
Appendix 1 Continuing matters

Enforcement

The following is a list of enforcement matters before the courts — in addition to the new and recently concluded matters reported in the Enforcement section.

Anti-competitive practices

IMB Group Pty Ltd, Logan Lions Ltd & ors, ss 47(6), 52. Alleged third line forcing and misleading or deceptive conduct in relation to financial planning and property development. Interlocutory proceedings commenced 6.9.93. Proceedings withdrawn 17.9.93. Proceedings recommenced 20.9.93.

Federal Court consolidated this and *ACCC v National Mutual Life Association of Australasia Ltd* (QG No. 77 of 1994) on 12.3.96.

National Mutual admitted that certain conduct alleged in the statement of claim contravened s. 52 of the Act and that it was indirectly involved in the conduct through its agent. National Mutual and the Commission agreed to a settlement. The Commission discontinued proceedings against National Mutual on 3.6.96.

Action against the agents, IMB Group Pty Ltd, and against Logan Lions Ltd and certain individuals continues. Trial in this matter began 7.9.98 and was adjourned on 24.9.98. Trial recommenced on 22.2.99 and was further adjourned on 24.3.99 to resume on 13.9.99. Directions hearing held on 16.6.99 to hear argument on the number and relevance of witnesses called by the respondents, and on the application of s. 51A.

On 17.6.99 Drummond J declared that in this particular case the Commission (applicant) had the persuasive burden of proof in regard to representations made by the respondents about

future events. On 24.6.99 Commission filed and served a notice of motion to appeal this decision. A date for a directions hearing on the notice of motion is pending. The trial resumed on 13.9.99. The Commission provided its closing submissions on 18.10.99 and the respondents were to provide their written submissions by 19.11.99 and any oral submissions on 10.12.99.

On 14.1.00 the respondents filed their written submissions, and on 24.1.00 the Commission filed applicants' submissions in reply. Judgment is now pending.

Australian Safeway Stores Pty Ltd (trading as Safeway) and George Weston Foods Limited (trading as Tip Top Bakeries), ss 45, 45A, 46, 47, 48. Alleged price fixing, misuse of market power and resale price maintenance in relation to the sale of bread in Victoria. Proceedings instituted on 23.12.96. The Commission is seeking penalties and injunctions. On 30.5.97 Federal Court imposed penalty of \$1.25 million on George Weston Foods Limited, which admitted the contraventions. Trial of allegations against Safeway began in February 1999 and finished on 20 October 1999. The decision has been reserved.

Simsmetal Ltd, Babister & Jaksa, ss 45, 46, 76. Alleged attempted market sharing arrangement and misuse of market power in the South Australian steel scrap and South Australian foundry steel markets.

The March 2000 trial date has been vacated pending the outcome of settlement negotiations between the parties.

Boral Limited and Boral Besser Masonry Ltd, s. 46. Alleged predatory pricing and misuse of market power in relation to the supply of concrete masonry products. Proceedings instituted on 6.3.98. The Commission is seeking penalty, declaration, injunctions requiring the companies to implement a corporate compliance program, and findings of fact. Trial commenced 6.7.99.

Justice Heerey found that Boral Besser Masonry Ltd did engage in below-cost pricing for the purpose of deterring new entrants and driving competitors out of the market. However, the Commission did not satisfy the court that Boral Besser Masonry Ltd had a substantial degree of power in the Melbourne concrete masonry market which is an essential element for establishing a contravention of s. 46. The court found that the relevant market was the Melbourne metropolitan market for wall and paving material. The Commission appealed these findings and the Full Federal Court heard the appeal on 7–10 February 2000. The parties are currently awaiting the decision of the full Federal Court.

George Weston Foods Limited and ors, s. 45. Alleged attempts to induce price-fixing agreement between two Tasmanian retailers in relation to biscuits. The Commission instituted proceedings on 28.10.98 seeking orders including pecuniary penalty, injunctions, declarations and findings of fact. The company has since admitted the contraventions and a penalty hearing held on 6.8.99 is pending decision.

SIP Australia Pty Limited and Baker Bros (Aust) Pty Ltd, ss 45(2), 45A. Alleged primary boycott and price fixing in relation to the supply of ABAC compressors. Proceedings instituted on 23.4.99 against Baker Bros and two directors, Andrew Baker and Guy Baker. At 5.5.99 directions hearing Baker Bros admitted to the conduct. At 7.5.99 penalty hearing Baker Bros and Commission presented joint submission seeking injunctions, penalties and a compliance program. On 29.6.99 court accepted joint submission and imposed penalties totalling \$60 000 on Baker Bros and two directors. Baker Bros also agreed to offer a s. 87B undertaking to implement a trade practices compliance program and pay part of Commission's costs.

SIP Australia filed its defence on 30.6.99. The next directions hearing in this matter is scheduled for 19 April 2000.

