
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 chapter.

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 Proceedings withdrawn 17.9.93.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.

The 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 the 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 the Federal Court imposed a 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 20.10.99. The decision was reserved.

Boral Ltd and Boral Masonry Ltd (formerly 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 a penalty, declarations, injunctions and findings of fact. Trial commenced on 6.7.99. First instance judgment handed down on 22.9.99 holding that Boral Ltd and Boral Masonry Ltd had not contravened s. 46. The Commission appealed to the Full Court of the Federal Court. Appeal heard from 7–10.2.00. Appeal judgment handed down on 27.2.01 unanimously holding that Boral Masonry Ltd's pricing below manufacturing costs contravened s. 46 but dismissing the appeal against Boral Ltd. Boral Masonry Ltd has applied for special leave to appeal to the High Court of Australia. The parties' summaries of argument are yet to be filed.

Visy Paper Pty Ltd, s. 45. Secondary boycott. Alleged attempt by Visy Paper to induce another business (Northern Pacific Paper) to enter into a market sharing agreement in relation to the collection of recyclable waste paper.

Proceedings instituted 18.11.98. The Commission sought orders against Visy Paper including declarations, injunctions, orders requiring the institution of a trade practices compliance program and costs. It also sought penalties against Visy Paper and two senior employees. Matter was heard 16–18.8.00 and 10–12.10.00 before Sackville J. 20.11.00 Sackville J dismissed the Commission's application with costs. 29.11.00 the Commission appealed and issued a media release. An appeal hearing is scheduled for 17.5.01.

SIP Australia Pty Limited and Baker Bros (Aust) Pty Ltd, ss. 45(2), 45A, 48. Alleged primary boycott, price fixing and resale price maintenance 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 the court accepted a joint submission and imposed penalties totalling \$60 000 on Baker Bros and two directors. Baker Bros also provided an s. 87B undertaking to implement a trade practices compliance program and pay part of the Commission's costs.

SIP Australia filed its defence on 30.6.99. Trial held on 16–18.10.00 and recommenced on 13.11.00 with final submissions being heard on 14.11.00. Decision reserved.

Rural Press Limited and ors, ss. 45, 46. 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.

On 1.3.01 judgment was handed down in the Federal Court, Adelaide. Rural Press Limited and its subsidiary, Bridge Printing Office Pty Ltd, were found to have misused their market power in the market for the provision of regional newspapers in the Murray Bridge area in contravention of s. 46. Law and McAuliffe were found to have been knowingly concerned in that contravention. Rural Press, Bridge Printing Office and Waikerie Printing House were found to have entered into and given effect to an anti-competitive agreement concerning the circulation of *The River News* in contravention of s. 45. Law, McAuliffe, Paul and Darnley Taylor were found to have been knowingly concerned in that contravention. The court will hear submissions on penalties at a later date.

Ithaca Ice Works Pty Limited, Queensland Ice Supplies Pty Limited, Ansonguard Pty Limited, ss. 45, 45A. 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. Judgment was handed down on 26.7.00, imposing pecuniary penalties and costs on Queensland Ice Supplies (\$25 000 penalty, no costs), Kenneth John Smith (\$15 000 penalty and \$12 500 costs) and Roderick Ian Matheson (\$7500 penalty and \$2500 costs). In addition, injunctions were ordered against those respondents, restraining them from engaging in similar conduct for five years. Queensland Ice Supplies, Brian Bradley and Roderick Ian Matheson, who are still in the industry, also agreed to implement or upgrade trade practices compliance programs.

The penalty hearing and trial concerning the remaining respondents was heard in December 2000. The Commission is awaiting judgment.

Polygram (now Universal Music), Sony Music, and Warner Music, ss. 45, 46, 47. Alleged exclusive dealing and misuse of market power.

Proceedings instituted 30.8.99. The Commission alleges that the respondent record companies, as well as some senior personnel of PolyGram and Warner, breached some restrictive trade practices provisions of the Act in attempting to prevent the importation of recorded music after the Copyright Act was changed to allow for parallel imports. The matter has been set down for trial on 2.4.01. Proceedings were discontinued against Music Industry Piracy Investigation Pty Ltd, Michael Speck and Adrian Fitz-Alan in March 2001.

Maritime Union of Australia, ss. 45DB(1), 60. Alleged secondary boycotts, undue harassment and coercion.

