
Adjudication

Authorisations

The Commission has the role, 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 where the Commission is satisfied that the practice delivers offsetting public benefits.

Australian Competition Tribunal

Review of the Commission's determination to revoke authorisation of the accreditation system for advertising agencies

On 24 May 1976 the Commission granted conditional authorisation to an application by the Media Council of Australia for a system of accreditation for advertising agencies.

After an appeal by the applicant to the Trade Practices Tribunal the system was granted authorisation on 10 February 1978. The Tribunal requested that the Commission periodically examine the working of the system to determine whether, by reason of altered circumstances, it was appropriate that the authorisation be varied or revoked.

In January 1995 the Commission announced a review of the system and called for submissions. After considering the submissions made by interested parties, the Commission was satisfied that a material change of circumstances had occurred in a number of areas since 1978 which warranted revocation of the authorisation. Accordingly a revocation was

issued on 5 October 1995 to take effect on 27 October 1995.

The Media Council and the Advertising Federation have applied to the Australian Competition Tribunal (formerly the Trade Practices Tribunal) for a review of the Commission's determination. A hearing is expected to be held in March 1996.

The authorisation will continue to apply until the Tribunal application is decided.

(See also Trade Practices Commission *Bulletin* 83, October 1995.)

Final determination

Australian Stock Exchange Limited

Amendments to ASX articles and business rules relating to admission and other requirements (A90585, A90586)

Summary

- Draft determination proposing to grant authorisation issued 10 January 1996
- Final determination granting authorisation, subject to conditions, issued 13 March 1996 effective 4 April 1996

The Commission has considered two applications for authorisation lodged by Australian Stock Exchange Limited (ASX) in respect of amendments to articles 7 (including new article 7A), 36, 38, 44, 46, 47, 55A and 60 of ASX's articles of association, and amendments to ASX's business rule 5.1.2.

ASX advised that the amendments to articles 36 and 44 and to business rule 5.1.2 related to educational requirements for admission and re-admission as natural person

members of ASX. The remaining article amendments related to minor or procedural matters. The articles and business rule being amended by ASX, with the exception of articles 7A, 44 and 47, had previously been granted authorisation by the Commission.

Under the amendments to the educational requirements for natural person members of ASX, all applicants for such membership would be required to:

- hold tertiary qualifications (although the ASX board would have the discretion to waive this requirement), whereas currently persons without tertiary qualifications, but who hold Securities Institute of Australia (SIA) qualifications, are eligible for admission;
- have successfully completed the four SIA subjects specified in rule 5.1.2, whereas currently applicants who fulfil other educational requirements need not necessarily have completed those particular SIA subjects; and
- have obtained a pass mark (to be set by ASX's board) for an ASX admission examination conducted under the auspices of SIA (as a means of demonstrating to ASX's board his or her knowledge and understanding of the securities industry and the ASX articles and rules), whereas currently this examination is recommended only to those applicants who do not satisfy the (current) minimum educational requirements.

The Commission considered that there was public benefit in the proposed tightening of the minimum educational requirements for admission as natural person members of ASX, as this would enhance ASX's ability to ensure that persons admitted as stockbrokers have attained minimum standards of knowledge and understanding of the securities industry and its regulation by ASX, and should help maintain confidence in stockbrokers with whom investors deal. However, the Commission noted that ASX's board has the power to set the pass mark for the admission examination (as well as setting the examination itself) which all applicants would be required to attain, and to

specify the SIA subjects which all applicants would be required to have completed successfully. The Commission indicated that it would be concerned at any amendments to these requirements that would increase the barriers to entry to the stockbroking industry for natural persons.

The Commission's only concern in respect of the amendments to ASX's other articles was that a member or member organisation declared by ASX's board to be a defaulter under article 60 had no right of appeal against such declaration.

On 10 January 1996 the Commission issued a draft determination proposing to grant authorisation in respect of the arrangements. There was no request for a pre-decision conference.

On 13 March 1996 the Commission issued a final determination granting authorisation to ASX to give effect to the amendments of its articles and business rule 5.1.2, subject to the condition that any member or member organisation declared to be in default under article 60 will be provided with a right of appeal to the Appeal Tribunal. The authorisation is to come into effect on 4 April 1996.