Rural Press Limited and ors, ss 45, 46. Alleged misuse of market power and anti-competitive agreement in relation to the withdrawal of *The River News* regional newspaper from the Mannum area in South Australia. Proceedings instituted 14.7.99 against Rural Press Limited and its subsidiary,

Bridge Printing Office Pty Ltd, in respect of ss 45 and 46, and its employees Ian Law and Trevor McAuliffe for being knowingly concerned. Also instituted against Waikerie Printing House Pty Ltd in respect of s. 45 and its directors, Paul and Darnley Taylor, for being knowingly concerned. Trial held from 8.12.99 to 17.12.99 before Mansfield J, closing submissions heard on 10–11 February 2000. Decision reserved.

Tubemakers of Australia, Associated Water Equipment and Geoff Clegg Enterprises formerly known as Watergear Distributors, ss 45, 45A. Alleged price fixing, market sharing, tender rigging and exclusionary provisions in the supply of fittings and valves suitable for use with ductile iron cement lined (DACL) pipe and plastic pipe.

Proceedings commenced 13.7.99. Penalties handed down against Tubemakers of Australia and Coastline Foundry (Qld) on 12.11.99. Penalty handed down against Associated Water Equipment on 6.3.00. Proceedings against Geoff Clegg Enterprises continue. Geoff Clegg Enterprises and Commission to submit agreed statement of facts if possible. The matter to be listed for further directions on 7.4.00 if parties do not provide confirmation to the court that relevant affidavits and outline of submissions have been filed by 6 April 2000.

Ithaca Ice Works Pty Limited, Queensland Ice Supplies Pty Limited, Ansonguard Pty Limited, s. 45. Alleged price fixing and market sharing in Queensland ice market.

On 12.8.99 the Commission filed proceedings in the Federal Court, Brisbane against Ithaca Ice Works Pty Limited, Queensland Ice Supplies Pty Limited, Ansonguard Pty Limited, Kenneth John Smith, Anthony John Mee, Gregory Paul Mee, Brian Bradley, Leo Grevis, Gary John Grevis, Roderick Ian Matheson and Jack Numan Berry.

The Commission alleges that the respondents promoted price fixing and market sharing arrangements in the ice industry in south-east Queensland between August 1993 and September 1996. Directions hearings were held on 3.9.99 and 5.11.99. A penalty hearing in relation to some respondents was held on 31.3.00. The trial, concerning the remaining respondents, has been set down for 4.12.00.

Unconscionable conduct

Farrington Fayre Shopping Centre, s. 51AA. Alleged unconscionable conduct in relation to leasing arrangements. Proceedings instituted 6.4.98 with the Commission seeking orders including declarations, injunctions, public apology, institution of a corporate compliance program and findings of fact.

Trial commenced 18.10.99, but was adjourned with French J raising concerns as to the constitutional validity of s. 51AA. Commission directed to issue notices under s. 78B of the Judiciary Act to the Attorneys-General for their consideration. This was completed on 25.10.99. Matter set down for 22.11.99 for argument on constitutional issue.

On 14.1.00 French J handed down his decision that s. 51AA was constitutional. Trial held on 31.1.00 to 3.2.00 and decision reserved.

Leelee Pty Ltd, s. 51AC. Alleged unconscionable conduct by a landlord towards one of its tenants. Proceedings instituted 4.2.99 against Leelee Pty Ltd and Pua Hor Ong, Managing Director, for aiding and abetting or being knowingly concerned. Commission seeking injunctions, declarations that the tenant has suffered loss or damage, findings of fact, and orders for payment of damages. Notice of motion to strike out part of the statement of claim and stay the proceedings heard on 2.7.99. Order made on 20.8.99 for Commission to file amended statement of claim. Amended statement of claim filed on 23.9.99. Notice of motion to amend application to include s. 51AA accepted without objection on 27.10.99. Next directions hearing 1.2.00.

Samton Holdings Pty Limited, s. 51AA. Alleged unconscionable conduct by a company towards one of its tenants. Proceedings instituted on 26.2.99. Commission seeking orders against the company, each of the landlords and their legal adviser, including declarations, injunctions, the publishing of public notices, the institution of corporate compliance programs, damages and costs. On 15.10.99 the applicants' notice of motion seeking further and better discovery on the

basis of the legal adviser's claim of privilege was mentioned and programming orders made for the hearing of the matter.

Simply No Knead Franchising Pty Ltd, ss 51AC, 51AD. Alleged unconscionable conduct by the company towards its franchisees and breach of the Franchising Code of Conduct. Proceedings instituted 16.6.99 against SNK and its director.

On 24.12.99 Justice Sundberg ordered that SNK's application seeking to dismiss or forever stay the Commission's proceedings on the grounds that it is vexatious, oppressive and/or abuse of process be dismissed. The court also upheld the Commission's application for interlocutory relief and ordered that SNK be restrained from further prosecution of its State court proceedings against its ex-franchisees until the hearing and determination of the Commission's proceeding. The order was given on the condition that the Commission file an undertaking by each of the ex-franchisees that they will not prosecute their counterclaims in the various State court proceedings until the hearing and determination of the Commission's proceeding. Such undertakings were filed with the Federal Court on 3.2.00.

A directions hearing was held on 3.3.00 and a court timetable was set. The trial date is yet to be set.