Proceedings instituted 14.4.00. The Commission alleges that the union and certain officials unlawfully hindered and prevented vessels sailing from various Australian ports unless the shipowner agreed to use MUA labour to clean the holds of the vessel. Hearing in relation to an MUA strike-out application to be heard 29–30 March 2001. Trial set down for 15.10.01 for three weeks.

ABB Power Transmission Pty Ltd, Alstom Australia Limited, Wilson Transformer Company Pty Ltd & ors, ss. 45, 45A. Alleged agreements lessening competition, primary boycotts, price fixing agreements.

Proceedings instituted on 1.10.99. Commission seeking various forms of relief including pecuniary penalties and injunctions. Judgment was handed down on 6.4.01 (see next journal (no. 33) for details).

AMA (WA) and Mayne Nickless Ltd, ss. 45, 45A. Agreements lessening competition and price fixing.

On 21.7.00 the Commission instituted proceedings in the Federal Court, Perth, against the West Australian branch of the Australian Medical Association (AMA) and Mayne Nickless when it became aware that the AMA (WA) had,

on behalf of visiting medical practitioners at Joondalup Health Campus, entered into negotiations with Mayne Nickless to determine terms and conditions under which the medical practitioners would provide their services for the care of public patients at the Joondalup Health Campus. A directions hearing was held on 23.3.01. A further directions hearing will be held in April 2001 at a date to be determined.

Colgate-Palmolive Pty Ltd, s. 48. Alleged resale price maintenance between 1994 and 1998 to stop Tasmanian retailer Chickenfeed from advertising Colgate lines at cheap prices after complaints from Woolworths supermarkets.

Proceedings instituted 15.11.00 with Commission seeking penalties and injunctions. A directions hearing was held on 13.12.00. A further directions hearing is scheduled for 18.4.01.

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 French J handed down his decision on 26.9.00 that the conduct of the owners and their representative, in one of the three pleaded cases, was unconscionable. The owners have subsequently appealed the decision of the court and the Commission has launched a cross-appeal. Both the appeal and cross-appeal are set down to be heard on 31.5.01.

Trevor Davis Investments Pty Ltd, Mans Davis Holdings Pty Ltd, Trevor Davis and Daniel Mans, ss. 45, 45A. Alleged attempted price fixing and attempted inducement to enter a price fixing arrangement for supplying casual Internet access.

Proceedings instituted on 2.11.00. It is alleged that Mr Davis on behalf of Idle Gossip Internet Services, by letter dated 22 October 2000, wrote to a nearby rival Internet cafe requesting it to agree upon a minimum hourly rate of \$5 for Internet access. The Commission alleges that the letter indicated that Idle Gossip would begin to compete more aggressively if its rival did not agree to set its public price at \$5 per hour.

The Commission is seeking:

- declarations;
- pecuniary penalties;
- injunctions; and
- findings of fact.

The court has ordered that any agreed statement of facts be filed by 18.4.01. A date for hearing of the matter is yet to be set.

Samton Holdings Pty Limited, s. 51AA.

Alleged unconscionable conduct by a company towards one of its tenants.

Proceedings instituted on 26.2.99. On 29.11.00 Carr J dismissed the Commission's application against Samton Holdings and the six individual landlords. A notice of appeal was filed on 20.12.00. A hearing date has been set down for 28.5.01.

Lux Pty Ltd, ss. 51AB, 60. Alleged unconscionable conduct with accompanying harassment and coercion by a company towards an intellectually impaired couple to secure the sale of Lux vacuum cleaner.

Proceedings instituted on 27.7.00. On 29.8.00 Lux instituted proceedings to transfer the matter interstate. The application was denied. On 13.10.00 a directions hearing was held with a further directions hearing set for 3.4.01. A mediation conference has been ordered and is set to proceed in April 2001 at a date to be determined. If the matter remains unresolved by then the court will set a date for trial.

National Australia Bank Ltd, ss. 51AA, 52. Alleged unconscionable conduct and misleading

or deceptive conduct in relation to obtaining personal guarantees for \$200 000 from a Tasmanian woman as security for a business loan to a company of which the woman's husband was a director. At the time the guarantees were executed, the woman's husband was seriously incapacitated with amnesia after an accident.

On 3.12.00 the Commission instituted proceedings in the Federal Court, Hobart. Following an initial directions hearing on 5.12.00, a mediation conference was held on 18.12.00. At a further directions hearing on 9.2.01, a second mediation conference was set down for 9.5.01. A directions hearing will follow on 5.6.01.

