
Adjudication

Authorisations

The Commission has the function, through the authorisation process, of adjudicating on proposed mergers and certain anti-competitive practices that would otherwise breach the Trade Practices Act.

Authorisation provides immunity from court action and is granted if the Commission is satisfied that the practice delivers offsetting public benefits.

Determinations

The full report of the following determinations can be obtained from the ACCC website at: <<http://www.accc.gov.au/electric/fs-elec.htm>>.

Resource NSW and seven inner Sydney councils

In relation to an arrangement under which two groups of Sydney councils would collectively tender for facilities to sort recyclable waste (A30204–5)

- Draft determination issued 7.3.02
- Final determination granted 6.6.02
- Application by Waste Services Corporation New South Wales to Australian Competition Tribunal for review

The Commission granted authorisation to Resource NSW, which applied on behalf of the following Sydney councils: Botany Bay City Council, Canterbury City Council, Hurstville City Council, Kogarah Municipal Council, Marrickville Council, Randwick City Council, Rockdale City Council, South Sydney City Council, Sutherland Shire Council, Waverley Council, and Woollahra Municipal Council (the southern Sydney councils—A30204).

On the same day the Commission also granted authorisation to: Ashfield Council, Auburn Council, Burwood Council, City of Sydney, Canada Bay Council, Leichhardt Municipal Council and Strathfield Municipal Council (the inner Sydney councils—A30205).

The applications relate to dry recyclable material (DRM) which includes paper, glass, plastic, aluminium and steel cans, and liquid paperboard (e.g. milk cartons). Councils collect DRM from households. Many councils then supply their DRM to a materials recycling facility (MRF) which sorts it and sells it to downstream processors. Councils pay a fee to MRFs for receiving their DRM.

Under each application, each group of councils has immunity to collectively negotiate with MRF operators with a view to appointing at least one to sort and dispose of their DRM for 10 years.

The Commission considered that both applications would result in a small public benefit. These benefits primarily arise from improved environmental outcomes. The Commission considered that minimal public detriment would result from the two collective tenders.

On 27 June 2002, Waste Services Corporation New South Wales filed applications to review each authorisation with the Australian Competition Tribunal.

Hugo Boss Australia Pty Ltd

In relation to an agreement between Hugo Boss Australia Pty Ltd and David Jones Limited (A90809)

- Draft determination issued 27.3.02
- Final determination granted 20.6.02

On 12 November 2001 Hugo Boss Australia applied for authorisation of an agreement to grant David Jones Limited exclusive rights to stock particular products within the Hugo Boss range. In consideration for the limited rights, David Jones would undertake to construct and fit out 'shop in shop' Hugo Boss outlets within David Jones Stores and employ specialist staff in them.

The proposed agreement is primarily a vertical arrangement between a supplier and retailer. However, the agreement may also constitute an agreement between competitors because Hugo Boss is owner of a factory outlet in Preston which

sells Hugo Boss goods potentially in competition with David Jones.

The Commission considered that the proposed agreement will have only a negligible effect on competition in the relevant market. Because all retailers maintain access to the product lines to which they are accustomed, competition between David Jones and the Preston outlet is minimal, and Hugo Boss is one of many suppliers of premium men's and women's apparel and accessories. The proposed agreement could promote some competition between brands and retailers.

The Commission therefore concluded that the public benefits likely to result from the proposed agreement would outweigh any anti-competitive detriment. It granted authorisation for five years.

St Vincent's Private Hospital, Mater Misericordiae Hospital, Trustees of the Sisters of Charity of Australia and Sisters of Charity Healthcare Australia Ltd

In relation to various collaborative arrangements following the acquisition of the Mater Hospital, North Sydney (A90770-2)

- Interim determination issued 20.12.00
- Draft determination issued 8.5.02
- Final determination granted 13.6.02

On 14 December 2000 the Mater Misericordiae Hospital Limited, St Vincent's Private Hospital, Trustees of the Sisters of Charity Australia and Sisters of Charity Healthcare Australia Limited applied for authorisation of various collaborative arrangements following the acquisition of the Mater Hospital, North Sydney.

The applications for authorisation arose from a legal technicality surrounding that acquisition. Specifically, the relevant entities within the post acquisition hospital group would not all be related bodies corporate. As a result, the hospital group is not entitled to a related bodies corporate exemption under s. 45(8) of the Trade Practices Act.

The Commission considered that there would be minimal anti-competitive detriment flowing from any coordinated conduct between St Vincent's and the Mater Hospital.

The Commission was satisfied that there were likely benefits to the public in the form of efficiency improvements resulting from the economies of

scale, improved utilisation of infrastructure and synergies across the hospital campuses.

The Commission granted authorisation for as long as the applicants are directly or indirectly owned and controlled by the Congregation of the Sisters of Charity.