Consumer protection

Venture Industries Pty Limited and Collings Construction Company Pty Limited, ss 51AB, 52. Alleged misleading, deceptive and unconscionable conduct in relation to building homes. Proceedings instituted 3.9.93 against Collings Construction Co Pty Limited, Wayne Collings, Venture Industries Pty Limited, Harry Kioussis, Penny Kioussis and June Collings. Representative action on behalf of seven families.

On 16.9.94 matter cross-vested to NSW Supreme Court. On 28.9.95 Hunter J adopted report from court-appointed referee. Trial before Hunter J from 9.10.95 to 28.11.95. In December 1995 Venture parties sought to overturn the cross-vesting of the matter from

the Federal Court to the NSW Supreme Court. On 23.5.96 application refused.

On 10.12.96 Hunter J found five of the respondents had breached s. 52. Damages of \$1 081 498.55 awarded to seven families represented by the Commission. No findings as to breaches of s. 51AB. No findings and no damages awarded against June Collings.

On 7.2.97 Hunter J made orders, including interest, against each of the five defendants found liable (effectively joint and several) of between \$1 412 798.92 and \$1 592 927.54, with a total award of \$1 618 507.24. Venture Industries Pty Limited, Harry Kioussis and Penny Kioussis are generally restrained from holding a pecuniary interest in an organisation offering services which would require a licence under the *Building Services Corporation Act 1989* (NSW). Venture Industries Pty Ltd, Harry Kioussis and Penny Kioussis sought a stay through the Court of Appeal, which was refused 17.3.97. Each of the five defendants found liable appealed the decision to Court of Appeal. Appeal dismissed 3.3.98. Venture Industries, Harry Kioussis and Penny Kioussis have sought special leave to appeal the decision to the High Court.

The High Court refused special leave to appeal the decision of the Court of Appeal on 20.11.98.

Recovery proceedings continue. Collings Construction Co Pty Ltd (now called CAN 000 443 176 Pty Ltd) has been placed in voluntary administration. Wayne Collings has been placed into bankruptcy (24.3.98) as have Harry Kioussis and Penny Kioussis (both on 10.7.98).

Venture Industries was placed into liquidation on 20.7.98.

Stephen Gregory Wyer, Optell Pty Ltd, Geoffrey Allan Beckett, Clinton Wade Andela, ss 52, 53(aa), (bb), (c), (d), (f), 64. Alleged misleading and deceptive conduct in relation to business registers and consultancies. On 9.8.96 proceedings instituted. On 15.8.96 Finn J granted consent orders against Mr Wyer restraining him from carrying on the OSA and SAR schemes, freezing moneys obtained through the schemes and ordering him to forward any moneys obtained through the schemes to the Commission or to the court.

On 26.8.96 Finn J made interlocutory orders against Optell and others preventing them from carrying on the register and consultancy businesses, and ordering them to forward to the Commission moneys received in relation to the businesses. Commission seeking permanent injunctions and other orders for corrective action.

On 6.9.96 proceeding transferred to Brisbane. Hearing for future conduct of proceedings 19.1.98. Final hearing 26–27.3.98. Judgment for the plaintiff handed down by O'Loughlin J on 3.6.98. Injunctions granted against Andela and Beckett. Draft orders filed on 1.7.98. Awaiting final orders.

Black on White Pty Limited (trading as Australian Early Childhood College), ss 51AB, 52. Alleged misleading, deceptive and unconscionable conduct in relation to the accreditation of courses and enforcement of enrolment contracts. Proceedings instituted on 1.8.97. On 15.8.97 court accepted undertakings from respondents in terms of interlocutory orders sought by the Commission. Administrator appointed 17.10.97. Validity of appointment being challenged in Supreme Court. At directions hearing on 17.10.97 court ordered joinder of fourth respondent. Directions hearing on 21.11.97 set down new timetable for discovery, filing of defences and affidavits. On 15.1.98 creditors resolved to wind up company. Proceedings to continue against individual respondents. On 26.10.98 notice of motion by fourth respondent to have their conduct tried as a preliminary issue. Motion unsuccessful. On 30.11.98 directions hearing amending timetable for second and third respondents. On 12.3.99 directions hearing. Trial set down for 3.4.00 for seven days.

HRJ Financial Services Pty Ltd, ss 52, 53(c), 55A, 51AB. Alleged misrepresentations in relation to the provision of personal loans. Proceedings instituted against HRJ and its directors Rowland William Thomas and Helen Elizabeth Lewis on 6.7.98. On 10.7.98 court issued restraining orders against HRJ and its directors and ordered a freeze on funds.

World Netsafe Pty Ltd & Terence Butler, ss 52, 53, 57, 59 & 61. Alleged misleading and deceptive conduct, false representations,

referral selling and pyramid selling scheme in connection with the marketing of an 'ATTM Card'.

It was alleged that the misrepresentations made included that the card was being printed and would be made available by certain times, and that the card would function as a telephone, ATM and POS card and possess Visa or Maestro Cirrus debit card facilities. It was 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.