Consumer protection

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. Trial completed. Submissions to court by respondent and applicant. On 6.3.01 judgment was handed down. On 28.3.01 hearing was held to consider orders and costs. Matter adjourned until 4.4.01.

Listen Systems Pty Ltd and Mr Stephen John Alexander, ss. 52 and 53(c). Misleading

and deceptive conduct, false representations with respect to alternative health therapy device.

On 7.4.00 the Federal Court, by consent, made numerous declarations and orders relating to misleading and false representations made by Listen Systems Pty Ltd with respect to alternative health therapy devices known as the EQ4 system. The court also found that Mr Stephen Alexander, a director of Listen Systems, had aided or abetted the breaches of the Trade Practices Act by Listen Systems.

On 8.1.01 the Commission instituted contempt of court proceedings against Listen Systems and Mr Alexander. The Commission alleges that Listen Systems failed to comply with the orders made against it on 7.4.00 and that Mr Alexander failed to take reasonable steps to ensure that the company complied with the orders. The matter is listed for hearing on 4.4.01.

HRJ Financial Services Pty Ltd, ss. 52, 53(c), 55A, 51AB. Alleged misrepresentations in relation to the provision of personal loans to callers using premium 1900 telephone services.

Proceedings were instituted on 6.7.98. On 18.2.00 consent injunctions were obtained against HRJ Financial Services Pty Ltd (now in liquidation) and its two directors Rowland William Thomas and Helen Elizabeth Lewis (both of whom are now bankrupt). Consumers wanting to make a claim against HRJ were invited to submit their details to the liquidator.

Centrebuy Direct Pty Ltd and Peter Edgar Riley, ss. 52, 53(c), 87B. Alleged misleading representations, misrepresentations as to performance characteristics, and breach of s. 87B undertakings in relation to a machine known as BodyTone.

Proceedings instituted on 21.3.01. An application and statement of claim were served upon the solicitor for Centrebuy Direct and Peter Riley (a director of the company). It is alleged that advertisements for the BodyTone machine imply the user is able to obtain benefits from its use without further effort on their part.

The Commission will be seeking declarations that the company has contravened ss. 52 and 53(c) of the Act and breached the s. 87B undertakings given on 25 June 2000; injunctions restraining Centrebuy Direct

and Peter Riley from making false and misleading representations in relation to electro-muscular stimulation machines generally; and an order for the placing of corrective advertisements and an offer of refunds to purchasers of the machine.

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. Those orders were discharged 8.11.99. Mediation to take place before 2.3.01. A directions hearing was held on 7.3.01 and a further hearing will be held on a date to be set.

Giraffe World Australia, ss. 52, 57, 61. Referral selling and pyramid selling.

Proceedings instituted on 6.5.98. Undertakings given by Giraffe World on 23.4.99 not to represent that the 'negative ion' mat it marketed produced negative ions, relieved health ailments or promoted health. On 29.6.99 the court found that Giraffe World had breached that undertaking. 26.8.99 Lindgren J found in the Federal Court that Giraffe World Australia Pty Ltd (in liquidation) had engaged in misleading or deceptive conduct, promoted a pyramid selling scheme and engaged in referral selling. Lindgren J also found that Mr Akihiko Misuma, founder and director of Giraffe World and Mr Robin Han, its president and chief executive officer until November 1998, were knowingly concerned in, and a party to, the contraventions by Giraffe World.

In November 1999 the Commission commenced a representative action under the Act on behalf of those persons who suffered a loss as a result of the contravening conduct of Giraffe World and its representatives. The representative action was adjourned in February 2000 pending the outcome of the liquidator's recovery action against the directors.

Golden Sphere International Incorporated, s. 61. Alleged pyramid selling.

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 participants in the Golden Sphere scheme. On 1.6.98 O'Loughlin J held that the three respondents had breached s. 61(2A) of the 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 scheme participants of the Federal Court orders in major national newspapers and invited them 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 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.

Medibank Private Limited, ss. 12BB, 12DA, 12DB, 12DF of the ASIC Act (equivalent to ss. 51A, 52, 53 and 55A of the TPA). Alleged false, misleading and deceptive advertising of the price and benefits of health insurance products.

Proceedings instituted on 26.10.00. Directions hearing on 4.12.00. Strike out application heard on 13.3.01. Judgment reserved.

