Enforcement

The following are reports on new and concluded Commission actions in the courts, settlements involving court enforceable (s. 87B) undertakings, and major mergers considered by the Commission. Other matters still before the court are reported in Appendix 1. Section 87B undertakings accepted by the Commission and non-confidential mergers considered by the Commission are listed in Appendix 2.

Anti-competitive practices (Part IV)

Rural Press Limited, Bridge Printing Office Pty Ltd, Waikerie Printing House Pty Limited

Anti-competitive agreement (s. 45), misuse of market power (s. 46)

On 16 July 1999 the Commission filed proceedings in the Federal Court Adelaide against Rural Press Limited, its subsidiary Bridge Printing Office Pty Ltd, its employees Mr Ian Law and Mr Trevor McAuliffe, Waikerie Printing House Pty Limited and its directors, Mr Paul Taylor and Mr Darnley Taylor.

Rural Press, through its subsidiary, publishes *The Murray Valley Standard* in the Murray Bridge district of South Australia. Waikerie Printing House publishes *The River News* in the adjoining Waikerie district of the Riverland.

In mid-1997 Waikerie Printing House extended the coverage of its newspaper to include the Mannum area, which had previously been covered only by *The Murray Valley Standard.*

The Commission alleges that Rural Press threatened Waikerie Printing House that it would introduce an opposition newspaper to the Riverland unless Waikerie Printing House withdrew *The River News* from the Mannum area. The Commission alleges that, in doing so, Rural Press, and/or its subsidiary, misused its market power in the market for regional newspapers in the Murray Bridge district.

The Commission alleges that, as a result of that conduct, Waikerie Printing House entered into an arrangement or understanding with Rural Press and/or its subsidiary to withdraw *The River News* from the Mannum area in breach of s. 45 of the Act.

The Commission is seeking injunctions, declarations and penalties.

Western Broadcasters Pty Limited

Misuse of market power (s. 46)

Western Broadcasters Pty Limited has provided court enforceable undertakings to the Commission in relation to a refusal to accept advertisements.

In 1996 Western, which operates the radio station 2DU, held the only commercial radio broadcasting licence for the Dubbo licence area. From 1 March 1996 it refused to accept further advertising from Tradesmen You Can Trust and Tradesmen You Can Trust Pty Limited.

In the Commission's view Western's refusal to accept advertisements from the group amounted to a misuse of its market power.

Western provided the undertaking to address the Commission's concern and has agreed to accept and broadcast advertisements from the group, subject to usual commercial considerations.

Coca-Cola Amatil

Misuse of market power (s. 46), exclusive dealing (s. 47)

The Commission is investigating allegations that Coca-Cola Amatil may have breached the Trade Practices Act, after complaints from

participants in the carbonated soft-drink industry.

The investigation will focus on allegations of potential breaches of ss 46 and 47 of the Act that deal with misuse of market power and exclusive dealing.

The complaints focus particularly on the 'route channel' of carbonated soft drink sales. This essentially includes all premises where the beverages are purchased cold for immediate or near-immediate consumption.

Mergers (Part IV)

BP Amoco and Caltex Australia

Joint venture (s. 50)

On 20 August 1999 the Commission announced it would not oppose a lubricants joint venture between BP Amoco and Caltex.

BP Amoco and Caltex Australia announced earlier in August that they had signed a memorandum of understanding for a joint venture for the blending, packaging and warehousing of lubricants in Australia.

From information supplied by the parties and otherwise available to it, the Commission concluded the joint venture was unlikely to lead to any substantial lessening of competition.

The Commission noted that there were a significant number of lubricant product suppliers in Australia. It considered that, aside from the major oil companies, there were other lubricant manufacturers that had achieved strong brand recognition among consumers and captured a substantial market share.

It also took into account that BP Amoco and Caltex Australia will continue to separately market lubricant products under their own brand names.

Mobil and Exxon

Merger (s. 50)

On 5 August 1999 the Commission announced it would not oppose the merger of the Australian interests of Mobil and Exxon.

The proposed global merger between Mobil and Exxon announced in December 1998 will combine the companies' worldwide interests in exploration and production of crude oil and natural gas, petroleum refining and marketing and chemicals manufacturing.

The Commission concluded that the main area of competitive overlap between the Mobil and Exxon operations within Australia was in natural gas production and marketing within the eastern States of Australia. Exxon, through its subsidiaries Delhi Petroleum and Esso Australia, markets natural gas produced from joint venture operations in the Cooper and Gippsland basins. It is also involved in exploration and potential production of natural gas through its interest in the Hides field located in the PNG Highlands. The Hides field is a potential source of gas supply to Queensland via the proposed Chevron pipeline. Mobil also has exploration and production interests in the PNG Highlands.