Proceedings were instituted on 21.12.99 against World Netsafe Pty Ltd and Mr Terence Butler, the sole director of the company. On 21.12.99 Mareva order was made freezing certain funds under the control of World Netsafe or Mr Butler. On 23.12.99 undertakings were given by the respondents to cease making representations with respect to the ATTM card, including about affiliations the company may have and the attributes of the card. Mareva order continued. Mareva order lifted on 27.1.00. Various interim injunctions made against the respondents regarding the promotion of the card. On 25.2.00 a directions hearing was held. On 12.4.00 orders were made including for demonstration of the card to the ACCC. Respondents requested adjournment on 4.5.00. Next hearing to be held on 15.6.00. ACCC to seek trial date. Injunctive orders against the respondents continue.

Billbusters Pty Limited, s. 53. Alleged misrepresentations in relation to the supply of telephone bill-paying services. Proceedings instituted on 13.11.98. Commission obtained interim restraining orders against Billbusters Pty Limited and its director Miles Kendrick-Smith on 23.11.98, restraining them from making certain representations and dealing with their assets. Next directions hearing on 30.6.00.

Giraffe World Australia, ss 53, 61. Alleged contravention of referral selling and pyramid selling provisions of the Trade Practices Act. Alleged false representations about the product it promotes, negative ion mats. Proceedings instituted on 6.5.98. Undertakings given by Giraffe World on 23.4.99. On 29.6.99 found that Giraffe World had breached its undertaking. Commission awaiting judgment on the substantive issues in the matter.

Golden Sphere International Incorporated, s. 61. In 1996 the

Commission instituted proceedings against Golden Sphere International Incorporated, Victor Michael Cottrill and Pamela Reynolds to obtain injunctive and other relief for an alleged breach of s. 61 of the Trade Practices Act. The Commission also commenced proceedings to obtain monetary relief on behalf of the members of the public who had been participants in the Golden Sphere scheme. On 1 June 1998, O'Loughlin J in the Federal Court of Australia, held that the three respondents had breached section 61(2A) of the Trade Practices Act which prohibits pyramid selling schemes. The Company, Mr Cottrill and Ms Reynolds were ordered to pay \$550 000 into a fund to provide refunds to consumers who invested in its pyramid selling scheme. The fund was administered by the Official Trustee and the staff of the Insolvency and Trustee Service of Australia (ITSA). Over \$250 000 was recovered and paid into the trust fund. This money was obtained as a result of the Commission's Mareva injunction orders (an injunction which enables the court to freeze the assets of a defendant). The Commission and ITSA notified participants in the Golden Sphere scheme of the Federal Court orders in major national newspapers and invited the participants to submit claims for refunds from the fund.

The respondents have not paid the full balance of the \$550 000 in accordance with the June 1998 judgment, and the Commission obtained evidence that monies due to the company had been transferred to Vanuatu. On 14.9.99 the Commission obtained judgment and other orders against the three respondents in the Supreme Court of Vanuatu before Saksak J.

ITSA has advised that the claims of the members of the pyramid selling scheme have been determined and claimants have been paid the money they were entitled to from the fund in accordance with the 1.6.98 orders. The surplus monies in the fund are to be distributed in accordance with the Federal Court orders of June 1998. That matter is currently progressing.

Shercind Pty Ltd (trading as Eyetastique) (in liquidation), s. 65C. Alleged non-compliance with mandatory consumer product safety

standard for sunglasses and fashion spectacles. Proceedings instituted against former directors, Farid and Matta on 15.10.98. Trial held from 18–19.10.99. Proceedings against Farid dismissed. On 5.11.99 Matta found guilty of two offences. Ordered to pay fines of \$500 per offence and the applicant's costs of the proceedings including reserved costs. On 8.12.99 Matta filed a notice of appeal. Hearing week commencing 15.5.00.

Pauls Limited, s. 53. Alleged misleading advertising of its white milk products in the Northern Territory. Proceedings instituted 25.2.99. On 9.3.99 court ordered Pauls not to make certain representations. Orders remain in place until full hearing. Commission seeking corrective advertising, permanent injunctions and refunds.

Abel Rent-A-Car, ss 52, 53, 56. Alleged misleading advertising of car rental services. Proceedings instituted on 24.2.99. Interim orders obtained on 27.3.99. Further interim orders obtained by consent on 5.5.99. Orders varied, and hearing on contempt issues on 24.6.99. Further directions made by consent on 25.6.99. Company placed into voluntary administration on 26.7.99. Company placed in a creditors voluntary liquidation on 20.8.99. Contempt judgment handed down on 19.4.00. Commission is seeking permanent injunctions and declarations.

Instant Document Retrieval Pty Ltd, ss 52, 59. Alleged false representations in relation to distributorships for 'doctrieve' product. Proceedings instituted 13.4.99 against the company, its managing director, Mr Earl Woolley, and Mr William McIntosh.

In January 2000 the court made orders by consent against Instant Document Retrieval Pty Ltd and Mr Woolley. The orders provided:

- more than 20 court injunctions preventing both IDR and Mr Woolley from making representations, similar to those alleged by the Commission, in the future; and
- damages to two franchisees, in Brisbane and Townsville, totalling over \$60 000.

