
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 Proceedings withdrawn 17.9.93.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 (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.

On 14.1.00 the respondents filed their written submissions, and on 24.1.00 the Commission filed applicants' submissions in reply. Judgment is 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 sought penalties and injunctions. On 30.5.97 the Federal Court imposed a penalty of \$1.25m on George Weston Foods Limited, which admitted the contraventions. The trial against Safeway began in February 1999 and finished on 20.10.99. Judgment is pending.

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 sought 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 are currently completing interlocutory processes.

Visy Paper Pty Ltd s. 45. 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. Appeal heard 17–18.5.01 before Hill, North, Conti JJ. On 10.8.01 the Full Federal Court upheld the Commission's appeal. The court found

by a 2:1 majority (Hill & North JJ, Conti J dissenting) Visy had breached s. 45, and remitted the matter to the trial Judge (Sackville J) to consider what, if any, pecuniary penalty should be imposed (*ACCC v Visy Paper Pty Ltd* [2001] FCA 1075). Visy has indicated that it will seek special leave to appeal to the High Court.

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. Judgment is pending.

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.

On 7.8.01 the Federal Court, Adelaide, imposed penalties of \$600 000 against Rural Press Limited for misusing its market power and for making and giving effect to a market sharing agreement contrary to the Trade Practices Act. Mansfield J also imposed individual penalties of \$70 000 against the general manager of Rural Press' Regional Publishing Division, Mr Ian Law, and its South Australian state manager, Mr Trevor McAuliffe, for being knowingly concerned in the contraventions. Waikerie Printing House and its director, Mr Paul Taylor, were penalised \$75 000 for entering into the market sharing arrangement with Rural Press.

The Rural Press respondents are appealing the court's decision that they contravened ss. 45 and 46 of the Act. The ACCC is appealing the court's decision on penalties. The appeals are likely to be heard by the Full Federal Court in February or March 2002.

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 alleged 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. Judgment was handed down on 2.5.01,

imposing pecuniary penalties on Ithaca Ice Works (\$100 000), Anthony Mee (\$7500) and Gregory Mee (\$7500) and those respondents were ordered to pay the Commission's costs. The Commission's application against Ansonguard Pty Limited, Leo Grevis and Gary Grevis was dismissed, and the Commission ordered to pay those respondents' costs. On 13.6.01 the court ordered, by consent, injunctions restraining Ithaca Ice Works, Anthony Mee and Gregory Mee. The Commission is appealing the penalties imposed on Ithaca Ice Works and Anthony Mee.

PolyGram (now Universal Music), and Warner Music, ss. 45, 46, 47. Alleged anti-competitive arrangements, misuse of market power and exclusive dealing.

Proceedings instituted 30.8.99. The Commission alleges that the respondent record companies, as well as some senior personnel of PolyGram and Warner, breached certain 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. Proceedings were discontinued against Music Industry Piracy Investigation Pty Ltd, Michael Speck and Adrian Fitz-Alan in March 2001.

Trial commenced on 2.4.01 and is part heard. Proceedings were discontinued against Sony on 2.4.01. Sony provided undertakings to the court without admitting liability.

The trial resumed from 17 September to 2 October 2001. Judgment is pending.

ABB Power Transmission, Alstom Australia Limited, Wilson Transformer Company & ors (power transformer proceedings), ss. 45, 45A, 4D. Alleged agreements lessening competition, price fixing agreements, primary boycotts.

Proceedings instituted on 1.10.99. The Commission is seeking various relief including pecuniary penalties and injunctions. Judgment on Alstom Australia Limited and some associated individual respondents was handed down on 6.4.01.

Submissions on pecuniary penalty and other relief were heard for Wilson Transformer Company and some individual respondents 30.7.01–1.8.01. Decision reserved.

The matter continues against ABB Power Transmission and some individual respondents.

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

Proceedings instituted 14.4.00. The Commission alleged that the union and three of its senior 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 vessels. The Commission further alleged that some aspects of the conduct amounted to undue harassment and coercion, in breach of s. 60 of the Act.

An in principle agreement was reached to settle the Commission's s. 45DB claim after a court-imposed mediation. A settlement proposal put to the court included admissions from the MUA of a breach of s. 45DB on two separate occasions, admissions by two senior officials to being knowingly concerned in the MUA's breaches of s. 45DB and proposed orders, including an agreed pecuniary penalty figure and costs. Further, parties agreed to have the Commission's s. 60 claim decided by the court by way of a statement of agreed facts in relation to two incidents.

Hearing commenced on 15.10.01. On 5.11.01 Hill J of the Federal Court found the MUA had engaged in coercion on two separate occasions, in breach of s. 60 of the Act, in relation to the supply of hold cleaning services.

In relation to s. 45DB, Hill J noted the admissions by the MUA and two of its senior officials and indicated that the orders proposed to the court with the consent of the two parties were generally and in all the circumstances appropriate. These orders included asking the court to make declarations that the union breached s. 45DB of the Act on two separate occasions and that two senior officials were knowingly concerned in these breaches, the imposition of a penalty of \$150 000 on the MUA for these admitted breaches, undertakings to the court by the MUA and three of its senior officials not to engage in similar conduct in the future, the implementation of a trade practices compliance program and a contribution of \$60 000 to the Commission's costs in relation to the admitted s. 45DB breaches.

