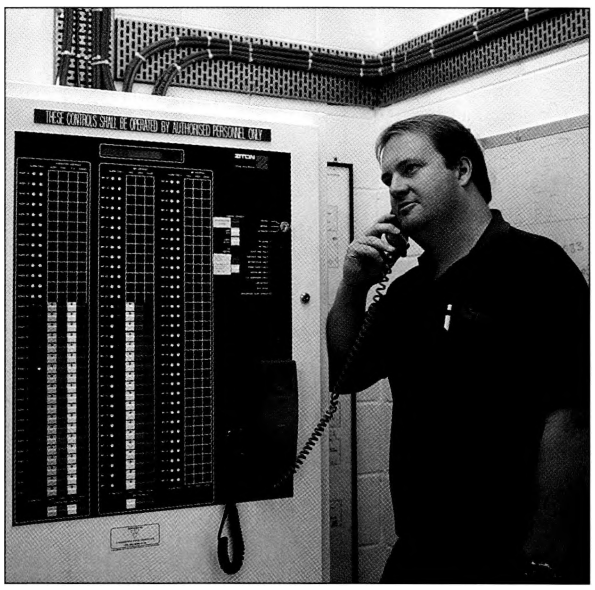
Enforcement

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

Restrictive trade practices (Part IV)

Queensland fire protection industry

Price fixing and market sharing (s. 45A, s. 45)



The Commission began proceedings against 56 respondents on 29 September 1999. The Commission had alleged that a longstanding anti-competitive cartel existed in the markets for the installation of fire sprinkler systems throughout Queensland, and for fire alarm systems in and around Brisbane.

On 14 December 1999 the court accepted joint submissions from Tyco Australia Pty Ltd trading as Wormald Fire Systems, Grinnell Asia Pacific Pty Ltd trading as O'Donnell Griffin, Sensor Systems (Australia) Pty Ltd, and F&H Pty Ltd (formerly Matthews Fire Alarm Pty Ltd). Injunctions were also made by consents against Burmess Pty Ltd trading as BEI, and the Commission, ordering penalties and injunctions against the companies. The court orders to date disposed of proceedings against 15 of the 56 respondents.

Proceedings continue against a further 41 respondents for alleged price fixing in the fire protection industry. On 22 March 2000, further parties were expected to make joint submissions relating to the conduct, and further directions will be made.

Visy Paper Pty Ltd and the Amcor Printing Papers Group Ltd and Ors

Market sharing agreement (s. 45)

The Commission began proceedings against Visy Paper Pty Ltd and Amcor Printing Papers Group Ltd on 4 December 1998. The Commission alleged there was a marketing sharing agreement between Visy Paper Pty Ltd and Amcor Printing Papers Group Ltd, and that Visy Paper had attempted to induce another business to enter into a market sharing agreement in relation to the collection of recyclable waste paper.

The Commission sought orders, including declarations, injunctions, costs and the institution of trade practices compliance programs. Penalties were sought against the companies and four senior employees.

On 3 December 1999, the Commission agreed to discontinue proceedings against one of the individual respondents.

Hearing the parties on 8 and 9 December 1999, Sackville J dismissed the application of the Commission after upholding a no-case submission made by the respondents. The Commission was ordered to pay the costs of the respondents on a party and party basis.

Anti-competitive practices (Part IV)

Planet Earth

Resale price maintenance (s. 48)

On 21 January 2000 the Commission received court enforceable undertakings from Planet Earth that it would stop trying to force one of its retailers to maintain prices for its goods.

The Commission initially approached the company, a Sydney-based manufacturer, wholesaler and retailer of t-shirts, in July last year following a complaint by a customer.

Resale price maintenance occurs when a supplier withholds, or threatens to withhold, its products because the buyer is selling the products at a price lower than that specified by the supplier.

But suppliers may only recommend prices or specify a maximum price. They cannot set a minimum price. Sellers, however, can sell at whatever price they see fit.

The Commission alleged that Planet Earth had advised a customer who sold the products at markets, that it had received complaints from its party plan consultants that her prices were too low and affecting their business.

Planet Earth told the customer that she could no longer be supplied with Planet Earth's products unless she sold them at the same prices as those charged through the party plan.

Planet Earth has undertaken to the Commission that it will:

- not engage in the practice of resale price maintenance, nor withhold supply from the complainant without first informing her in writing of the reasons for the decision;
- send letters enclosing a copy of the undertaking to each person to whom it currently supplies products; and
- implement a trade practices compliance program and complaints handling system.

Mergers (Part IV)

Eisa's acquisition of OzEmail

Merger (s. 50)

On 24 February 2000 the Commission announced it would not intervene in the proposed acquisition of OzEmail by eisa.

The proposed acquisition would give eisa a market share of around 20 per cent in the provision of retail Internet access services which would not greatly alter the existing market structure.

Following the acquisition, the two large ISPs would be Telstra and eisa/OzEmail, followed by several smaller competitors.