Mr Woolley also provided a court enforceable undertaking requiring him to implement a trade practices compliance program in any company over which he has control in the future.

MHG Plastic Industries Pty Ltd, s. 65C. Alleged non-compliance with mandatory consumer product safety standard relating to protective helmets for vehicle users. Proceedings instituted on 13.5.99. On 15.6.99 Federal Court found that MHG Plastic Industries had manufactured and offered for sale motor cycle helmets that failed to comply with the relevant mandatory safety standard. On 28.6.99 Federal Court Sydney ordered MHG Plastic Industries to conduct a recall of all helmets manufactured by it since 1.7.96. These orders stayed to argue the mechanics of the recall. On 13.7.99 the court ordered the recall and that consumers be given a full cash refund. MHG has appealed. No appeal date has been set.

Australian Taxation Services, s. 52. Alleged distribution of forms appearing to be issued by the Australian Taxation Office. Proceedings instituted on 5.7.99. On 7.7.99 court made interlocutory orders restraining ATS and its director, Michael Ivanoff, from distributing forms seeking businesses to register for the GST and to pay a fee. On 9.7.99 Kiefel J continued the injunction and ordered a freeze on the company's bank account. On 16.7.99 court handed down permanent orders restraining the company and its director from continuing the conduct, freezing ATS' bank account, and ordering refunds.

Goldseal Australia Pty Ltd, Specialty Products International Pty Ltd, ss 52 and 53. Alleged misrepresentations in relation to franchises and distributor agreements. Proceedings instituted on 7.6.99 against the company and Mr Norman English, a director of the company. In February 2000 the court made orders by consent against Goldseal Australia Pty Ltd and Mr English. The orders provided:

- court injunctions preventing both Goldseal and Mr English from making representations, similar to representations alleged by the Commission, in the future;
- declarations that Goldseal and Mr English had breached the Act; and
- findings of fact.

The Australasian Institute, s. 52. Alleged misleading representations in relation to the promotion and teaching of Internet-delivered degrees. Proceedings instituted on 21.5.99. On

27.5.99 the Australasian Institute undertook, for the present, to stop promoting the Global Master of Business Administration degree, and to provide to the Commission the names and addresses of the students currently enrolled in the course. On 18.6.99 court ordered that mediation take place between the parties. On 14.7.99 the Commission applied to add representative proceedings. This is now being opposed. Matter next before the court on 27.10.99.

Stephen Frederick Grant, director Furniture Wizard Pty Ltd (in liquidation), ss 52, 59(2). Alleged misrepresentations in relation to the sale of mobile furniture repair franchises in SA, Qld and Vic.

On 29.10.99 proceedings instituted in Federal Court Adelaide against Stephen Frederick Grant, director of Furniture Wizard Pty Ltd (in liquidation). Commission seeking interim orders to restrain respondent from making certain representations. Permanent orders sought as to false and misleading representations in the sale of franchises and in like activities in the future, as well as findings under s. 83, refunds to franchisees and costs. Directions hearing has been set down for 18.11.99.

Cash Return Mercantile Pty Limited and Sharyn McCaskey – ss 52, 53(g) and 60. Alleged harassment and coercion in relation to payments of goods and services. The Commission has alleged that Ms McCaskey and Cash return engaged in undue harassment of a number of consumers in relation to the payment for goods and services supplied by clients of cash return. The Commission has also alleged the conduct involved threatening, aggressive and false representations during their telephone contacts with consumers. Proceedings were instituted on the 13.10.99. The matter is listed for the 17.7.00. Submissions are to be filed by 20.6.00.

Australian Billboard Connections Pty Ltd, ss 52, 59(2) Alleged false representations regarding the viability of franchises. Proceedings instituted 30.6.99 against Australian Billboard Connections Pty Ltd and its Managing Director, Michael Hollingsworth, and National Sales Manager, Kevin Hall, for aiding and abetting or being knowingly concerned.

The matter was resolved by consent before Mansfield J of the Federal Court, Adelaide on 7.4.00. ABC was restrained, in the course of selling businesses, from:

- estimating prospective franchisees' earnings without giving details of how the estimates were calculated;
- telling prospective franchisees that ABC has existing or established customers for the prospective franchisee without also giving details of those customers' history of dealing with ABC; or
- disclosing the cash flow or earnings of other franchisees without giving details about the number and earnings of other franchisees in the same State as the prospective franchisee and any other information which may affect the prospective franchisee's earning capacity.

Messrs Hall and Hollingsworth were ordered not to make, or aid and abet ABC in making, the above types of statements.

ABC consented to pay \$35,000 towards the Commission's costs and, in private settlements with each of three franchisees, paid compensation of more than \$210 000.

Chubb Australia Limited, ss. 52, 53(aa). The Federal Court in Brisbane granted injunctions on 4.4.00 against Chubb Australia Limited, trading as Chubb Fire. Chubb Fire admitted misleading its clients about services it didn't provide. These included failing to provide contracted inspections, testing and maintenance for some customers' fire alarm systems, particularly over the period 1996-97 where it missed at least one annual alarm system test for about 80 per cent of its customers and some buildings received no service for either year.

