99 undertaking not to proceed with or to complete the Cockburn acquisition otherwise than contemporaneously with the ABCL acquisition and the Rugby acquisition.

Signal Telecommunications, ss 52, 53(e), 53C. Misleading representations in relation to the promotion of a mobile phone package.

12.5.99 undertaking to send a letter of apology to customers; inform customers that they will receive \$50 credit towards payment of their account; allow customers to exit the contract; develop a compliance program and a complaints handling system.

Digital Discount Pty Ltd, ss 52, 53(e), 53C. Misleading representations in relation to the promotion of a mobile phone package.

12.5.99 undertaking to send a letter of apology; help Signal to inform affected customers; and develop a compliance program.

Viking Office Products Pty Ltd, ss 52, 53(e). Misleading representations in relation to promotion of products in a catalogue.

13.5.99 undertaking to engage in two-price advertising only where the price compared to is the price at which that product was available for a reasonable period; prominently print in every two-price advertising a statement describing the source of the comparison; prominently display other qualifications; review its trade practices compliance program; complete a community service obligation to inform the direct mailing industry about the Trade Practices Act.

Blackmores Ltd, s. 53(eb). Misleading representations in relation to country of origin.

17.5.99 undertaking to cease representing its Cod Liver Oil as 'Made in Australia'; systematically visit retail outlets selling Blackmores CLO to ensure labelling is correct or is corrected by oversticking; place corrective advertising in newspapers; offer refunds to customers misled by the representations; participate in Commission-approved industry compliance program.

Internic Technology Pty Ltd, s. 52. Misleading conduct in relation to the use of a domain name.

19.5.99 undertaking to no longer use the name 'internic' or any similar name; to pay into a \$250 000 compensation fund for consumers misled by the alleged conduct; email each person who has contracted with it to

obtain domain registration services, informing them of the procedure for obtaining refunds.

Waratah Towage Pty Ltd, s. 50. Acquisition of harbour towage services.

2.6.99 undertaking not to increase tariff rates for harbour services beyond a specified amount; maintain discounts/rebates existing at December 1998; not introduce new charges, or increase existing charges, for towage services; enter into a service agreement with the Newcastle Port Corporation; provide the Commission with an annual audit report.

British American Tobacco Plc Australia Pty Ltd, Rothmans Holdings Ltd, s. 50. Merger.

2.6.99 undertaking to divest certain brands of cigarettes, roll-your-own tobacco and cigarette papers to Imperial Tobacco.

McDonald's Australia Ltd, ss 52, 53(a). Misleading representations in relation to its 'grilled' chicken burger.

16.6.99 undertaking to cease advertising the subject burgers as grilled; implement a trade practices compliance program.

Remington White Australia Pty Ltd, s. 47(6). Third line forcing in relation to granting access to a real estate database.

17.6.99 undertaking to grant Flagstaff membership of its database; not to refuse membership or access to its database for the reason that an organisation is not a member of REINT.

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 Item1, Schedule3

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 No151

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 — Chicken Meat Industry Exemptions) Regulation 1998

Victoria

Gas Industry Act 1994

Electricity Industry Act 1993

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

South Australia

Dairy Industry Act 1992

Australian Capital Territory

Milk Authority (Amendment) Act 1999 (No. 2
of 1999