The Commission seeks declarations, injunctions restraining future conduct and costs in relation to the union's breaches of s. 60. Hill J handed down his orders in relation to the breaches of both ss. 45DB and 60 on 21.11.01.

AMA (WA) and Mayne Nickless Ltd, ss. 45, 45A. Alleged 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. Directions hearings were held on 23.3.01, 24.5.01 and 6.7.01. A penalty hearing for the AMA (WA), Mr Paul Boyatzis and Dr David Roberts was heard on the 7.8.01. The decision was reserved. Proceedings against the other respondents are continuing.

A directions hearing was held on 19.10.01. Judgment has handed down recently and will be reported in *ACCC Journal* no. 37.

ABB Transmission and Distribution Limited, ABB Power Transmission, Alstom Australia Limited, Wilson Transformer Company, Schneider Electric (Australia), AW Tyree Transformers & ors (distribution transformer proceedings) ss. 45, 45A, 4D. Alleged agreements lessening competition, price fixing agreements, primary boycotts.

Proceedings instituted on 6.11.00. The Commission is seeking various relief including pecuniary penalties and injunctions. Judgment on Alstom Australia Limited and some associated individual respondents was handed down on 6.4.01.

Submissions on pecuniary penalty and other relief were heard for Wilson Transformer Company, Schneider Electric (Australia), AW Tyree Transformers and some individual respondents 30.7.01–1.8.01. Decision reserved.

The matter continues against ABB Transmission and Distribution Limited, ABB Power Transmission and some individual respondents.

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.

Proceedings instituted on 15.11.00 with the Commission seeking penalty and injunctions. Directions hearings were held on 13.12.00 and 24.7.01 with a further hearing set down for 6.12.01.

Pilbara Panel Beaters, s. 45. Alleged price fixing.

On 9.7.01 the Commission instituted proceedings in the Federal Court, Perth, against four panel beating and spray painting businesses (two companies and two sole traders) in the Port Hedland region alleging the businesses were involved in price fixing.

The Commission is seeking declarations, injunctions and orders requiring the implementation of trade practices compliance programs.

Pauls Limited, Malanda Dairyfoods Ltd and Australian Cooperative Foods Ltd, s. 45. Agreements lessening competition.

Proceedings instituted on 15.8.01. It is alleged that a long-standing price fixing agreement had the purpose and likely effect of controlling or maintaining the price for Pauls and Malanda milk products at the wholesale level in the Northern Territory, and unprocessed milk in the Northern Territory.

It is further alleged that, in the course of negotiations which led to the agreement, Pauls, Malanda and ACF made an arrangement whereby ACF and Malanda would supply to Pauls all the unprocessed milk for the production of Pauls, Malanda and ACF milk products at an agreed price, and Pauls would process and package it.

Individuals alleged to be knowingly concerned in the conduct were Mr Barry Jardine, the corporate secretary of Pauls, Mr Alan McCray, the former general manager international of Pauls, Mr Sydney Morgan, the general manager, planning and development of ACF and Mr Richard See, the former chief executive officer of Malanda.

The Commission is seeking orders against Pauls, Malanda, ACF and the senior executives including declarations, injunctions, compliance programs, penalties and costs. A directions hearing was set down for 18.9.01.

Unconscionable conduct

Farrington Fayre Shopping Centre, s. 51AA. Alleged unconscionable conduct in relation to leasing arrangements.

Proceedings instituted 6.4.98 and the trial was held on 31.1.00 to 3.2.00. French J handed down his decision on 26.9.00 that the conduct of the owners and their representatives, in one of the pleaded cases, was unconscionable.

The owners subsequently appealed and the Commission cross-appealed. A hearing was held on 31.5.01 and judgment handed down on 27.6.01 upholding the appeal and dismissing the Commission's cross-appeal.

The Commission filed an appeal with the High Court on 29.8.01.

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 and a hearing held on 28.5.01. The decision was reserved.

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 a 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. After compliance with some programming orders, a mediation conference was held on 16.7.01.

A date will also be set for a hearing of objections to witness statements. Should the matter remain unresolved a date for trial will then be set.

Commodore Homes (WA) Pty Ltd, ss. 51AB, 52. Alleged unconscionable conduct, misleading or deceptive conduct.

Proceedings instituted on 5.4.01. The Commission alleges that in the lead-up to the introduction of the GST, Commodore Homes represented to potential homebuyers that, if they signed up with them, their homes would be built by 1 July 2000 and they would avoid having to pay GST. The Commission is seeking declarations that Commodore Homes' conduct breached the Trade Practices Act, orders restraining Commodore Homes from engaging in such conduct in the future, for Commodore Homes to publish a corrective public notice and implement a trade practices compliance program, refunds of the GST money paid to Commodore Homes by those affected homebuyers, and costs.