Chubb has agreed to refund customers for missed tests, place two ads in the *Courier Mail* alerting previous customers to potential missed services, install a management control program, and upgrade its trade practices compliance program.

The Commission also reached a similar settlement with Independent Fire Sprinklers Pty Ltd and Independent Fire Alarms Pty Ltd, following their admission that they also failed to

perform certain contracted sprinkler and alarm system services between July 1993 and December 1998.

Anti-competitive conduct — telecommunications

Telstra. Alleged anti-competitive conduct in relation to its local call transfer process. Proceedings instituted 24.12.98 following the issuing of three competition notices. Two notices the subject of the present proceedings came into force on 9.12.98; the third came into force on 25.1.99.

On 9.4.99 the Commission issued a fourth notice alleging Telstra's package of conduct in relation to churn amounts to a breach of the competition rule. The Commission has also instituted proceedings against Telstra in relation to the third and fourth notices. All proceedings are due to be heard by the Federal Court in March 2000.

The legislation provides that Telstra may be liable for significant penalties if it is found to have breached the competition rule, of up to \$10 million for each offence and \$1 million per offence per day for each day that the conduct continues.

Adjudication

The following authorisation applications and notifications are under consideration by the Commission. New authorisation and notification matters are discussed in more detail in the Adjudication chapter.

Authorisation applications under consideration

Advertiser Newspapers Limited & ors (A60020-1)

Contracts and rules for the operation of SA newsagency system.

26.3.97 Interim authorisation extended to three months after the date on which the Commission's review of the NSW/ACT, Queensland and Victoria systems is completed.

12.12.97 Commission's review completed.

Interim authorisation to date consistent with Tribunal's decision for arrangements in NSW/ACT, Queensland and Victoria.

Advertiser Newspapers Limited & ors (A60022)

Agreement regarding newsagency territories and termination of agreement to adopt newsagency administration rules.

TransGrid and other NSW applicants, VPX and other Victorian applicants (A90601-12)

Proposed National Electricity Market Stage 1 (NEM1) arrangements (comprising the revised NSW code, the revised VicPool Rules, co-extensive rules, aligned provisions and enforcement agreement).

5.3.97 Interim authorisation granted until Stage 2.

10.11.97 VicPool Rules revoked — new interim granted for amended pool rules which incorporate the Victorian capacity support program.

19.12.97 Amendment to application received.

24.12.97 VicPool Rules revoked and re-granted to accommodate new entrants to the Vic market.

2.2.98 Revision to amendment to application.

25.2.98 Interim authorisation granted to amend NEM1 codes until either of NEM commencement or 1.7.98.

27.3.98 Amendment to application received.

9.4.98 Amendment to application received.

6.5.98 Interim authorisation granted to amended NEM1 codes until earlier of NEM commencement or 1.7.98.

1.12.98 Amendment to application received.

9.12.98 Interim authorisation granted to amend NEM1 codes until 180 days after NEM commences.

Interim authorisation has since lapsed.

Victorian Egg Industry Co-op Ltd (A90621)

Franchise and marketing agreement.

27.8.97 Interim authorisation granted until 31.3.98.

25.3.98 Interim extended until final determination issued.

Queensland vesting contracts (A90632–6)

Queensland electricity vesting contracts between the three major generators and three main retailers from 1998–2001.

14.1.98 Interim authorisation granted until final determination.

Chevron Niugini Pty Ltd and others (A90667–9)

Arrangements for marketing of PNG gas, terms of supply to customers.

5.8.98 Interim authorisation granted subject to certain conditions.

3.12.99 Interim authorisation revoked and new interim authorisation substituted — primarily to clarify reporting requirements.

Tarong Energy Corporation (A90677)

Coordination of generator output at times of involuntary load shedding in the Queensland electricity market.

2.12.98 Conditional authorisation granted.

2.12.99 Interim authorisation granted.

Mater Miseri Cordiae Hospital & ors (A90679)

Proposed collective negotiating group of private hospitals.

3.12.99 Draft determination issued proposing to refuse authorisation.

24.2.00 Pre-determination conference.

Agsafe (A90680–81)

Accreditation scheme code of conduct and sanctions process.

30.3.99 Interim authorisation granted until final determination issued.

Golden Circle Ltd (A50022)

Seeking authorisation of constitutional arrangement that deals with acquisition of shares and conditions of a shareholding in the company.

24.2.99 Interim authorisation granted.

13.3.00 Draft determination proposing to grant authorisation.

Australian Newsagents Federation Ltd (A30196)

Negotiation of trading terms with publishers.

16.4.99 Interim authorisation granted.

23.12.99 Draft determination issued.

NECA (A906484–6)

NSW intra-regional loss factor derogation amendment.

30.6.99 Interim authorisation granted.

Allgas Energy Ltd (A90691, A50024–5)

Exclusive dealing for aggregation of gas supply from PNG.

The Commission granted interim authorisation to Allgas on 9.6.99 to negotiate contracts to supply PNG gas to Qld customers. Allgas was not authorised to enter into or give effect to such contracts.