The Commission took the view that the merger of the gas interests of Exxon and Mobil was unlikely to substantially affect competition in any Australian market. It noted that the merger would result in only a small increase in the combined interests of Mobil and Exxon in the PNG Gas to Queensland project. Neither party is directly involved in the proposed marketing of PNG gas in Australia.

The Commission also considered the merger's likely competitive impact on the petroleum retail and refinery markets in Australia. Since Exxon ceased all petroleum refinery and retailing operations in Australia in 1990 it has not competed against Mobil in these markets. The Commission concluded that the merger was unlikely to substantially lessen competition in these markets.

This merger is still being reviewed by both the European Commission and the US Federal Trade Commission.

Australian Stock Exchange and Sydney Futures Exchange

Acquisition (s. 50)

On 17 June 1999 the Commission gave its preliminary view that the Australian Stock Exchange's bid for the Sydney Futures

Exchange (SFE) would be likely to substantially lessen competition. On 8 July 1999 the Australian Stock Exchange (ASX) gave the Commission an additional submission. However this did not change the Commission's assessment.

On 29 July 1999 the Commission issued a statement reaffirming its view that the merger would be likely to substantially lessen competition. Nevertheless, it agreed to delay reaching a final conclusion until it received a submission from Gresham Investment House on behalf of a group of 10 brokers. This submission was not, however, made. On 13 August 1999, the Commission concluded that on the information available to it, the proposed acquisition would be likely to substantially lessen competition and would be opposed if it were to proceed.

The Commission concluded that, in the absence of the merger, the ASX and SFE were likely to compete strongly in the future, especially for new products. With new financial instruments being continually devised and, with the market expanding rapidly, the scope for competition between them is likely to increase substantially, especially with the proposed regulatory changes to the Corporations Law. At present the SFE cannot offer equities trading and ASX's CHESS system is the only such facility approved for electronic clearing and settling services for shares. Proposed regulatory changes would allow each exchange to offer the full range of exchange trading services for financial instruments without distinguishing between shares and futures.

The Commission expressed concern that the merger would create one dominant exchange in all exchange-traded financial instruments.

The Commission was also concerned about barriers to new entry. New entrants face significant costs in establishing trading, clearing and settling facilities and would need to achieve sufficient liquidity (the volume of trading that directly influences the ease with which customers may buy or sell a product on the exchange). Foreign exchanges would not be able to compete effectively in the domestic market because of differing national laws regulating entry, market integrity and investor protection. Brokers and institutional investors appeared unlikely to set up a competing exchange. Broking groups and their employees are major owners of the ASX and in the Commission's view would have little incentive to compete with an organisation in which they have an equity interest.

Consumer protection (Part V)

A1 Mobile Radiator Repairs Pty Ltd

Misleading and deceptive conduct (s. 52), misleading representations about certain business activities (s. 59(2))

On 20 August 1999 O'Loughlin J found that claims by A1 Mobile Radiator Repairs Pty Ltd, an Adelaide based franchising business, and its director, Norman Sidney Trayling, were misleading.

The Commission instituted proceedings in November 1998 after complaints from numerous franchisees. In particular, four franchisees alleged that they had paid up to $22 500 to purchase business franchises as a result of advertising and promotional representations that were either untrue or made with reckless indifference. These included:

- the potential of the franchise was thoroughly researched and there was strong demand;
- an existing franchisee earnt over $12 000 in a single month;
- there would be exclusive territories for each franchise;
- all work for the franchisee would be referred from the franchisor;
- franchisees would have to do only minimal canvassing for customers;
- franchisees would be able to earn $50 000 to $55 000 per year; and
- franchisees would be given full training and support.

All the franchisees' businesses had failed.

The Commission sought declarations and orders, including refunds and costs. On 25 November 1999 the court issued interim injunctions to prevent further representations being made unless they could be substantiated. Subsequently, the company went into liquidation and Mr Trayling was declared bankrupt.

Handing down his decision Loughlin J said:

> The misrepresentations proved ... were numerous. They ranged in seriousness from those that were relatively minor to others that, in my assessment of Mr Trayling's activities, were very serious.
>
> In particular, regarding the representations about supply of work to franchisees, he found that 'these inducements were patently false ... these were the most fundamental statements because they represented the assurance of work that would, in turn, generate a cash flow and an income to the franchisee'.

All the allegations relate to the franchising business run by Norman Trayling, not to individual radiator repairers who may still be operating using the A1 Mobile Radiator Repair name.

The court made a declaration that Mr Trayling's conduct had breached the Act and granted permanent injunctions to prevent him from engaging in like activities in the future. It further ordered refunds to the franchisees totalling $77 500 plus interest, and the Commission's costs.