Health insurance, as it falls within the definition of financial product, is regulated through the ASIC Act. However, ASIC has formally delegated the regulation of all consumer protection aspects of health insurance to the Commission.

The Australasian Institute, ss. 52, 53(c), 55A. 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. Mediation took place on 19.10.99 and short minutes were agreed to settle the matter. They provided for declarations that the Australasian Institute had engaged in conduct in breach of ss. 52, 53(c) and 55A of the Act and orders that the institute display a corrective notice on its website for six months, provide refunds to certain students and contribute \$24 000 to the Commission's costs.

McDonald's Australia Limited, ss. 51AB, 52, 53(g). Alleged unconscionable conduct in consumer transactions, misleading or deceptive conduct, false representations as to the existence of a right in relation to the 1999 McMatch & Win Monopoly competition.

On 24.9.99 the Commission instituted proceedings in the Federal Court, Sydney. The matter was transferred to the Federal Court, Brisbane, in October 1999.

On 14.10.99 the Commission applied to have the matter heard concurrently with private representative proceedings before the court (*Hurley v McDonald's Australia Limited*); however, this application was not pressed.

The Commission reserved the right to apply to have its case re-listed pending the outcome of the representative proceedings. On 9.3.01 Dowsett J delivered his judgment in the representative proceedings, finding in respect of 34 claimants who presented evidence that they had not made out their claim. The Commission's matter is now listed for directions on 27.4.01, to be heard in Brisbane.

Back to Basics Worldwide Education Aids Systems Pty Ltd, s. 59(2). Alleged misrepresentation in relation to profitability of a business.

On 17.5.00 the Commission filed criminal proceedings in the Federal Court in Adelaide against Queensland based Back to Basics Worldwide Education Aids Systems Pty Ltd, Hartwich Pty Ltd, and company directors John Moon (aka John Croke) and Wayne Baker.

It is alleged that the companies and their directors placed advertisements in newspapers in several States inviting investments of up to \$65 000 in a business opportunity selling a range of educational aids to schoolchildren and their parents. At least seven distributors were recruited. The Commission alleges that representations about the profitability and risk of the business were false or misleading, in particular that:

Guidance and information

- high sales returns had been achieved;
- distributors would earn up to \$150 000 per year; and
- other distributors were doing well.

At a hearing before Justice O'Loughlin on 26.4.00 the defendants did not enter a plea. Orders were given to serve witness proofs and the matter was heard on 3.8.00 and a move to Brisbane agreed. Trial set down for 30.3.01 to 5.4.01.

Video Ezy and ors, ss. 52, 75AU. Alleged price exploitation.

On 25.5.00 proceedings were instituted in the Federal Court in Sydney alleging that Video Ezy Australasia Pty Ltd engaged in price exploitation and misleading and deceptive conduct.

The Commission has joined Video Ezy senior management in these proceedings including general manager, Mr Peter Scicluna, a company director, Mr Daryl McCormack and a senior manager, Mr Jaims Hill. Various directions hearings have been held in the Federal Court, Sydney, with the most recent hearings being on 9.2.01 and 23.3.01. A further directions hearing has been set down for 27.4.01 in Sydney.

Rod Turner Consulting Pty Ltd, ss. 52, 53(e), 53(d). Misleading or deceptive conduct, misrepresenting prices in relation to the New Tax System and misrepresenting a corporation as having approval or affiliation.

Proceedings instituted on 3.7.00 in the Federal Court, Melbourne, against an accountancy firm and its principal, Mr Rod Turner, over representations about how the New Tax System will affect residential rents and water rates.

The Commission is seeking declarations that the conduct is unlawful, injunctions restraining the respondents from making similar statements and orders that the respondents take corrective action and apologise to the affected tenant.

Skybiz Pty Ltd (Skybiz 2000), ss. 57, 61. Alleged referral selling and pyramid selling.

Proceedings were instituted on 4.8.00 in the Federal Court, Perth, against Kevin Ryan of Perth, a participant in a scheme called Skybiz 2000 Home Based Business. The Commission alleged that Mr Ryan attempted to induce others to become participants in the trading scheme, promoted by Skybiz.Com.Inc, and to pay Skybiz.Com.Inc US\$100 per website to obtain the prospect of participating in the scheme. The Commission is seeking declarations that Mr Ryan was involved in a pyramid selling scheme, injunctions restraining him from further involvement, and orders requiring him to attend a trade practices compliance seminar and to inform others that the scheme is a pyramid selling scheme.