The Commission understands that it is Allgas's intention to bring any such proposed gas sales contracts to the Commission for authorisation and that any proposed gas sales contract would be conditional upon authorisation.

NECA (A90704-6)

Code changes to allow for market network services.

BHP (Fertiliser Holdings) Pty Ltd, Incitex Ltd, Pivot Ltd (A90707)

Supply agreements with a number of fertiliser distributors in Australia.

Investment and Financial Services Association (A30200-1)

IFSA draft policy on genetic testing.

National Electricity Code changes (A90711-13)

Amendments to the NEC dealing with capacity mechanisms, VoLL and the price floor.

2.12.99 Interim authorisation granted.

The Uniting Church in Australia Property Trust (Q) and others (A90714-7)

Application for exclusionary provisions arrangements which may substantially lessen competition.

Council of Textile and Fashion Industries Ltd and Footwear Union of Australia (A90722-25)

Homeworkers code of practice.

NECA (90726-28)

Amendments to the Queensland derogations.

Independent Private Hospitals Association (A30203)

Proposal to form a network for mutual cooperation through the inter-hospitals.

The Showmen's Guild of Australia (A90729)

Code of conduct.

Rebidding Code changes (A90730-2)

Changes to the rebidding rules, VOLL scaling and revision to the settlements statements.

CSR Ltd (A90733)

Agreement for supplying sugar cane to Invicta Sugar Mill.

Notifications under consideration

Advertiser Newspapers Ltd (N60023-5)

Arrangements for supply of newspapers published by Advertiser.

15.4.96 Consideration in abeyance pending review of authorisation of related conduct.

Provet Queensland Pty Ltd (N50094)

Supply of 'Pharmaceutical; vet only' and 'Open seller' product to veterinary surgeons on certain conditions only.

Tamawood Pty Ltd (N90642)

Offer of certain building work for the construction of dwellings to various independent builders on condition they acquire certain goods or services from certain suppliers (third line forcing).

Mobil Oil Australia Ltd (N40327)

Proposes to offer a discount from the Mobilcard price in relation to purchases by Toll Transport Pty Ltd of petroleum products from participating stores (third line forcing).

Henley Arch, Henley Properties (QLD), Henley Properties (NSW), Northridge Homes (N50102-5)

Engagement of contractors to paint houses on condition they use only Taubmans paints.

NRMA Insurance Ltd (N90740)

Supplying motor vehicle insurance at a discount on condition customers acquire hire car services from a nominated supplier and smash repair services from repairer in NRMA's competitive partnering scheme (third line forcing).

Cheque Exchange (Australia) Pty Ltd (N70137)

Supply of a franchise on condition the franchisee acquire stationery and other goods from suppliers approved by the franchisor and a computer system from CX.

The Herald and Weekly Times, Advertiser Newspapers, Nationwide News, Queensland Newspapers, Advert (N40373-82)

Transitional arrangements for distribution of newspapers and magazines.

SOCO (N30887)

Promotion and sale of tickets to customers of SOCOG by Internet or through the Olympic Call Centre who acquire the credit or debit services of VISA in conjunction with box office sales (third line forcing).

Law Council of Australia (N90770)

Proposal to require persons who wish to join or remain members of its sections must also be members of one of its constituents (third line forcing).

Ergon Energy Corporation Ltd (N50116)

In relation to the Century Connection and access agreement (third line forcing).

PIVOT Ltd (N40399)

Strategic alliance agreement with Suncorp Metway Ltd.

News Ltd (N30894)

Sale of Olympic games tickets via entry form/code published in News Ltd newspapers (third line forcing).

Sta Travel (N40400)

Requirement for application participating on their work abroad program to purchase with Sta Travel an insurance policy provided by a specified provider (third line forcing).

Tabcorp Manager Pty Ltd (N90786)

Offering to supply a TAB kiosk and related services or EBTS to agents on condition agent offered supply will acquire broadcasting services from Sky Channel Pty Ltd (third line forcing).

Australian Competition Tribunal

Australasian Performing Right Association

(A30186-88, A30190-1, A30193 and N30751) Arrangements for acquisition rights to music and licensing performances.

3.12.97 Draft determination issued proposing to deny authorisation for input and licensing arrangements.

14.1.98 Determination issued denying authorisation of input, output and distribution arrangements; granting conditional authorisation for overseas arrangements; and revoking the notification relating to input arrangements.

4.2.98 APRA filed appeal to Australian Competition Tribunal.

13.11.98 Hearing — decision reserved.

16.6.99 Tribunal decision proposing to grant authorisation subject to rule amendments, adjourned for nine months. Interim authorisation granted.

REIA

(A90354) In relation to a consumer code of conduct for real estate agents.

23.11.99 Commission revoked, on the basis of changed circumstances, an authorisation granted in 1981 for the REIA's code of ethics — and granted a substitute authorisation for a new code of conduct.

10.12.99 REIA applied to the Australian Competition Tribunal for a review of the Commission's determination.

Certification trade marks

Completed

The Law Society of WA

(CTM 708877) Law practices under Quality Practice Standard.