A directions hearing was held on 14.12.01 and a further directions hearing is listed for 11.2.02.

Esanda Finance Corporation Ltd and ors, ss. 51AB, 60. Alleged unconscionable conduct with accompanying harassment and coercion.

On 12.4.01 the Commission instituted proceedings in the Federal Court against Esanda Finance Corporation Ltd, Capalaba Pty Ltd trading as Nationwide Mercantile Services, and a number of individuals alleging the use of physical force, undue harassment and coercion, and unconscionable conduct in connection with the supply and payment

for services by a consumer. The Commission has also alleged some individuals breached s. 23 of the *WA Fair Trading Act 1987* (which mirrors s. 60 of the Trade Practices Act).

Programming orders were made at directions hearings held on 4.5.01 and 8.6.01.

Axxess Australia Pty Ltd, ss. 51AB, 52, 53(c), 53(d), 53(f)). Alleged unconscionable conduct, misleading or deceptive conduct, misrepresentation of sponsorship, approval or benefits of the service, misrepresentation of corporation's sponsorship, approval or affiliation, false or misleading representations concerning the need for the service.

Proceedings instituted 25.5.01 in the Federal Court, Melbourne. The Commission has alleged that the respondent engaged in misleading and deceptive conduct and unconscionable conduct when door-knocking and making unsolicited telephone calls to consumers while selling and marketing residential telephone services.

On 10.8.01 the Commission amended its statement of claim when new allegations of misleading and deceptive conduct came to its attention. These additional allegations are that Axxess and its door-to-door and tele-marketing agents illegally obtained signatures from consumers.

The Commission is seeking injunctions restraining Axxess and its door-to-door and tele-marketing selling agents from engaging in or being otherwise involved in similar conduct; orders to implement a trade practices compliance program, orders requiring the publication of information, and costs. The next directions hearing has been set for 2.11.01 before in the Federal Court, Melbourne.

Avanti Investments Pty Ltd and Dr Giuseppe Barbaro (ss. 51AA, 51AC, 52, 53A). Alleged unconscionable conduct, undue harassment or coercion in connection with land, misleading or deceptive conduct, false or misleading representations about land.

Proceedings instituted on 27.4.01. The Commission is also taking action against Dr Giuseppe Barbaro, a former director and representative of Avanti Investments, for allegedly aiding or abetting or being knowingly concerned in the breaches.

The Commission is seeking injunctions, declarations, findings of fact, and orders to vary the market gardeners' agreements so they are no longer responsible for the cost of excess water and so that the rent returns to \$600 per acre per year. It is also

seeking refunds of the excess rent paid by the farmers since the 1994 lease was terminated.

The trial started on 22.10.01 and on 26.10.01 it was adjourned to a date to be fixed. Possible relistings are scheduled for December 2001 or February 2002.

Consumer protection

Top Snack Foods Pty Limited, ss. 52, 59.

Alleged misleading conduct in relation to selling franchises for the distribution of confectionery.

On 23.9.96 proceedings were instituted in the Federal Court, Sydney, against Top Snack Foods Pty Limited, one of its directors and two of its employees. The court granted leave to the ACCC on 7.11.97 to join two further parties to the action, Nick Kritharas Holdings Pty Limited and Adway Holdings Pty Limited. It also granted the ACCC a *mareva* injunction against Gatsios Holdings Pty Limited, which held all the company assets as trustee of a family trust, and which prevented either party from dealing with or removing certain property from the jurisdiction without first giving the ACCC 14 days notice in writing. A hearing was held on 15–26.3.99.

On 4.6.99 Tamberlin J found that Top Snack Foods had engaged in misleading and deceptive conduct and that George Manera, a director and manager of Top Snack Foods, and Nick Kritharas, general manager, were knowingly concerned. Damages of over \$400 000 were awarded to the ACCC for franchisees of Top Snack Foods. On 29.2.00 and 9.3.00 a liquidator was appointed to Adway Holdings Pty Limited, Top Snack Foods Pty Limited and Nick Kritharas Holdings Pty Limited. George Manera was declared bankrupt on 4.1.00 and on 31.10.00 Nick Kritharas was declared bankrupt. In July 2000 an application was made to the Equity division of the NSW Supreme Court by the liquidator of Nick Kritharas Holdings Pty Limited (funded by the ACCC as creditor) for a declaration that Nick Kritharas Holdings Pty Limited was entitled to be indemnified out of the assets of the family trust in respect of the ACCC's judgment debt, over and above the beneficiaries of the trust. Hamilton J made the above declaration on 25.5.01 and granted a stay of execution until 22.6.01. Assets of the trust will therefore pass to the liquidator of Nick Kritharas Holdings Pty Limited for the benefit of the ACCC as creditor in respect of the more than \$400 000 debt. The ACCC has been notified an appeal is being lodged.

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.

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. A directions hearing was held on 11.4.01 and the date for a further hearing is to be advised by the court.

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 the Commission with the names and addresses of 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. On 15.3.01 a liquidator of the company was appointed.