Consent orders were made on 6.12.00 in relation to the programming of the matter. A further directions hearing was listed for 3.4.01.

Australian Industries Group Pty Ltd t/a Half Price Shutters, ss. 51AC, 51AD, 52, 59(2). Alleged misleading and deceptive conduct, unconscionable conduct and contravention of the mandatory industry codes by Australian Industries Group t/a Half Price Shutters, Tony Gullotti (National Manager) and Robert Keirle (a former director).

Proceedings instituted on 4.8.00. A mediation conference was held on 28.3.01 and another will be held on 15.5.01.

Paul and Linda Storer, ss. 52, 53(c), 53(d), 53(f). Alleged misleading or deceptive representations about the benefits of using a certain probiotic as a cure for chronic fatigue syndrome.

Proceedings instituted on 27.7.00. A directions hearing was held on 8.8.00. On 13.10.00 a

directions hearing for discovery was held. Undertakings were granted on 24.11.00 with discovery of documents by Storer to be completed by 24.12.00. A mediation conference has been set down for 27.3.01. Should the matter remain unresolved following the conference, the court will set a date for trial.

Emerald Ocean Distributors Pty Ltd, Slendertone Health and Beauty Pty Ltd, ss. 51A, 52, 53(c). Alleged false and misleading representations by a firm about the benefits of electronic muscle stimulation products.

Proceedings instituted on 19.7.00. The Commission alleged that the firm represented that the Slendertone product could have beneficial weight loss and cosmetic benefits to users without any effort.

A directions hearing was held on 2.11.00. Discovery of products, specifications or instructions ordered. Leave granted to respondents to join the parent company, Bio Medical Research Ltd located in Ireland, to the action. The Commission is opposing this application and a date is to be set for the hearing of arguments on this issue. A further directions hearing was set for 3.4.01.

Target Australia Pty Ltd, ss. 52, 53(e). Alleged misleading or deceptive conduct and false or misleading representations. On 5.9.00 the Commission instituted proceedings against Target Australia Pty Ltd in the Federal Court, Perth, alleging false, misleading and deceptive conduct in television and newspaper advertising of its discount sales. On 22.2.01 the Federal Court granted leave to amend the statement of claim and programming orders were made. The next directions hearing is listed for 3.5.01.

David Zero Population Growth Hughes, t/a Crowded Planet, ss. 52, 53(c), 53(d). Alleged misleading or deceptive conduct, misrepresentations about the performance characteristics of goods and about sponsorship.

Proceedings instituted against Mr Hughes on 30.8.00. The Commission alleged he had engaged in misleading or deceptive conduct in that he had represented on his Internet site that the Commission had approved Crowded Planet's operations. The Commission does not give approval to the operations of individual businesses.

Subsequent to this the Commission became aware that Crowded Planet was supplying Schedule 4 oral contraceptives over the Internet. Because of health risks associated with oral contraceptives, it is illegal to supply them without a prescription in Australia.

On 9.11.00 the Federal Court made interlocutory orders against Mr Hughes, restraining him from supplying oral contraceptives to consumers within Australia.

On 22.11.00 the Commission instituted contempt of court proceedings against Mr Hughes and a final hearing was held on 14.12.00. On 2.2.01 judgment was handed down in the contempt proceedings. Mr Hughes was found to be in contempt of court and was sentenced to two weeks' imprisonment, with the warrant to lie in the registry for 30 days to allow him further time to comply with the court's order. On 9.3.01 this warrant was executed and Mr Hughes was sent to prison for two weeks. This matter is set down for a further directions hearing on 11.5.01 and for final hearing on 2-3.8.01.

Purple Harmony Plates Pty Ltd, s. 52. Alleged misleading or deceptive conduct.

On 4.12.00 the Commission instituted court action in the Federal Court, Melbourne, against Purple Harmony Plates Pty Ltd. The Commission alleged the Victorian business had engaged in misleading and deceptive advertising and promotion for selling products that claimed to protect against the effects of electromagnetic radiation, increase health, reduce pain, stress and fatigue, and promote healing.

The Commission is seeking court orders including corrective advertising and refunds to consumers who believe they were misled by the advertising.

The matter has been set down for hearing on 2.5.01.

Australian Institute of Permanent Makeup, ss. 52, 53(aa), 53(c). Alleged false or misleading representations about goods and services.