Agsafe Limited

In relation to accreditation scheme for distributors of farm chemicals (A90680-1)

On 22 May 2002 the Commission granted authorisation to an agricultural and veterinary chemical industry self-regulation compliance program overseen by Agsafe Limited.

Authorisation was granted to the Agsafe's industry accreditation scheme requiring persons and premises involved in the transport, handling, and storage of agvet chemicals to be accredited and to comply with a code of conduct. The authorisation also enables Agsafe to apply trading sanctions to premises that fail to meet accreditation standards. The Commission also authorised two changes to the existing scheme (which has been operating under authorisation for more than 10 years). First, a change in the definition of agricultural and veterinary chemicals which are the target of accreditation and second, a change in the obligatory threshold which determines if premises require accreditation.

The Commission considered that the arrangements may result in some lessening of competition. However, the Commission considered the anti-competitive detriments as a result of the scheme were limited. In particular, the Commission considered that appropriate safeguards exist to ensure that Agsafe's powers to impose trading sanctions are not employed to the detriment of competition in the market. The Commission also considered that public benefits would flow from the arrangements—to users and the community generally—from the safe use of agvet chemicals and Australia-wide uniformity in the storage of agvet chemicals.

Authorisation was granted for 5 years.

On 12 June 2002 the Veterinary Manufacturers and Distribution Association appealed the Commission's decision to the Australian Competition Tribunal. On 11 July 2002 the appeal was withdrawn.

Notifications finalised

The following notifications have been allowed to stand.

Zurich Financial Services Australia Limited and ors (N31139–42) Financial services offered on condition by Zurich Financial Services, Zurich Investment Management, Zurich Australian Superannuation and Wrap Account.

LifeCare Health Limited (N90995) LifeCare Health swim centres—two free swimming lessons in every ten for members of Medibank Private Ltd (third line forcing).

Nine West Melbourne, MD Formulations, Tourism QLD, Gloss Star (N90985–8) Arrangement between notifying parties and MasterCard Australia with a discount being offered if the purchaser acquires goods with a MasterCard (third line forcing).

People Telecom Ltd (N31146) Rebate supplied to customers who acquire workers compensation insurance from Allianz Australian Workers Compensation (NSW) Limited (third line forcing).

BP Australia Limited (N90978) Operators of BP outlets required to purchase goods and services from nominated suppliers (third line forcing).

Queensland Art Gallery (N50141) Gallery will supply function space if required catering services are supplied by nominated suppliers (third line forcing).

Juice Station Franchising Pty Ltd (N31144) Franchisees required to purchase fruit and equipment from nominated suppliers (third line forcing).

BP Australia Pty Ltd (N90999) Requirement that existing and future franchisees acquire electricity requirements from a nominated supplier.

Kebab Co (N90993) Nominated suppliers (third line forcing).

Doctors Formula Pty Ltd, Ali Hamylton, Fitness First Australia Pty Ltd (N31154–6) Discount or special offers for customers who use MasterCard to purchase products and services offered by the notifying parties (third line forcing).

Mary Birch Buteyko Bayside Breathing Centre (N91002) Courses offered at a discount to members of health fund Australian Unity (third line forcing).

Westpac Banking Corporation (N91000) Provision of a protected equity loan—nominated sponsor of uncertificated shares and nominated broker (third line forcing).

Subaru (Aust) Pty Ltd (N91001) Discount on the supply of vehicles and services to dealers who acquire wholesale finance from General Motors Acceptance Corp trading as Subaru Finance (third line forcing).

Hallas Franchising Co Pty Limited (N90989–90) Require franchisees to supply only Ella Bache products that are manufactured by Hallas Trading (third line forcing).

Hallas Trading Co Pty Limited (N90991–2) Require distributors to deal in Ella Bache products that are manufactured by Hallas Trading (third line forcing).

Toyota Finance Australia Limited (N31145) Finance offered at a lower rate of interest if customer purchases a specified Toyota vehicle from a participating Toyota dealer (third line forcing).

Western Australia Tourism Commission (N91240–51) Proposing to regulate the supply of network entitlements to operators on condition that the tourism operators become members of their local visitor centre.

ACN 100 053 585 Pty Ltd (N31149) Will supply lending services on condition that the customer will acquire equipment from particular dealers (third line forcing).

Royal and Sun Alliance Portfolio Services (N31152) Directed portfolio service called VISTA. Investors must operate a Macquarie Bank Cash Management Trust Account in conjunction with their VISTA account (third line forcing).

Bank of Western Australia Limited (BankWest) (N31157) Reduction in loan application fee if customer acquires other services from BankWest, RASA or St Andrews.

Bank of Western Australia Limited (BankWest) (N70300) Money Magazine loyalty partner (third line forcing).

Northern Marketing Management Pty Ltd t/a Collect Food Stores (N91009) Discount on petrol purchase if a Spar Supermarket docket of value greater than \$45 is produced (third line forcing).