Pacific Dunlop Limited (PDL), ss. 52, 75AD. Alleged misleading or deceptive conduct, liability for defective goods causing injuries — loss by injured individual.

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. On 10.10.00 court-ordered mediation was held, but a settlement was not reached. On 18.6.01 the Federal Court granted leave for the Commission to amend its current application and amended statement of claim to include an action under the misleading and deceptive provisions of the Act (s. 52). On 31.8.01 orders were made by consent for the parties to undertake a further mediation which was to be concluded by 30.11.01.

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.

A trial was set down for 30.3.01 to 5.4.01. On 30.3.01 the defendants pleaded guilty and penalty submissions were made. Spender J reserved judgment.

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.

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. A directions hearing was held on 2.11.00. Discovery of products, specifications or instructions were ordered. Leave was granted to respondents to seek to join the parent company, Bio Medical Research Ltd located in Ireland, as a cross respondent to the action. The Commission opposed the application in part as it did not believe the cross respondents fell within the jurisdiction of the Federal Court. Nicholson J ruled in favour of the Commission's submissions on the matter. On the 25.7.01 the respondents were granted leave to appeal this decision.

A directions hearings was held on 4.9.01, an appeal hearing on 23.11.01 and a further directions hearing listed for 18.12.01.

Australian Industries Group Pty Ltd t/a Half Price Shutters, ss. 51AC, 51AD, 52, 59(2).

Alleged misleading or 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 were instituted on 4.8.00. The matter was adjourned until 18.12.01 for directions.

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

Proceedings were 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 individual businesses.

Subsequent to this the Commission became aware that Crowded Planet was supplying Schedule 4 oral contraceptives over the Internet. Because of the 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. The warrant lay 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.

The final hearing for this matter was held over 2–3.8.01. The matter is currently awaiting judgment.

Michigan Group Pty Ltd, Immobiliare (trading as 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 in relation to the promotion, sale and distribution of commercial orange juice machines.

On 6.10.00 the Commission instituted proceedings in the Federal Court, Brisbane.

The Commission is seeking court orders, including declarations and injunctions. A hearing was held on 10–14.12.01 in the Federal Court, Brisbane and the trial is to resume on 15–19.4.02.

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 or 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.

Until recently health insurance, as it fell within the definition of financial product, has been regulated through the ASIC Act but ASIC formally delegated all consumer protection aspects of it to the ACCC. From 11 March 2002, health insurance provided as part of a health insurance business is specifically excluded from the new definition of 'financial product' in the ASIC Act and Corporations Act. The Financial Services Reform Act made these amendments to ensure that health insurance is regulated by the ACCC rather than ASIC.

Commercial and General Publications Pty Ltd, ss. 58, 64(2A). Alleged asserting of a right to payment for unsolicited services without reasonable cause to believe that there was a right. Alleged acceptance of payments for such services without being able to supply.

Proceedings commenced 17.1.01 against Commercial and General Publications and its director, Anthony Robert Hassett, in the Federal Court, Hobart. Directions hearings were held on 8.6.01 and 21.8.01. Proceedings reinstated 28.9.01 against Commercial and General Publications and Mr Hassett incorporating a further 32 charges against each party. Directions hearings were held on 8.10.01 and 23.10.01. Trial proposed for March 2002.

Mr Stephen Henry Wayt, ss. 52, 53. Misleading or deceptive conduct, false or misleading representations.

Proceedings instituted on 5.4.01. The Commission is alleging that a fax sent by Mr Wayt was likely to mislead or deceive recipients into believing that COM.AU.REGISTER was responsible for registering Internet domain address registration and that it had dealt with those businesses and organisations previously.

The Commission is seeking court orders including declarations that Mr Wayt breached the Act, injunctions to prevent Mr Wayt from making similar representations in the future and to implement a trade practices compliance program in any future business of which he has managerial control. The Commission is also seeking an order for costs. COM.AU.REGISTER has closed down its website and advised the Commission that all money paid to COM.AU.REGISTER has been refunded to customers.

Directions hearings were held on 12.4.01, 17.8.01 and 12.10.01. In the absence of settlement the matter is set down for a hearing in the Federal Court, Brisbane, on 29.4.02 and 30.4.02.

Guardian Finance, ss. 57, 61. Referral selling scheme and pyramid selling scheme.

Proceedings instituted on 5.4.01. The Commission is alleging that Guardian Finance and Insurance Consultants Pty Ltd promoted a scheme that amounted to an illegal pyramid selling scheme or referral selling scheme. The Commission is also alleging that its sole director, Mr Peter Martin James (also known as Peter St James) was knowingly concerned in the alleged conduct.

At an interlocutory hearing on 12.4.01 in the Federal Court, Brisbane, the Commission sought interlocutory injunctions to prevent Guardian Finance and Insurance Consultants from contravening the pyramid selling provisions of the Act by promoting the scheme in its current form.

At the final hearing the Commission is seeking declarations that Guardian Finance and Insurance Consultants and Mr James breached the Act, injunctions to prevent a repeat of this conduct in future, refunds for affected consumers, the implementation of a trade practices compliance program and costs.

