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# 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 if the Commission is satisfied that the practice delivers offsetting public benefits.*

## Determinations

### **Amendments to the National Electricity Code — rebidding, VoLL scaling and settlements statements**

*In relation to modified rules for rebidding (A90730-2)*

- Draft determination issued on 3 November 2000.
- Final determination issued on 6 December 2000.

On 15 March 2000 the National Electricity Code Administrator (NECA) asked the Commission to grant authorisation to amendments to the National Electricity Code's rules for rebidding.

As part of the National Electricity Market (NEM) arrangements, participants in the centralised spot market can lodge bids for prices and quantities to be dispatched. While the price bids cannot be altered beyond the bidding deadline for the day of dispatch, as contained in the timetable published by the National Electricity Market Management Company (NEMMCO), the quantities can be rebid until the dispatch period. NECA's proposed amendments to the code introduce modified rules for information disclosure about rebids.

On 27 March 2000 NECA amended this application by including code changes relating to VoLL scaling and the revision of settlements statements.

VoLL is effectively a price cap in the market, and the existence of the price cap (and the price floor) may constitute a form of price fixing under s. 45 of the Act. The VoLL scaling provisions, which adjust the price cap in certain regions, and also apply in times of administered price periods and to the price floor, may also constitute a form of price fixing. These arrangements may also detract from the overall public benefit in that they may distort market signals. The VoLL scaling amendments aim to introduce mechanisms to address the inability to simultaneously meet a number of market objectives at times of system stress. The arrangements for settlements statements are to allow NEMMCO to adjust settlements payments when errors in processing are detected or more accurate information becomes available.

The Commission considered that accurate and prompt settlements statements will greatly contribute to the effective operation of the NEM, and enhance confidence in the spot market trading arrangements. The Commission also accepted that some revision of settlements statements will be required as new data becomes available and errors are corrected. Therefore, if a dispute is raised, which is likely to alter end calculations, then NEMMCO must be able to recalculate settlements and issue a revised statement. The Commission considered that this would lead to a more transparent and efficient process.

The Commission agreed that where settlements statement revisions affect the settlements residues accruing between regions, it is appropriate to extend the coverage of the settlements provisions to network service providers.

The Commission considered it appropriate for affected parties to be able to join a dispute, and put forward their views before it was resolved. The Commission agreed with NECA that such an arrangement might reduce the likelihood of disputes cascading. The Commission considered that to ensure the greatest accuracy in final settlements it was appropriate for NEMMCO to both be able to join a dispute, and to raise one.

After considering the timing of routine revised statements, the Commission decided it would be beneficial for the market to have two rounds of routine revised statements, at 20 weeks and 30 weeks respectively. It thought this to be in the best interests of all market participants as it allows for the capture of any inaccuracies from data or processing errors. The 30-week round would allow for the adjustment of settlements in response to any corrections discovered after the 20-week revision period (yet before the 6-month limitation on raising disputes). This will be useful in the forthcoming implementation of full retail contestability in which interval meters without communication facilities are read quarterly. If a reading were missed, then the 30-week round would allow for this situation. The Commission therefore places a condition on this authorisation that will require NEMMCO to routinely recalculate settlements at periods of both 20 and 30 weeks.

The Commission noted an error in the draft code changes relating to routine settlement statements and supported correcting this clause to improve the code's accuracy.

The Commission also noted NEMMCO's concerns about clause 3.15.19(d) and supported changing the code to improve its clarity and accuracy. NEMMCO's concerns are set out in its submission of 8 September 2000.

The Commission concludes that, subject to specified conditions, the proposed amendments are likely to result in:

- a benefit to the public which outweighs the detriment from any lessening of competition that would be likely to result from the arrangements; and
- such benefit to the public that the arrangements should be allowed to be given effect to.

The authorisation is subject to any application to the Australian Competition Tribunal and expires on 31 December 2010.

### **Investment and Financial Services Association**

*In relation to clauses 2 and 4 of its draft policy on genetic testing (A30300-1)*

- Draft determination issued on 14 June 2000.
- Final determination issued 21 November 2000.

On 30 August 1999 the Investment and Financial Services Association (IFSA) applied for authorisation of its draft policy on genetic testing. IFSA is an industry association that represents the retail and wholesale funds management and life insurance industries. It has reported that its current life insurer members account for more than 98 per cent of the life insurance industry in Australia.

On 14 June 2000 the Commission issued a draft determination proposing to deny authorisation to IFSA. After a pre-decision conference on 17 July 2000 the Commission received further submissions. In addition, on 9 August 2000 the Federal Government announced that the Australian Law Reform Commission and the National Health and Medical Research Council would be inquiring jointly into human genetic information privacy and discrimination issues.

IFSA subsequently amended its applications to seek authorisation only for clauses 2 and 4 of its draft policy believing that other parts of the policy did not raise trade practices issues. These provide for a proposed agreement by IFSA members that they will not require applicants for life insurance to undergo genetic testing, and will not induce applicants to undergo such testing by offering discounts off standard premium rates based on favourable test results.

