
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

Full reports of the following determinations can be obtained from the ACCC website at: <<http://www.accc.gov.au>>.

Inghams Pty Ltd & ors

In relation to collective negotiation of standard growing agreement or agreements in New South Wales (A90800)

- Draft determination issued 20 March 2002
- Final determination issued 8 October 2002

The Commission has issued a final decision dismissing an application for authorisation to allow collective negotiations between chicken-meat growers and processors in NSW.

Eight NSW poultry processors (Inghams Enterprises Pty Ltd, Bartter Enterprises Pty Ltd, Red Lea Chicken Pty Ltd, Cordina Chicken Farms Pty Ltd, Baiada Poultry Pty Ltd, Sunnybrand Chicken Pty Ltd, Narex Australia Pty Ltd (trading as Penrith Poultry) and Summertime Chicken Pty Ltd) sought authorisation for each individual processor and its contracted growers to engage in collective negotiations of standard growing agreements (including the agreement of a common fee).

The NSW poultry meat industry is regulated by the *Poultry Meat Industry Act 1986* (PMIA) which provides for the Poultry Meat Industry Committee (PMIC) to determine prices paid to poultry growers.

The Commission found that because of recent changes to NSW legislation, the arrangements that

were the subject of the authorisation application were unlikely to ever eventuate, and that accordingly, the claimed public benefits of the arrangements were unlikely to ever flow. For this reason, the Commission dismissed the application.

This application for collective bargaining was distinguished by the high level of opposition from those who stood to benefit from it—namely, NSW chicken growers, who had indicated their preference for industry-wide regulation.

In its draft decision, the Commission proposed to grant authorisation with conditions. However, after that decision, and with the support of NSW chicken growers, the NSW State Government passed legislation amending the PMIA. The Commission considered that this legislation would have the effect of precluding the implementation of the arrangements that are the subject of this authorisation application. Thus the public benefits that were claimed to flow from the proposed arrangements are not likely to occur.

NSW chicken-meat processors applied for authorisation to allow their contract growers to collectively negotiate with their respective processors and give effect to standard growing contracts in accordance with a code of practice and minimum contract guidelines.

The Commission considers that the NSW Parliament has indicated its clear intention that the industry will only operate under the arrangements contained in the PMIA. While there appears to be some scope for variations in the types of agreements approved by the PMIC, it is reasonable to assume that, in view of the Government's expressed intention, the arrangements as proposed are unlikely to eventuate.

Therefore the Commission considers that the likely outcome from applying the 'future with-and-without test' to this application is that the claimed public benefits previously expected to arise would no longer be likely to flow.

Clay Brick & Paver Association of New South Wales

In relation to a scheme to increase the number of trained bricklayers in NSW (A90676, A90830)

- Draft determination issued 28.8.02.
- Final determination issued 23.10.02.

In May 2002 The Clay Brick and Paver Association of New South Wales asked the Commission to revoke an authorisation granted in 1999 and to grant a new authorisation to allow a scheme to operate for a further three years. It applied for authorisation enabling it to continue to operate a scheme to assist young people in entering the bricklaying trade in NSW.

The determination allows the Association to continue to collect two levies from NSW brick manufacturers. The levies are paid to a group training company, which uses the money to subsidise some of the costs associated with employing apprentice bricklayers.

The Commission first authorised the scheme in 1999. At the present time, about 140 bricklayer apprentices have been recruited and are being trained in NSW under the scheme.

The Commission considered that the scheme has been and is likely to continue to be successful in providing opportunities for young people to enter a trade that has a recognised skill shortage.

By increasing the numbers of skilled bricklayers working in all areas of NSW, consumers are likely to benefit from improved quality of workmanship. They are also likely to benefit from building works being completed faster and from cheaper bricklaying services, particularly during periods of high demand.

In granting authorisation for a further three years, the Commission noted that the levies are small and do not appear to have resulted in an increase in the overall cost of building to consumers.

Agsafe Limited

In relation to the Agsafe agricultural and veterinary chemicals accreditation program, code of conduct and sanctions process (A90680, A90681)

Minor variation of authorisation issued 3.10.02.

On 22 May 2002 the Commission granted authorisation to Agsafe for its agricultural and veterinary chemicals accreditation program. code of conduct and sanction process.

The Agsafe scheme has been operating under authorisation for more than 10 years. The authorisation granted by the Commission on 22 May 2002 renewed the existing scheme and made several changes to it including the definition of the scope of agricultural and veterinary chemicals covered.

Agsafe argued that an unintended consequence of this change to the scheme was that by expanding its scope it included veterinarians and veterinary chemical wholesalers not originally intended to be covered. On 21 August 2002 Agsafe applied for a minor variation to authorisations A90680 and A90681 to clarify the scope of the authorisations as they applied to veterinarians and veterinary chemical wholesalers.

The Commission accepted that an unintended consequence of the changes in the Agsafe authorisation was to extend its scope to include veterinarians and veterinary chemical wholesalers not originally intended to be covered by the scheme.

The Commission considered that the proposed minor variation would clarify that veterinarians and veterinary chemical wholesalers selling, storing and handling hazardous substances in quantities less than 500 kg or 500 L, were not intended to be, and as a result of the minor variation, will not be covered by the Agsafe program.

The Commission concluded that the proposed variation would not affect the net public benefit identified in the original authorisation but merely clarify the original intentions of the scheme.