A directions hearing was held on 30.7.01 and a case management conference on 23.11.01. A further directions hearing before a registrar was listed for 14.12.01.

Greenstar Cooperative Ltd, ss. 52, 53, 57, 58, 59 and 61. Alleged pyramid and referral selling in the promotion of an organic fertiliser product and transaction card, and alleged misleading and deceptive conduct and false representations regarding the transaction card.

The Commission instituted proceedings in the Federal Court on 5.6.01. On 14.6.01 it sought and obtained interim injunctions preventing the promotion of the Greenstar scheme until the matter is determined at trial or earlier order. On 31.7.01 the Commission obtained a *mareva* injunction freezing the assets of Greenstar and Mr Smith.

A directions hearing was held on 4.9.01 at which general programming orders were settled for the matter to progress towards trial.

Telstra Corporation Limited, ss. 52, 53(c), 53(f), 53(g). Misleading or deceptive conduct, misrepresentation.

On 6.7.01 the Federal Court, Melbourne, issued an interim injunction against Telstra prohibiting it from making representations to One.Tel Next Generation customers that they would incur termination fees from One.Tel unless they transferred their business to Telstra.

The One.Tel Next Generation mobile network was terminated on 9 June 2001. On 5 July 2001 the Commission publicly asserted that no contract termination fees should apply to customers who transfer to another service provider after One.Tel withdrew its service and customers should not incur a penalty when a business ceases to offer its service.

The Commission is seeking declarations of unlawful conduct, a permanent injunction to ensure the behaviour is not repeated, an opportunity for consumers who may have been misled to rescind their new Telstra contracts without penalty, corrective advertisements and a compliance program by Telstra.

The next directions hearing is to be held on 12.2.02.

Multigroup Distribution Services Pty Ltd & ors, ss. 51A, 52. Representations as to future matters, false or misleading conduct.

Proceedings instituted on 11.7.01. Individuals alleged to be knowingly concerned in the conduct are Mr John O'Neile and Mr Malcolm Roberts.

The Commission alleges that between January and September 1999, Multigroup Distribution Services Pty Ltd misled or deceived, or were likely to mislead or deceive Mr Wayne Parker, a director of Parker Freight Express Pty Ltd, about the provision of a transport contract in North Queensland to Parker Freight Express Pty Ltd.

The Commission is seeking declarations, injunctions, compensation for Parker Freight Express, orders to implement a trade practices compliance program and costs.

A directions hearing was held on 3.8.01. The matter was listed for directions at a date to be fixed after 22.10.01.

Will Writers Guild Pty Ltd, ss. 51AD, 52, 53(g). Alleged failure to comply with mandatory Franchising Code of Conduct, false or misleading representations.

Proceedings instituted on 27.3.01 in the Federal Court, Hobart, against WWG and its director, Sidney Murray. Directions hearings were held on 5.6.01 and 21.8.01. At a directions hearing on 18.10.01 the proceedings were stayed until completion of separate criminal proceedings instituted by the Commission against the parties on 26.9.01. A directions hearing was held on those proceedings on 26.10.01 and a trial was set for 10–14.12.01.

Info4pc.com Pty Ltd, ss. 52, 56, 58. Alleged misleading or deceptive conduct, bait advertising and accepting payment not intending to supply.

Proceedings instituted on 23.1.01 when the Commission asked for an interim injunction in the Federal Court, Adelaide. A hearing on 24.1.01 removed the matter to the WA Federal Court. An *ex parte* interim injunction restrains the company from, among other things, advertising and accepting orders for computers and/or upgrades, and freezes the company's business bank account.

One motion for contempt of court, dated 31.1.01, for alleged breaches of the injunctions was heard on 15.6.01. The hearing for the other motion for contempt of court, dated 7.5.01, will be heard on 7.9.01. Judgment for these motions will be handed down together.

Signature Security Group Pty Limited, ss. 52, 53(c), 53(e), 53(d), 53(g). Alleged misleading or deceptive conduct, cash prices to be stated in certain circumstances, false or misleading representations, alleged breach of s. 87B undertakings.

Proceedings instituted on 19.3.01. The Commission is seeking court orders including injunctions restraining Signature from making similar misrepresentations in the future; declarations that Signature has contravened the relevant provisions of the Act; orders that Signature publish and broadcast corrective advertisements in newspapers and on the same radio stations as the original advertisements appeared; compensation for affected consumers, one requiring Signature to comply with its undertaking given pursuant to s. 87B of the Act, and one requiring Signature to implement a compliance program at its own expense.

Directions hearings were held on 11.4.01, 15.6.01, 3.8.01 and 2.10.01. Matter listed for hearing on 2-3.4.02.

Medical Benefits Fund of Australia Ltd (MBF) and John Bevins Pty Ltd, ss. 52, 51A, 53(c), 53(g), 55A. Alleged misleading or deceptive conduct, representations as to future matters, misrepresentation of performance characteristics, accessories, uses or benefits, misrepresentation of warranties, conditions, guarantee, right or representation of warranties, conditions, guarantee, right or remedy, certain misleading conditions in relation to an MBF print and television advertising campaign, conducted by John Bevins Pty Ltd.