The acquisition is likely to preserve the intense competition and rivalry in the industry, and is unlikely to arrest the trend towards falling retail Internet access prices.

The esia/OzEmail merger follows Telstra's failed bid for OzEmail about which the Commission had serious concerns.

By removing OzEmail as a vigorous and effective competitor to Telstra in providing residential Internet subscriber services, the Commission felt that competition would be jeopardised.

If the merger had gone ahead, Telstra would have had more than 40 per cent of the national market. The next largest Internet service provider would have had barely more than 6 per cent of all subscribers.

The new proposed acquisition of OzEmail by eisa now provides an effective and independent competitor to Telstra.

ACTEW–AGL partnership

Merger (s. 50)

On 22 February the Commission announced it would not intervene in the proposal by ACTEW Corporation Limited and the Australia Gas Light Company to create an ACT based multi-utility partnership.

With the introduction of contestability in gas and electricity markets, the Commission expects competition will further develop in the ACT.

In supporting the merger, the ACT Government has indicated that the partnership will be subject to regulatory oversight under the proposed ACT Utilities Act.

Fair Trading (Part V)

World Netsafe Pty Ltd & Terence Butler

Misleading or deceptive conduct (s. 52), false representations (s. 53), referral selling (s. 57) and pyramid selling scheme conduct (s. 61)

On 25 January a further hearing was held in the Federal Court, following action taken by the Commission against World Netsafe regarding the promotion and marketing of an 'ATTM' card, including on the Internet.

It is alleged that the misrepresentations made included that the card was available, or would be made available by certain times, and that it would function as a telephone, ATM and POS card and possess Visa or Maestro Cirrus debit card facilities. It is also alleged that it was misrepresented that the card allowed members of the scheme to generate lifelong income without the member having to leave their home.

The Federal Court has issued injunctions stopping the respondents from making various representations about the card and that it was available for supply, and from making claims that persons could receive money by participating in the scheme.

The next hearing will be held on 12 April 2000.

Qantas

Misleading or deceptive conduct (s. 52)

Following discussions with the Commission in January 2000, Qantas Airways has adjusted its service charges on its frequent flyer accounts.

It originally added a $2 GST charge to a $20 service charge but as the GST only applies from 1 July 2000, the exact pro-rata amount is $1.63. About 184 000 of Qantas's 2.3 million frequent flyers had received invoices for $22.

Qantas has changed its pricing to charge $1.63 on frequent flyer accounts for this quarter and $1.88 for the next quarter and it will adjust its account system to accommodate the new prices.

Previously Qantas adopted a pricing approach that included rounding up 18 prices and rounding down 31 prices to the nearest dollar. These related to Qantas's customer loyalty program, such as the price of guest passes for Qantas Club members. The net effect on margins was expected to result in a small net loss to Qantas.

Following the Government's emphasising that no single price should rise by more than 10 per cent as a result of the GST, Qantas adjusted its pricing policies accordingly.

Country of origin (Part V)

YBD Pty Ltd

Misleading or deceptive conduct (s. 52), the place of origin of goods (s. 53(eb))

On 2 February 2000 YBD Pty Ltd provided a court enforceable undertaking to the Commission that it would change its labelling on a number of its food products, removing the words 'Product of Australia' and replacing them with 'Australian Made Australian Owned'.

The Commission approached the company in June last year after a complaint was made that a muesli slice made by the Victorian-based manufacturer was labelled with the words 'Product of Australia' and, in finer print, 'Made from Local and Imported Ingredients'.

To be able to use the defence for the premium claim that a product is a 'Product of Australia' each significant ingredient must be sourced from Australia and all, or virtually all, processes involved in its production or manufacture must occur in Australia.

YBD undertook to:

- change the labelling of products in its Nana Diver's Classic Baked Muesli Slice range, to remove the words 'Product of Australia';
- change the labelling of other products in YBD's range, such as Moose Bars and

Round Cakes, which carry the wording 'Product of Australia' but which contain imported ingredients; and

- implement a trade practices compliance program and complaints handling system.

Price exploitation in relation to the New Tax System (Part VB)

See GST chapter on p. 21.

Telecommunications — anti-competitive conduct (Part XIB)

Telstra

Anti-competitive conduct (s. 151(aj))

On 23 February 2000 the Commission and Telstra agreed to discontinue proceedings commenced in the Federal Court known as the *Commercial Churn Litigation*. The litigation was based on four Competition Notices, issued by the Commission in late 1998 and early 1999, alleging that the customer transfer process that Telstra offered to its local call reseller competitors was anti-competitive and in breach of Part XIB of the Act.

The settlement terms provided for Telstra to establish a $4.5 million fund. The purpose of the fund, which will be administered by the Commission, is to help service providers develop their technical capability to deal with Telstra and each other online. Also as part of the settlement, Telstra agreed to further reduce the price it charges to transfer local call customers from Telstra to competing local call service providers.