New South Wales Department of Health

In relation to its policy regarding the provision of pathology services (A90754, A90755)

The policy:

- requires pathology services for private inpatients in public hospitals to be provided by public hospital pathologists (excluding private pathologists)
- makes the use of public hospital pathologists a prerequisite for private medical practitioners to treat private inpatients in public hospitals.

This policy is set out in Circular 89/1 'Policy on Provision of Pathology Services in Public Hospitals' issued by the NSWDOH on 4 January 1989. The policies are implemented by the various area health services in New South Wales as part of their role of managing public hospitals in their respective regions.

The Commission considered that the NSWDOH's policy results in direct anti-competitive detriment as it denies private pathologists access to private inpatients in public hospitals and results in consumer detriment as private inpatients are denied the right of choosing their preferred pathologist.

Overall, the Commission considered that if there is any public benefit associated with the NSWDOH's policy it is only minimal.

The Commission considered that the public benefits from the NSWDOH's policy are unlikely to outweigh its anti-competitive effects. The Commission proposed not to grant authorisation to applications A90754 and A90755 for the longer term.

However, the Commission recognised that a significant benefit to private inpatients will result from having the policy apply for a finite period to allow public hospitals to plan for and implement the orderly transition to a multiple pathologist system.

The Commission therefore proposed to authorise the NSWDOH policy for a period of one year from the date of effect of its final determination to provide a transition period for removal of the policy.

Notifications finalised

The following notifications have been allowed to stand.

Australian Fuel Distributors Pty Ltd (N91034)
Fuel discount with proof of purchase of goods from Coles and Bilo Supermarkets.

Alshandegha Pty Ltd t/a Wendy Ford Hair and Beauty (N40527) Franchisees to acquire beauty products from the franchisor, Wendy Ford Hair and Beauty.

CIBO Espresso (SA) Pty Ltd (N60034)
Franchisees to acquire products from nominated suppliers.

Esanda Finance Corporation Limited (N91031) Refusal to supply financing of insurance premiums to applicants if the applicant has acquired specific insurance from an insurer that has not entered into a service level agreement with Esanda.

Juice Station Franchising Pty Ltd (N31192)
Purchase of stock from a nominated supplier.

Tip Top Cleaners Pty Ltd (N91038) Discounted petrol on condition that customers acquire goods of not less than \$30 from participating Foodland Stores.

N1MP (T No1) Pty Ltd (N31189) Discounted accommodation and goods offered to MasterCard holders.

Ali Hamylton (N31191) Discounts offered for customers who use a MasterCard to acquire goods.

Westpac Life Insurance Services Limited and Westpac Banking Corporation (N31172-3)
Offer to pricing advantage to HCF customers when acquiring products from Westpac Banking Corp and Westpac Life Insurance Services Limited.

APIR Systems Pty Ltd (N90120) Access to online services via a digital cryptography system Public Key (PKI). Users to apply for APIR Certificate Smartcard.

Australian Automotive Network Exchange (AANX) (N90971) Supply of virtual private network services on condition that subscribers obtain carriage services from a nominated service provider and a nominated brand security gateway device (third line forcing).

Retravision (N40471) Retravision will supply a Retravision product to retail customers if the customer acquires mobile services from Telstra (Eternity campaign) (third line forcing).

One Xerro Communications, Myer, Grace Bros, Dick Smith, Leading Edge (N90981-4)
Will supply goods on condition customer acquires mobile services from Telstra (third line forcing).

Fone Zone (N40472) Will supply on condition customer agrees to acquire mobile services from Telstra (third line forcing).

Dick Smith Wholesale, Fone Zone, Mobileworld Operating, One Xerro Communications and Retravision Australia (N40477-81) Supply goods on condition customers acquire mobile services from Telstra (third line forcing).

Telstra Licensed Shops (43 notifications—N40471-N40526, N90982-4) Offer of goods or services to customers who acquire mobile services or plans from Telstra (third line forcing).

Dick Smith Electronics Pty Ltd (N40526)
Supply of goods on condition customers acquire mobile phone services from Telstra (third line forcing).

ANZ Rewards Pty Ltd (N90994) Loyalty program discounts on purchases from nominated suppliers.

Subaru (Aust) Pty Ltd and General Motors Acceptance Corp. Aust. (N40533-4)

Concession offered with the supply of finance to purchasers of Subaru WRX if vehicle is acquired from a GMAC Wholesale Dealer.

Burger King Corporation (N31190) Franchisees to acquire the services of nominated suppliers.

Aroma Science Pty Ltd (N31195) Discounts offered on condition consumers acquire products using MasterCard.

ANZ Rewards No 2 Pty Ltd (N40536-7) Two notifications loyalty programs 'Instant Rewards' and 'Points Plus Play'.

Vodafone Pty Ltd (N91039) Offer of a Starcard with the purchase of a No Plans Pre Pay pack for \$29.95 from selected Caltex or Ampol outlets.

Corporate Momentum Pty Ltd and Corporate Momentum Group Pty Ltd (N31193-4) Supply home alarm systems and Chubb monitoring services to customers of Wizard Mortgage Corporation Ltd.

Telepathy System Pty Ltd (N31153) Compelling SMS users to connect with the Vodafone Network.

Australian Rugby Union Ltd (ARU) (N31196) Restriction on the distribution of tickets for the Rugby World Cup 2003.

Rugby World Cup Limited (N50144) Provision of hospitality services during the Rugby World Cup 2003.

Printware (Aust) Pty Ltd (N40538) Require franchisees to acquire products from nominated suppliers.