Provisions subject to IFSA's original applications but excluded from its amended ones, included a proposed agreement by IFSA members that insurers may require insurance applicants to make available all existing genetic test results for the purpose of classifying risk. IFSA stated that 'this requirement is enacted in law in the form of section 21(1) of the Insurance Contracts Act 1984 (Cth)'. IFSA has also stated that:

While it is an extremely important issue, consideration of insurers access to medical information including genetic tests, is not relevant to the authorisation application, that is, it does not need authorisation because it does not contravene any law or regulation.

The Commission considered that there would be public benefit in avoiding insurer-initiated coercion to undertake genetic testing and that government policy would be more difficult if compulsory genetic testing was introduced now.

The Commission noted, however, that there was nothing in IFSA's draft policy to prevent life insurers charging applicants for insurance higher than standard insurance premiums based on genetic testing already undertaken on them. IFSA has stated that it would be unfair to existing policyholders if applicants for life insurance withheld information that would, if disclosed in the normal manner, lead to a higher premium being paid or the proposal being rejected. IFSA has also acknowledged that it is probable that genetic test results may affect the risk classification process.

Submissions indicated there is considerable community concern about the adequacy of existing legislation to deal effectively with the issues of access to, and use of, individuals' genetic tests results including by life insurers.

The Commission considered that the public would benefit from:

- avoiding the coercion of life insurance applicants to undertake genetic testing; and
- an orderly debate, without the difficulty of insurer-initiated testing, on the regulatory safeguards appropriate for genetic testing.

It concluded that these benefits would outweigh any anti-competitive detriment resulting from life insurers agreeing not to use genetic tests as the basis for offering discounts off insurance premiums. In view of anticipated rapid advances in gene technology over the next few years, and the likely further development of self-regulatory and legislative safeguards for the use of such technology, it granted authorisation for the proposed clauses 2 and 4 of IFSA's draft policy on genetic testing until 13 December 2002.

## **Clay Brick and Paver Association of Victoria**

*In relation to a scheme to increase the number of trained bricklayers in Victoria (A90738)*

- Draft determination issued on 1 November 2000.
- Final determination issued on 12 December 2000.

On 27 July 2000 the Clay Brick and Paver Association of Victoria (CBPAV) applied for authorisation to charge a common levy on its members, and prospective parties to the arrangements, to establish a training initiative to help overcome the shortage of skilled bricklayers in Victoria.

The training initiative will establish a bricklayer training centre to provide high quality training for apprentice and trainee bricklayers, and a Group Training Company to assist host employers provide employment for apprentice and trainee bricklayers. The arrangement between CBPAV members is to charge a \$2 levy per thousand bricks sold to fund the training initiative.

While the Commission found that the \$2 levy might marginally increase the price of bricks, it also found that a public benefit would arise from the proposed arrangements through:

- alleviating the skills shortage in Victoria's bricklaying trade, by increasing the number of skilled bricklayers capable of offering high quality work to consumers;
- alleviating the cyclical increases in the cost of hiring bricklayers caused by shortages during periods of peak demand, by increasing the overall supply of skilled bricklayers; and
- reducing completion times by avoiding delays caused by bricklayer shortages.

The Commission concluded that the public benefits likely to result from the arrangements would outweigh the anti-competitive detriment. The Commission therefore granted authorisation to CBPAV for three years.

## Notifications

### Notifications finalised

The following third line forcing matters have been allowed to stand.

**Optus Internet Pty Ltd** (N90824) Offering a discount on Optus@Home service if certain IBM computer goods are also purchased.

**PlesTel Limited** (N31041) Offering discounted mobile phones to customers who either enter into a rental contract for a Commander Key Telephone system or connects to Telstra MobileNet.

**Optus Mobile** (N90826) Offering of mobile phones and related products and services to customers who acquire products at a discount from Gratis Nominees Limited.

**Gratis.com.au** (N90827) Reward scheme offer to customers who purchase certain Optus mobile products.

**Westpac General Insurance Ltd, Westpac Life Insurance Services Ltd and Australian Guarantee Corp Ltd** (N31049-51) Offering of a pricing advantage for customers who purchase packages from a Westpac subsidiary.

**One.Tel Dealers** (N31047-48) Proposing to offer discounts on mobile phones to customers who purchase the phone in connection with digital mobile telco services provided by One.Tel or One.Tel Networks Pty Ltd.

**Seven Companies** (N70185-91) Offering discounted goods and services to RAC members and the RAC Reward & Recognition Loyalty Program.

**BM & BF Hays Pty Ltd** (N40441) Don Service Station offering of a discount on petrol as part of Mobil/Coles.

**Westpac Banking Corporation** (N31052) Offering of accounts to BNP Paribas Equities Private Australia clients.

**National Finance Limited** (N40438-40) Sharp Corporation and Pacific Automotive supply of services on condition that a national card product is used to make the purchase.

### **TIR Securities** (Australia Ltd) (N40436)

Supplying broker services relating to trading on the Australian Stock Exchange, conditional to client acquiring clearing services by a clearing participant nominated by the broker.

**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.

**Australian Health Management Group Ltd** (N31042) Dental Provider Network to classify GP dentists into average annual charge rankings for calculation of benefits AHMG will provide to the GP dentist.