On 30.10.00 the Commission instituted court action in the Federal Court, Brisbane, over alleged misleading and deceptive advertising and promotion by a business trading as the Australian Institute of Permanent Makeup. The Commission alleges the Institute claimed that

micro-pigmentation procedures are permanent but documentation supplied to consumers advises that after three to five years further treatment would be required to maintain the desired effect.

The Commission is seeking court orders including corrective advertising and refunds to consumers who believe they were misled by the advertising.

Michigan Group Pty Ltd, Immobiliare (t/a the Queensland Juice Company), Yeppoon Pty Ltd and ors, ss. 52, 53(a), 53(bb), 53(c), 53(d), 58 and 59. Alleged misleading or deceptive conduct and misrepresentations.

On 6.10.00 the Commission instituted proceedings in the Federal Court, Brisbane, against various respondents for alleged false and misleading or deceptive conduct in relation to the promotion, sale and distribution of commercial orange juice machines. The respondents are: Michigan Group Pty Ltd, Immobiliare (trading as the Queensland Juice Company), Yeppoon Pty Ltd, Rodney Laski, Peter Semos, Linda Moretto, Charles Cameron, Daryl Doherty and George Semos and a lawyer, Prospero Franzese.

The Commission is seeking court orders, including declarations and injunctions. Proceedings are set for trial on 3–14.12.01 in the Federal Court, Brisbane.

Pacific Dunlop Limited (PDL), s. 75AD. Proceedings instituted on 21.1.00. The proceedings were brought under the representative action and product liability provisions of the Act. The Commission is seeking compensation for a consumer who has allegedly developed a serious form of latex (rubber) allergy through the frequent and consistent use of PDL's Ansell brand of household rubber gloves. 10.10.00 court ordered mediation — no settlement reached. Discovery is in progress and directions hearings were held on 8.3.00, 19.3.01 and 21.3.01.

Adjudication

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

Authorisation applications under consideration

Advertiser Newspapers Limited and others (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.

Tribunal's authorisation for NSW/ACT, Queensland and Victoria expired 1.2.01.

Advertiser Newspapers Limited and others (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 authorisation 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 regranted to accommodate new entrants to the Victorian 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.

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.

2.12.99 Interim authorisation granted.

Agsafe (A90680–1) Accreditation scheme code of conduct and sanctions process.

30.3.99 Interim authorisation granted until final determination issued.

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 Queensland 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.

28.12.00 Draft determination issued.

The Uniting Church in Australia Property Trust (Q) and others (A90714–7) Application for exclusionary provisions arrangements which may substantially lessen competition.

Independent Private Hospitals Association (A30203) Proposal to form a network for mutual cooperation through the inter-hospitals agreement.

6.12.00 Interim authorisation granted.

6.12.00 Draft determination issued.

The Showmen's Guild of Australia (A90729) Application for authorisation of the Guild's proposed code of conduct for sideshow entertainment at agricultural shows.

CSR Ltd (A90733) Agreement for supplying sugar cane to the Invicta Sugar Mill and Pioneer Sugar Mill in Queensland.

6.9.00 Interim authorisation granted with conditions.

12.12.00 Draft determination issued.

23.2.01 Pre-determination conference.

CSR Ltd (A90734, A90769) Negotiation of cartage contracts for pre-mixed concrete carriers in the West Australian market.

23.11.00 Additional application for authorisation (A90769) lodged (rostering provisions which establish the system for the distribution of CSR's cartage work among its carriers).

20.6.00 Interim authorisation granted.

26.7.00 Draft determination issued.

Real Estate Institute of Western Australia (A70011) Application to authorise member's code of practice, multiple listing service by-laws and standard exclusive agency agreements.

Full retail competition (A90739–41)
Authorisation of national electricity code changes (minimalist changes introduced to facilitate the introduction of full retail competition).

20.9.00 Interim authorisation granted.

Premium Milk Supply Pty Ltd (A90745)
Collective negotiations of farm milk prices and milk standards through a representative body (Premium) for supply to Pauls Ltd.

14.2.01 Draft determination proposed.

14.2.01 Interim authorisation granted.

Chevron Overseas Petroleum Inc (A40081)
Proposal to commercialise, discuss and establish terms and conditions for offering gas for sale in Australia.