Authorisation under review

Newspaper and magazine distribution in NSW/ACT, Victoria and Queensland

In 1980 the Commission authorised distribution arrangements for newspapers and magazines in NSW/ACT, which provided the model for the subsequent Victorian and Queensland authorisations granted in the 1980s. The arrangements generally provided for:

- horizontal agreements between publishers;
- combined delivery, supply to sub-agents and retail functions; and
- close control of newsagency businesses by newsagency councils.

In 1995 the Commission decided to review the authorised arrangements in the eastern States and Territories. This decision followed the Trade Practices Tribunal's decision in November 1994 to set aside a July 1993 authorisation by the Commission of a revised distribution system in Victoria.

It appears to the Commission that a number of changed circumstances have materially affected the original authorisations and that the public benefits said to flow from the authorised arrangements may no longer outweigh the anti-competitive detriments. Small business may now be substantially constrained by the current arrangements.

The Commission is reviewing the authorisations in the light of these apparent changes. It has received a large number of submissions and is currently considering them. No decision has yet been made.

(See also former Trade Practices Commission *Bulletin* 82, August 1995.)

Revocation of authorisations

Under s. 91(4) of the Trade Practices Act, where it is satisfied that there has been a material change of circumstance since an authorisation was granted, the Commission may revoke the authorisation, and if it considers it appropriate to do so, grant a substitute authorisation.

International Commodities Clearing House Limited

On 30 January 1976 the Commission granted clearance (C23038) under s. 92(2) of the Trade Practices Act to International Commodities Clearing House Limited (ICCH) in relation to the following proposed arrangements (concerning the proposed establishment of the Australian options market) that may have been in restraint of trade:

- a proposed agreement between ICCH and Options Clearing House Pty Limited (OCH)

relating to the provision of services by ICCH to OCH; and

- a proposed agreement between ICCH and The Sydney Stock Exchange Limited (SSE) whereby SSE undertook to keep secret all information divulged by ICCH to SSE or to OCH and passed onto SSE by OCH.

Following the 1 July 1977 amendments to the Trade Practices Act, clearances granted previously under s. 92(2) were deemed to be authorisations under ss 88(1) or (5) of the Act as amended.

On 9 November 1987 the Commission granted authorisation (A30119) to ICCH in relation to clearing house services which ICCH provided in respect of the Sydney Futures Exchange (SFE) markets.

ICCH has not provided services (relevant to authorisation C23038) in respect of the operation of the Australian options market since 1981. In addition, ICCH has not provided clearing house services (relevant to A30119) in respect of SFE's markets since December 1991.

The Commission was satisfied that a material change of circumstances had occurred since the authorisations were granted. The Commission issued a revocation on 10 January 1996 to take effect on 1 February 1996.

Sydney Stock Exchange Limited and Options Clearing House Pty Limited

On 30 January 1976 the Commission granted authorisation A21113 to Options Clearing House Pty Limited (OCH) and authorisation A21114 to Sydney Stock Exchange Limited (SSE) in respect of their respective requirements that all options transactions negotiated on the proposed Australian options market be registered with OCH and that OCH would not register transactions not negotiated on the proposed market.

SSE became a subsidiary of Australian Stock Exchange Limited (ASX) in 1987 and has since been placed in liquidation. In addition, on 25 October 1995 the Commission granted authorisation (A30163) to ASX and OCH in

respect of similar conduct to that granted authorisation on 30 January 1976.

The Commission was satisfied that a material change of circumstances had occurred since the authorisations were granted. The Commission issued a determination on 7 February 1996 to take effect on 29 February 1996.

Brisbane Wool Selling Brokers' Association

On 1 December 1980, the Commission granted authorisation to applications A2482 and A2484 lodged by the Brisbane Wool Selling Brokers' Association in relation to the Association's constitution, rules and regulations, as well as the conditions of sale for wool auctioned at the Association's Brisbane sale rooms.

The Secretary of the Association informed the Commission that a decision had been made to wind the Association up as at 30 June 1996, and that the Association consented to the revocation of these authorisations.

It is anticipated that the membership will continue to meet as the Brisbane branch of the National Council of Wool Selling Brokers of Australia. Assuming this decision is formalised, the branch will operate under the memorandum and articles of association of the national organisation, which has been authorised by the Commission.

The Commission was satisfied a material change of circumstances had occurred since the authorisations were granted. A revocation was issued on 14 February 1996 to take effect on 7 March 1996.

Pre-1977 'deemed' authorisations

Before 1 July 1977, the Commission granted clearances to a number of companies under s. 92(2) of the Trade Practices Act for various contracts, arrangements or understandings that may have been in restraint of trade.