Specifically, the Commission has alleged that MBF engaged in misleading or deceptive conduct and made false representations by advertising financial services in breach of ss. 12DA, 12DB & 12DF of the Australian Securities and Investment Commission Act 1989. It is alleged that John Bevins Pty Ltd, an advertising agency, was knowingly concerned in the alleged breaches.

Proceedings were instituted on 5.2.01 and discovery orders were made on 12.6.01. Substantive hearing date yet to be set.

Solutions Software International Pty Ltd & ors, ss. 51AB and/or s. 51AC, 52, 53(c), 53(d), 53(e), 59(1). Alleged unconscionable conduct, misleading or deceptive conduct, misrepresentation of performance characteristics, uses or benefits, misrepresentation of approval or affiliation, misrepresentations concerning price, misleading statements about work-at-home schemes.

Proceedings instituted on 29.6.01 in the Federal Court, Brisbane, against Solutions Software International Pty Ltd and related companies, formerly known as Acepark Pty Ltd and Offtrack Investments Pty Ltd. Proceedings were also instituted against former directors, Robert James Price and William Greig Millar, and the former Offtrack Investments sales manager, Ronald James Curtin.

The Commission is seeking final relief in the form of declarations, permanent injunctions and orders for refunds of the purchase price of the software. It is also seeking corrective advertising, compliance with a s. 87B undertaking previously accepted from Acepark, implementation of a trade practices compliance program and costs.

At a hearing held on 21.9.01 the Federal Court granted interlocutory injunctions, by consent, restraining the respondents and their servants and agents from being involved, directly or indirectly, with the making of false or misleading representations about the software and, in particular, that the software and any substantially similar software has an average strike rate of greater than 58 per cent in selecting successful place bets.

A trial date has been set down for 2.9.02.

Orbit Homes Australia Pty Ltd, s. 53A. False or misleading representations in relation to the sale of land.

Proceedings instituted on 14.9.01. The Commission alleges that between March and May 2001 Orbit Homes advertised home packages with representations that some features were to be provided at no cost to purchasers. The advertisements appeared in a Melbourne newspaper and also on Orbit Homes' Internet website.

The Commission is seeking declarations from the court that the advertising contravened the Trade Practices Act, injunctions restraining Orbit Homes from making similar representations in future, an order requiring Orbit Homes to publish a public disclosure notice in a major Victorian newspaper and also on its website and an injunction requiring Orbit Homes to implement a trade practices compliance program.

A directions hearing was held on 29.10.01 in the Federal Court, Melbourne.

SkyBiz.Com Inc., ss. 52, 57, 59, 61. Misleading or deceptive conduct, referral selling, misrepresentations about the profitability or risk of a home-based business, pyramid selling.

Proceedings instituted on 18.9.01. The court documents were served through the US court-appointed receiver for SkyBiz.

The Commission alleged that SkyBiz breached the Act by operating and promoting the Skybiz home business scheme as a pyramid selling scheme. It is alleged participants in the scheme paid SkyBiz.Com Inc. US\$100 for a website and that SkyBiz claimed participants could then earn a substantial income for introducing new consumers into the scheme.

A directions hearing is listed for 15.3.02.

World Netsafe, contempt proceedings.

On 1.11.01 the Commission instituted contempt proceedings against World Netsafe Pty Ltd and its sole director, Terence Butler. Spender J of the Federal Court, Brisbane, made extensive court orders on 8 December 2000 regarding the ATTM Card Scheme which was promoted and marketed by World Netsafe and its Mr Butler. Spender J found that World Netsafe and Mr Butler had breached the Trade Practices Act including ss. 52, 53(aa), 53(c), 53(d), 57, 58, 59 and 61.

During 2001 the Commission was inundated with communications from World Netsafe members who advised that they had not received a refund in accordance with the court orders.

The Commission continued its investigation into Mr Butler's alleged non-compliance with the court orders, and also issued subpoenas to various banks and obtained numerous affidavits from ex-employees and consumers within Australia, as well as some from New Zealand, Canada, United Kingdom, Hong Kong, Japan and Malaysia.

An urgent ex parte application was heard and Spender J ordered that until 2.11.01 Mr Butler was to be restrained from leaving Australia, was not to approach within 500 metres of any airport or port, and was to surrender all passports held by him to the Registrar of the Federal Court by 2.11.01.

On 2.11.01 consent orders were made on the basis of the following undertakings by Mr Butler:

- Mr Butler would not to leave Australia without first receiving the Commission's written consent;
- Mr Butler would deliver all of his passports to the Registrar of the Federal Court who would hold them unless authorised in writing by the Commission to release them to Mr Butler; and
- Mr Butler would not, before 9.11.01, sell or agree to sell his property situated at Brookfield, Brisbane.