Certifire Pty Ltd

(CTM 750533) Systems relating to passive fire protection systems and services.

Printsoft Development

(CTM 730216) IT software for high speed printing.

Seed Industry Association of Australia

(CTM 768023) Sowing seed quality.

Department of Industry, Science and Resources, Commonwealth of Australia

(CTM 451318) Goods bearing; Australian made; logo.

Department of Agriculture WA

(CTM 707595) Quality systems requirements for the food industry.

Department of Agriculture WA

(CTM 707596) Quality systems requirements

for use by primary producers, food manufacturers or food distributors.

Department of Agriculture WA
(CTM 744849) Quality systems for the food industry.

Chrissie Maher
(CTM 712256) Certification of document standards.

Waters and Rivers Commission WA
(CTM 716402) Plumbing and landscaping services.

National Indigenous Arts Advocacy Association
(CTM 772565) Amendments to the rules of the authenticity label for indigenous art and cultural works.

Tourism Victoria
(CTM 778019, 778020, 778023, 778025)
Tourism signs on roadways in Victoria.

Under consideration

Elicos Association Ltd
(CTM 701445) Provision of travel programs and training for overseas students.

Australian Vine Improvement Association
(CTM 720347) Grapevines and cuttings/graftings/cultures of grapevines.

Standards Association of Australia
(CTM 667437) Certified Laboratory Practice Program.

Consorzio Per La Tutela Del Formaggio Grana Padano
(CTM 732270–1) Italian cheeses.

Australian Owned Companies Association Ltd
(CTM 652664–6) Provision of goods and services provided by a wide range of Australian companies.

Australian Registered Cattle Breeders Association and Beef Improvement Association of Australia Inc.
(CTM 727387) Sale of beef cattle seedlot.

Sheepmeat Council of Australia
(CTM 703607, 704634, 710728)
Live sheep and lambs, processed sheep meat and products.

Centre Technique du Bois et de l'Ameublement
(CTM 750620) Certification of wooden casks and barrels.

Consorzio del Formaggio Parmigiano Reggiano
(CTM 677876–8) Certification of Italian dairy cheeses.

Victorian Conveyancers' Association
(CTM 758563) Certification of conveyancing services.

Department of Mines and Energy, Qld and others
(CTM 714440) Certification of household electrical goods — assignment and variation to the rules.

Craft Australia
(CTM 746821) Certification of craft products, materials and techniques.

National Safety Council of Australia Ltd
(CTM 725527) Certification of audit services of occupational health and safety activities.

Cattle Council of Australia
(CTM 647073, 669943)
Assignment to Cattlecare Ltd.

The Bio-dynamics Research Institute
(CTM 704565, 709823) Clothing and other apparel made from horticultural crops.

Australian Fertiliser Services Association
(CTM 738374) Fertiliser spreading equipment.

Recording Industry Association of America
(CTM 704384) Certification of enhanced CDs, musical sound recordings with accompanying text, graphics and audio-visual images with interactive capabilities.

Benchmark Certification Pty Ltd
(CTM 764299) Laboratory standards auditing services.

Australian New Zealand Food Authority
(CTM 770228) Health claims on foods and beverage products.

Standards Association of Australia
(CTM 743608) Design award program and consultancy services.

Standards Association of Australia
(CTM 741723, 741725-6) Certification of products under the Australian Design Award scheme.

Harris Tweed Authority
(CTM 705888) Amendment to the rules re Harris Tweed cloth.

Cotton Australia Ltd
(CTM 763065) Certification of cotton textiles and other cotton goods.

The Institute of Chartered Financial Analysts
(CTM 680354) Financial advising services.

The Pharmacy Guild of Australia
(CTM 761785) Quality of business management systems and customer service in pharmacies.

**Commonwealth of Australia
c/- Department of Industry, Science and Resources**
(CTM 786060) Paints, varnishes, lacquers and other coatings relating to the Australian Paint Approval Scheme.

State of Victoria c/- Department of Infrastructure
(CTM 769535) Accreditation of road transport passenger services.

Australian Wood Panels Association Inc.
(CTM 785600) Wood panels of particleboard and medium density fibreboard.

**Commonwealth of Australia
c/- National Archives of Australia**
(CTM 752089) Variation to the rules.

Meat Research Corporation
(CTM 762759) Classification of beef meat and meat products.

Meatlink Network Pty Ltd
(CTM 789679) Competence measurement of metropolitan retail outlets.

Tasmanian Quality Assured Inc.
(CTM 795314) Quality assurance of Tasmanian agricultural, horticultural and other primary products.

Migration Institute of Australia Ltd
(CTM 786309) Certification of migration advisory services.

Standards Australia International Limited
(CTM 740328) Certification of quality management systems for advertising, business management, insurance, financial, real estate, building construction, repair and maintenance and telecommunication services.

Computing Technology Industry Association Inc
(CTM 712106) Certification of computer service providers.

Leeton Development Corporation
(CTM 770200) Certification of products and services produced in the Leeton, NSW region.