13.10.00 Interim authorisation granted.

Basslink code changes (A90747-9) To facilitate consideration by the Inter-regional Planning Committee of the technical network issues associated with Basslink and to empower NEMMCO to impose any necessary technical requirements on its connection to the mainland grid.

6.12.00 Draft determination issued.

Marven Poultry Pty Ltd (A90750) Collective negotiation of standard growing agreements between contracted chicken growers and six processors in Victoria.

12.12.00 Draft determination issued.

12.12.00 Interim authorisation granted.

Queensland derogations (A90751-3) NEC Queensland derogations — Qld/NSW interconnector. Application to extend the end dates of eight derogations from the date of the commissioning of the QNI to 31.12.02 as an interim measure pending further applications; and to make minor clarifications to definitions contained in the Qld derogations.

NSW Department of Health (A90754-5)
Authorisation for supply of pathology services to private inpatients in public hospitals.

Sydney Futures Exchange Ltd (A90756-7)
Requirement of participants of the Sydney Futures Exchange to acquire clearing services from the Sydney Futures Exchange Clearing House (SFECH) and membership requirements for the SFECH.

15.11.00 Interim authorisation granted.

Australian Stock Exchange Ltd (A90758)
ASX third line forcing of clearing services with Options Clearing House (OCH) and tied membership of ASX/OCH.

15.11.00 Interim authorisation granted.

Tasmanian derogations and vesting contracts (A80010-11, 90759-61) Filed by NECA and the Crown in Right of Tasmania.

NECA (A90762-4) Extension of Schedule 9G and Clause 9.35.7 of the code jurisdictional derogations.

Royal Australian College of Surgeons (A90765) RACS processes for selecting trainees for all specialities in which it conducts training, and for its application processes and assessment guidelines for assessing overseas-trained doctors.

Mater Misericordiae Hospital, St Vincent's Hospital and others (A90770-2) Proposal to operate as a single economic entity following the acquisition of the Mater Hospital by St Vincent's.

Australian Funeral Directors Association (WAFDA) (A70012) Agreement to provide concessional rates for funeral services.

Southern Sydney Waste Board (SSWB) and Inner Sydney Waste Board (ISBW) (A30204-5) Eleven councils joint venture. Contract with recycling contractor for provision of dry recyclable materials (DRM). Contracts to be managed by SSWB. Seven councils in the ISWB region, together with ISWB, make single contract with provider of DRM services. Contracts to be managed by ISWB.

Snowy Hydro Trading Pty Ltd (A90776-8)
Extension of notional unit derogation from 31.3.01 to 30.9.01.

SFE Ltd (A90781) Proposal that each applicant to become a clearing participant must be or have been admitted as either a full participant or associate participant.

Notifications under consideration

Advertiser Newspapers Ltd (N60023-5) Arrangements for supply of newspapers published by Advertiser (exclusive dealing).

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 (exclusive dealing).

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 (third line forcing).

The Herald and Weekly Times, Advertiser Newspapers, Nationwide News, Queensland Newspapers, Advert (N40373-82) Transitional arrangements for distribution of newspapers and magazines.

Harrier National Pty Ltd (N31020) Offer of mechanical protection plan to provide for mechanical service on condition the service is carried out by the selling Ford dealer or participating Ford dealers (third line forcing).

National Australia Bank Ltd (N40420) Supply of discounted Corporate Express Services on condition that the customer uses a National card product to make the purchase (third line forcing).

The Herald and Weekly Times Ltd (N40421-3) Territorial distribution agreement — retail agency agreements — setting of maximum price for home delivery (third line forcing).

Queensland Newspapers Pty Ltd (N40424-6) Territorial distribution agreement — retail agency agreements — setting of maximum price for home delivery (third line forcing).

Adelaide Newspapers Ltd (N40427-9) Territorial distribution agreement — retail agency agreements (third line forcing).

Gold Coast Publications Pty Ltd (N40430-2) Territorial distribution agreement — retail agency agreements — setting of maximum price for home delivery (third line forcing).

Nationwide News Pty Limited (N40433-5) Territorial distribution agreement — setting of maximum price for home delivery — retail agency agreements (third line forcing).

Medicine Quantale Ltd (N90825) Loyalty program (third line forcing).

Australia Post (N40437) Issue of postage meter licences (third line forcing).

JB Were Group (N90828) Offering of stockbroking, investment, superannuation, custodian and other related services (third line forcing).