On 9.11.01 through his legal representatives, Mr Butler undertook not to sell, dispose or further encumber or otherwise deal with his interest in his Brookfield property without first giving the Commission five business days written notice of his intention to do so. Spender J also ordered by consent of all parties that Mr Butler:

- complete a statement of the financial position of World Netsafe and a personal statement of his own financial position by 26.11.01;
- deliver to the Registry of the Federal Court a list of documents on the financial position of him and the company on or before 26.11.01;
- attend before the Registrar of the Federal Court to give information and answer questions about his personal property and the property of World Netsafe on a date to be notified by the Registrar.

A further directions hearing was held on 10.12.01.

Product safety

Berri Limited, ss. 53(eb), 65. Country of origin claims.

Proceedings instituted on 13.8.01. It is alleged that between March 1999 and June 2000 Berri supplied Coles Supermarkets Australia Pty Ltd with Farmland brand orange juice concentrate that was labelled 'Made in Australia from Australian Fruit Juice'. It is alleged that the product contained imported juice.

The Commission is seeking declarations from the court that the labelling was misleading and injunctions restraining Berri from making similar representations in the future. It is also seeking court orders requiring Berri to publish corrective advertisements in national daily newspapers informing consumers of the misleading conduct; and requiring Berri to implement a corporate compliance program.

Directions hearings were held on 17.8.01, 17.9.01 and 3.12.01. A further directions hearing is listed for 4.3.02.

GST compliance and enforcement

Domaine Homes Pty Ltd, s. 75AU. Alleged price exploitation under the New Tax System.

Proceedings instituted on 11.7.01. The Commission also instituted legal proceedings against Mr Robert Grant, managing director and Mr Terry Sofos, contracts manager of Domaine for their involvement in the conduct.

The Commission is seeking orders from the court injunctions to restrain Domane from making misleading representations in the future and declarations that the conduct of Domane and senior Domane staff was unlawful. It is also seeking refunds totalling approximately \$1.9 million paid in GST by 291 Domane customers, corrective action, including corrective newspaper advertisements and apology letters to Domane consumers, consequential damages for a number of Domane customers to compensate new home buyers for additional expenses such as rental for temporary accommodation, implementation of a trade practices compliance program and costs.

The Commission has sought undertakings from Domane that it cease referring to their contract as a standard Housing Industry Association one.

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 amend 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.

30.8.01 Draft 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.

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 Limited (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.

20.7.01 Draft determination issued proposing to deny authorisation.

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.

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.

3.8.01 Draft determination issued.

14.11.01 Final determination issued (a summary of the determination will be published in *ACCC Journal* no. 37).

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

15.11.00 Interim authorisation granted.

3.8.01 Draft determination issued.

14.11.01 Final determination issued (a summary of the determination will be published in *ACCC Journal* no. 37).

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

18.7.01 Draft determination issued.

14.11.01 Final determination issued (a summary of the determination will be published in *ACCC Journal* no. 37).

National Electricity Code Administrator (A90762–4) Extension of Schedule 9G and Clause 9.35.7 of the code jurisdictional derogations.

28.11.00 Interim authorisation granted.

8.8.01 Interim authorisation revoked and regranted.

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.

4.5.01 Interim authorisation granted.

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.

20.12.00 Interim authorisation granted.

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.

Australian Dairy Farmers Federation Ltd (A90782) Proposing to negotiate pricing and supply terms and conditions for agreements between dairy farmers and the dairy company to which they supply milk.

2.10.01 Draft determination issued.

8.10.01 Pre-decision conference.

Western Sydney Waste Board (A90789) Proposing to enter into a contract with an operator in respect of the pre-treatment facility, to be known as the build own operate (BOO) contract.

3.9.01 Application withdrawn.

Franklins Limited (A30206–8) Proposing a joint marketing arrangement with Pick n' Pay and Foodland for promotion of food and grocery products under their Franklin's banner.

4.7.01 Interim authorisation granted.

29.8.01 Draft determination issued.

National Electricity Market (A90792–4) Alternative dispute resolution arrangements in the NEM — code changes.

The Royal Australian College of General Practitioners (A90795) Application for authorisation of a framework agreement to provide broad coverage for general practitioners and other medical practitioners.

24.9.01 Interim authorisation granted.

Adelaide Airport (A90796) Application for authorisation of a Passenger Facilitation Charge (PFC) Between Adelaide Airport Ltd, Qantas Airways Ltd, Ansett Airways Ltd and Virgin Blue.

National Electricity Code (A90798) Generators' bidding and rebidding strategies and their effect on prices

Inghams Pty Ltd & ors (A90800) Collective negotiation regarding standard growing agreement or agreements in New South Wales.

NSW FRC (A90801–3) NSW Government is seeking authorisation of an amendment to chapter 9 of the NSW derogations of the National Electricity Code — full retail competition.

Queensland Newsagents Federation Ltd (QNF) (A90804) Proposing to collectively represent newsagent members in their negotiations with suppliers.

National Electricity Code — prudential amendments (A90805-7) Amendments to the prudential arrangements in the code to allow market participants facing a call to lodge a cash deposit rather than finding a further bank guarantee. The arrangements set up a security fund.

CSR Limited (A90808) Collective negotiations of owner/driver contracts in Queensland.