On 1 July 1977 the Trade Practices Act was amended and s. 92 repealed. Under the amendments, any s. 92(2) notices that had been granted clearance before 1 July 1977

were deemed authorisations under ss 88(1) or (5) of the amended Act.

The Commission is reviewing all pre-1977 'deemed' authorisations in an effort to bring its register up to date.

Authorisations to the following companies for various agreements in this category have now been revoked since it appeared to the Commission that material changes in circumstances had occurred in that the agreements had expired or had been terminated.

- Queen's Bridge Motors Pty Ltd, Gilbeys Australia Pty Ltd, Mirvac Pty Ltd, Melbourne Family Care Organisation (various distribution and lease agreements) — the revocation of 38 'deemed' authorisations was issued on 4 October 1995 to take effect on 26 October 1995.
- Australian Wire Weavers Pty Ltd, The Broken Hill Pty Company Ltd, Southern Limestone Pty Ltd & Southern Lime Distributors Pty Ltd, Brambles Holdings Ltd, Newport Plaza No 1 Pty Ltd & Newport Plaza No 2 Pty Ltd (various distribution and lease agreements) — the revocation of 13 'deemed' authorisations was issued on 13 December 1995 to take effect on 4 January 1996.
- Comes Nominees Pty Ltd, Annand & Thompson Pty Ltd, D.J.'s Properties Limited (the code of ethics of the business and coaching colleges of Victoria, a distribution agreement, and various lease agreements) — the revocation of four 'deemed' authorisations was issued on 10 January 1996 to take effect on 1 February 1996.
- Davids (SA) Limited, Astronics Pty Limited, OPSM Protector Limited, Wallaby Grip BAE Pty Limited, Mercantile Investments Pty Limited, Lowndes Lambert Australia Pty Limited, Armadale Square Shopping Centre Pty Limited, ATP (Australia) Pty Limited (various lease and commercial agreements) — the revocation of 46 'deemed' authorisations was issued on 31 January 1996 to take effect on 22 February 1996.

- Citizen Watches Australia Pty Ltd, Burns Philp Trustee Co Limited, The Broken Hill Associated Smelters Pty Ltd, Janice Patricia Burke, Cascade Cordials Pty Ltd, Cutler Hammer Australia Pty Ltd, William Adams Tractors Pty Ltd (various commercial and lease agreements) — the revocation of 12 'deemed' authorisations was issued on 14 February 1996 to take effect on 7 March 1996.
- Alberta Centre Pty Ltd, Colin Campbell (Chemicals) Pty Ltd, Coats Patons (Australia) Ltd, Carlton and United Breweries Ltd, CRA Services Ltd, Clark International Marketing, Austral Motors Holdings Limited, Australian & Kandos Cement Holdings Limited, Associated Minerals Consolidated Limited (various commercial agreements) — the revocation of 15 'deemed' authorisations was issued on 6 March 1996 to take effect on 28 March 1996.
- Craminster Properties Pty Ltd, Dalgety Liverpool Ltd, Clyde Contract Fillers Pty Ltd, American Dairy Queen (QLD) Pty Ltd (various commercial and lease agreements) — the revocation of four 'deemed' authorisations was issued on 6 March 1996 to take effect on 28 March 1996.

Authorisation applications under consideration

SA Stock Salesmen's Association (A60012, A60013)

Rules and regulations of association, terms and conditions of livestock auction sales conducted by members and exclusionary provision.

Consideration deferred pending VSAA and SSAA appeals to Trade Practices Tribunal.

8.7.94 Requested advice on whether SA Stock Salesmen's Association will proceed with application following VSAA and SSAA decision to withdraw appeal to the Trade Practices Tribunal.

30.6.95 SASSA's solicitors advised regulations being rewritten to address Commission's concerns.

24.11.95 Application withdrawn.

Delhi Petroleum (A90547)

Joint venture operations for SA gas supply.

Existing interim authorisation extended until final determination is made.

Further consideration deferred pending review of AGL authorisation A90424.

Santos Limited (A90559)

Agreement relating to the sale and marketing of liquid hydrocarbons from natural gas in south-west Queensland.

Further consideration deferred pending review of AGL authorisation A90424 and consideration of new application A90568 to address Commission concerns.

Santos Limited (A90560)

SA Cooper Basin — joint venture — natural gas.

Further consideration deferred pending review of AGL authorisation A90424.

Advertiser Newspapers Limited & others (A60020, A60021)

Contracts and rules for the operation of SA newsagency system.