Optus Networks, Optus Mobile, Source Integrated Networks, Cable & Wireless Optus E-Solutions (N90829-34) Offering of conditional incentives and product bundling (third line forcing).

Commonwealth Bank Group (N31055-6) Offering a discount or allowance in relation to Commonwealth Bank Group and HIH Group product packages (third line forcing).

PlesTel Limited (N31086) Proposing a supply of business communications products and services including sale of mobile telephones and sale and services of Commander branded key telephone systems (third line forcing).

ASX Operations Pty Ltd (N31088) ASX World Link Service package involving Bloomberg software and ASX Settlement and Transfer Corporation Pty Ltd (third line forcing).

Bloomberg Tradebook (N31093) Terminal discount services on condition that users acquire brokerage services from B Trade or G Trade Services and clearing services from BNY and others.

BankWest Australia Ltd (N70193) Proposing to offer discounts to BankWest AgriOne customers who take out specified insurances with CGU Insurance Ltd.

RetireInvest Pty Ltd (N90840) Proposing to offer its clients a share trading service for securities listed on the ASX provided that clients use Shaw Stockbroking Ltd as their broker (third line forcing).

Broadway Credit Union Ltd (N31095) Proposing to lend money and take security for that lending on condition the borrower obtains legal advice about documents they are signing (third line forcing).

Fantastic Furniture Pty Ltd (N31094) Proposing to require franchisees to purchase furniture from nominated suppliers and corporation related to Fantastic Furniture Pty Ltd (third line forcing).

Bendigo Bank Ltd (N90841) Offering to propose financial accommodation to customers on condition they acquire sponsorship services (third line forcing).

Omni Leisure Operations Ltd (N50120) Proposing a Big Park Pass to provide consumers who purchase daily tickets to Dreamworld and one other major Gold Coast theme park, a bonus ticket to Dreamworld (third line forcing).

Optus Networks Pty Ltd (N90842) Proposing a discounted call rate to customers who remain a customer of Optus Networks and continue to acquire products and services from Optus mobile (third line forcing).

AGL Electricity Ltd, AGL SA Ltd, AGL Retail Energy Ltd & Actew AGL (N90843–6) Offer of interest — free repayment options to customers who acquire appliances from nominated parties (third line forcing).

Certification trade marks

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.

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

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

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

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.

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.

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

Standards Australia (CTM 743608, 741723, 741725–6) The Australian Design Award and Australian Design Mark Scheme — variation to the rules.

Standards Association of Australia (CTM 743379) Certification of quality management systems under the 'StandardsMark'.

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.

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

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.

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

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.

National Indigenous Arts Advocacy Association (CTM 772566) Collaboration mark — certification of products carrying indigenous artwork licensed for amendments to the rules of authenticity label for indigenous art and cultural works.

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.

Deer Industry Projects and Development Pty Ltd (CTM 796848) Certification of deer farms and transportation systems.

The Bio-Dynamic Research Institute (CTM 774682) Certification of clothing, headgear and footwear produced using methods approved under Bio-Dynamic guidelines.

Healthy Waterways (CTM 763115) Certification of a wide range of goods and services relating to the use of the Brisbane River and Moreton Bay waterways.

Deer Industry Projects and Development Pty Ltd (CTM 825966, 827816 and 828929) Certification of deer antler, deer meat and deer transportation systems.

Meatlink Network Pty Ltd (CTM 789679) Certification of retail butchereries. Assignment to Tradev Pty Ltd.

Consorzio Del Prosciutto Di Parma (CTM 815585) Certification of 'Parma' ham products.

Cornelis Johaanes & Marcella Maria De Groot (CTM 798087) Certification of installers of a patented locking function for hinged doors or windows.

Prufgemeinschaft Mauerbohrer (CTM 795774) Certification of drills, bits and boring tools for use with machine tools.

Department of Agriculture, Western Australia (CTM 774429-30) Certification of food and beverage businesses involved in the production, processing, transport, storage, distribution and sale of agricultural, horticultural and forestry products.

Australian Pork Corporation (CTM 492376) Amendment to the rules and licence agreement.

Australian Lowline Cattle Association Inc. (CTM 813064) Certification of lowline cattle producers.

Wireless Ethernet Compatibility Alliance Inc. (CTM 492376) Certification of Wireless Local Area Networking (WLAN) equipment as interoperable with each other.

Community Child Care (CTM 836887) Certification of child care centres as being community owned.