Notifications under consideration

Advertiser Newspapers Limited (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.

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

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).

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 or G Trade Services and clearing services from BNY and others.

AGL Electricity Limited, AGL South Australia Pty Limited, AGL Retail Energy Limited & ActewAGL (N90843–6) Offer of interest-free repayment options to customers who acquire appliances from nominated parties (third line forcing).

Network Payment Solutions Pty Ltd (N70202) Propose to operate Electronic Credit Card & Batch Processing.

Australian Stock Exchange Ltd (N90875) Proposed Options Clearing House Futures Clearing Rules and ASX Futures Exchange Pty Ltd business rules.

AGL Retail Energy Limited, ACTEW Retail, AGL ACT Retail Investments Pty Ltd, AGL Electricity Limited, AGL Energy Sales & Marketing Limited, AGL South Australia, Dingo Blue (N30878–83) Offering discounted gas, electricity, ancillary or telecommunications services on condition that customers also acquire one or more additional services.

AusBulk Ltd (N90896) Proposing to restrict access to AusBulk weighbridge to shareholders of United Grower Holdings Ltd.

Officeworks Superstores Pty Ltd (N90900) Operation of retail stores and catalogue sales business throughout Australia and Internet retail business.

Hallas Trading Pty Ltd (N90889) Proposing to require salon owners, distributors and franchisees to supply only Ella Bache products for skin and sun care.

Joint Vending Company (N90925) Exclusive dealing contract with Arnotts Biscuits Ltd with the supply of vending machines tied to an arrangement for machine contents.

Snap Franchising Limited (N40465) Offer to supply Snap Franchising service on condition the customer also acquires or has acquired National Card product from National Australia Bank Limited.

Val Morgan Cineticket Pty Ltd (N70211–7)

Supply goods/services on presentation of cinema ticket — notifying parties are Aroma Café, Whitford; Contacio, Scarborough; Leading Edge, Joondalup; McDonalds, Joondalup; Movies 4U, Joondalup; Booragoon Morley Video, Scarborough; Whitford City Video.

MC Franchise Systems Pty Ltd (N31121)

Requirements for franchisees to use certain software and hardware.

Certification trade marks

Completed

Victorian Tourism Operators Association

(CTM 700461) Assignment to Tourism Council of Australia.

Harris Tweed Authority (CTM 705888)

Amendment to the rules for Harris Tweed cloth.

Department of Mines and Energy, Qld and others (CTM 714440)

Certification of household electrical goods — assignment and variation to the rules.

Standards Australia (CTM 743608, 741723,

741725–6) The Australian Design Award and Australian Design Mark Scheme — variation to the rules.

Centre Technique du Bois et de l'Ameublement

(CTM 750620) Certification of wooden casks and barrels.

Cotton Australia Ltd (CTM 763065)

Certification of cotton textiles and other cotton goods.

Benchmark Certification Pty Ltd (CTM 764299)

Laboratory standards auditing services.

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.

Under consideration

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.

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

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

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

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.

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

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.

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 772566) Collaboration mark — certification of products carrying indigenous artwork licensed for amendments to the rules of authenticity label for indigenous art and cultural works.

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

The Bio-Dynamic Research Institute
(CTM 776347) Certification of persons using the application of bio-dynamic methods of agriculture and horticulture.

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.

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.

International Standards Certification Pty Ltd

(CTM 816463–4, 816838) Certification of quality management system.

National Office for the Information Economy

(CTM 841106) Certification to provide users with the comfort that their digital signatures have been issued meeting stringent standards.

The Institute of Inspection, Cleaning and

Restoration (CTM 789517) Certification of technicians and firms within the carpet and upholstery cleaning industry.

Deer Industry Projects and Development Pty Ltd

(CTM 836187) Certification that processed deer antler is Australian in origin and has been farmed and removed in accordance with certain standards.

US Environmental Protection Agency

(CTM 787534) Certification of Energy Star Program to promote the manufacturing and marketing of energy-efficient computer equipment.

Certified Financial Planning Board of

Standards (CTM TM0097) Certification of financial planners as being trained, tested and disciplined to certain standards.

National Archives of Australia Standards

(CTM 752089) Variation to rules governing CTM which certifies that paper and similar products are of archival quality.

Free Range Egg and Poultry Association of

Victoria (CTM TM 0098) Approval of rules governing CTM application no. TM0098).

The Earthmark Institute (CTM 868315–7)

Certification of marks designed to promote the marketing, sale and use of 'environmentally beneficial goods'.

Australian Institute of Risk Management

(CTM 862543) Approval of accreditation scheme for risk management consultants.

AAA Tourism Pty Ltd (CTM 797184–9) STARS

accommodation classification scheme.

Australian Pilates Method Association

(CTM 725018) Approval of accreditation system for Pilates Method instructors and practitioners.

Gaming Laboratories International

(CTM 832536 and 880902) Approval of scheme for certifying gaming equipment as meeting certain standards.

Commonwealth Department of Industry

Science and Resources (CTM 451318–9)

Assignment of Australian Made Logo to Australian Made Campaign Ltd.