Interim authorisation granted until 1.3.96.

Franchising Code Administration Council Ltd (A30164)

Voluntary code of practice for the franchising sector.

Interim authorisation granted until final determination.

Santos Ltd (A90568)

Sale of commingled liquid hydrocarbons from Cooper Basin in SA and Qld.

8.2.95 Interim authorisation granted.

CSR Ltd (A50016)

Application for authorisation for negotiation and agreements on cartage rates with independent contractor concrete carriers.

ASX (A90583, A90584)

Proposed amendments to ASX business rules relating to capital liquidity and other requirements.

Du Pont (Australia) Limited and Ticor Limited (A90581, A90582)

Unincorporated joint venture to acquire assets of both Howson Algraphy (Australasia) Pty Ltd and Ticor Chemical Company Pty Ltd.

Marketing agreement between joint venture and DUPA, agreement not to sell sodium cyanide to any agent other than DUPA.

Australian Performing Rights Association (APRA) (A30166-A30173)

Arrangements for acquiring and granting rights for music.

Advertiser Newspapers & others (A60022)

Agreement regarding newsagency territories and termination of agreement to adopt newsagency administration rules.

MIM Holdings Limited (A50017) (A50018)

Joint venture and power purchase agreements relating to the production and supply of electricity by the Mica Creek power station.

Davids Limited (A30174) (CA96/3)

Proposed acquisition of QIW Limited.

Notifications

Under the Act, immunity from legal proceedings is available for exclusive dealing conduct, including third line forcing, when notification is given to the Commission. Exclusive dealing conduct, except third line forcing, gains immediate and automatic immunity when notified to the Commission. In the case of third line forcing, immunity comes into force at the end of the prescribed period from the time the Commission receives the notice. Immunity remains unless revoked by the Commission.

Notifications considered

Kanematsu Australia Ltd (N30711) (Allowed to stand)

Exclusive distribution agreement for supply of agricultural chemicals.

Commonwealth Serum Laboratories Limited (N40203) (Allowed to stand)

Exclusive distribution agreement for supply of interferon drug.

SGIC Holdings Limited (N60019-N60022) (Allowed to stand)

The offering of multi-product discounts to customers of SGIC General Insurance Limited, SGIC Life Limited and SGIC Health Pty Ltd who have more than one product with those companies.

Adelaide Produce Markets (N90333) (Allowed to stand)

Exclusive dealing on wholesale sales of fresh fruit, vegetables and flowers.

Sydney Futures Exchange Limited (N90335) (Allowed to stand)

Exclusive dealing in the settlement procedures for deliverable share futures contracts traded by SFE in that physical delivery of scrip must be

actioned via the CHESSE system operated by the Australian Stock Exchange.

Australian Milk Marketing Pty Ltd (N90334) (Allowed to stand)

Trademark owner giving milk processors a licence to produce certain milk products on condition that they purchase the pre-mixes from a specified supplier.

Pacific Star Mobile Pty Ltd (N90337) (Allowed to stand)

Supply of mobile phones and related services by Pacstar on condition customers connect to Telstra's Mobile Net.

Tattersall Sweep Consultation (N30712) (Allowed to stand)

Exclusive dealing on supply of gaming machines by International Game Technology.

The Adelaide Steamship Company Ltd and Howard Smith Ltd (N90336) (Allowed to stand)

Provision of towage services for car carriers of Nippon Yusen Kaisha of Japan.

Mobile Innovations Pty Limited (N30715) (Allowed to stand)

Sale of mobile phones and airtime agreement on condition customers nominate a credit card to facilitate a sale.

Lets Talk Communications Pty Limited (N30716) (Allowed to stand)

Sale of mobile telephones related accessories and other telecommunications products on condition purchasers connect to Telstra Mobile Net.

OneTel Digital Pty Limited (N30717) (Allowed to stand)

Sale of mobile phones on condition of purchase of telecommunication services from OneTel Pty Ltd.

Vodac Pty Limited (N30718) (Allowed to stand)

Supply of mobile phone products and network services on condition that the customer pay by credit card.

Notifications under consideration

Queensland Milk Pty Ltd (N50089)

Supply of milk and dairy products on a wholesale basis.

Australian Performing Rights Association (APRA) (N30714)

Arrangements for acquiring and granting rights for music.

Advertiser Newspapers Ltd (N60023-N60025)

Arrangements for supply of newspapers published by Advertiser.