Millennium Diagnostics (Victoria) Pty Ltd, Millennium Solutions (Australia) Pty Ltd, Millennium Solutions Group Australasia Pty Ltd

Breaching a mandatory code of conduct (s. 51AD), misleading and deceptive conduct (s. 52), false and misleading representations (s. 53), accepting payment without intending to supply (s. 58), false and misleading representations about the profitability of a business activity (s. 59)

On 19 August 1999 the Federal Court Melbourne made final orders against Millennium Diagnostics (Victoria) Pty Ltd, Millennium Solutions (Australia) Pty Ltd, Millennium Solutions Group Australasia Pty Ltd and Mr Michael Henderson, the director of Millennium Diagnostics (Victoria) Pty Ltd and Millennium Solutions (Australia) Pty Ltd.

The companies and Mr Henderson were involved in promoting and selling franchises or distributorships which claimed to provide IT services and computer software to deal with Year 2000 compliancy issues.

The court declared that in promoting the franchises or businesses, the companies and Mr Henderson had contravened ss 52, 53, 58 and 59 of the Trade Practices Act.

The orders restrain the companies and Mr Henderson from making further representations that:

- franchisees will be provided with computer software stock;
- franchisees will achieve estimated gross earnings of $600 000 per annum;
- the companies will provide business leads to franchisees;
- the companies have technical support staff and offices around Australia, where this is not correct;
- the companies can supply infrastructure support to franchisees;
- the companies have a sponsorship or approval or any affiliation with a government or other body; and
- the companies have approval to use the Year 2000 Industry Program logo.

The court also made an order declaring that Millennium Solutions (Australia) Pty Ltd had contravened s. 51AD of the Act by failing to provide a disclosure document to a franchisee, as required under the Franchising Code of Conduct.

In addition, the court ordered the companies to pay refunds to particular franchisees, publish corrective advertisements in major daily newspapers, implement a corporate compliance program and pay the Commission's costs.

Australian Taxation Services

Misleading and deceptive conduct (s. 52)

On 16 July 1999 the Federal Court Brisbane made orders against Australian Taxation Services (ATS) and its sole Director, Michael Phillip Ivanoff, in relation to the distribution of forms seeking businesses to register for the GST and pay a fee.

The forms sent by ATS appeared to be issued by the Australian Taxation Office, or some other government agency, and misled people into believing that it was compulsory to pay ATS the GST registration fee of $175 for one year or $295 for two years. Businesses receiving these forms advised the Commission that they were misled into believing that the ATS forms were from the Australian Taxation Office because of the similarity between the ATS form and the forms generally used by the Australian Tax Office.

On 7 July 1999 the Commission obtained interlocutory orders from the Federal Court Brisbane against ATS and its director restraining them from distributing the forms.

On 9 July 1999 the court continued the injunction and ordered a freeze on ATS' bank account to ensure that funds obtained from the scheme were preserved.

The permanent orders handed down on 16 July 1999:

- restrain both parties from carrying on the conduct and from sending out any further GST registration forms;
- order both parties to deliver any mail addressed to ATS to the Commission;
- freeze ATS' bank account, thereby denying both parties access to funds forwarded by people misled by the ATS form;
- order both parties to refund any monies received by ATS; and
- order both parties to return any cheques/money orders sent to ATS that had not yet been presented for payment.

Pursuant to the court orders, the ACCC has taken control of the mail being sent to ATS and is now in the process of returning both forms and cheques/money orders to those whom the Commission believes were misled by this scheme. To date the ACCC has returned over $200 000 in cheques with more mail to be collected from GPO Boxes in Brisbane, Melbourne and Sydney. Also, in accordance with the court orders, the Commission has arranged for ATS to repay the money taken from the company bank account. This amount, together with the amount in the account frozen by court order, the Commission used to refund almost $4000 to small businesses whose cheques to ATS had been banked and had already cleared.

The Shell Company of Australia Limited

Misleading or deceptive conduct (s. 52), unconscionable conduct in commercial dealings (s. 51AA)

On 7 July 1999 The Shell Company of Australia Limited gave undertakings to the Federal Court to confirm in writing to franchisees the tenure or extension of tenure of franchise agreements.

The Commission took court action against Shell on behalf of two Gold Coast franchisees, John and Karen Bird. The Commission alleged that Shell had made certain representations to the Birds about the length of their tenure at their Gold Coast service station. In the Commission's view the conduct amounted to misleading and deceptive conduct and unconscionable conduct.

Shell denied the allegations but, after extensive discussions and mediation with the Commission and the Birds, it accepted that the franchisees held a strong and genuine sense of grievance about their treatment. All parties accepted that there was room for a difference of opinion about the understanding the franchisees were given about tenure.

In recognition of this and the undesirability of protracted litigation, Shell has agreed to make a payment to the franchisees and pay a contribution toward the Commission's legal costs.

Shell's Chairman and Chief Executive of Oil Products, Mr Peter Duncan, indicated that Shell has reviewed and is updating its trade practices compliance program to ensure similar misunderstandings do not recur.

Vital Earth Company Pty Ltd, Raylight Pty Ltd and Colin Ronald Dixon

Misleading or deceptive conduct (s. 52), false or misleading representations (s. 53)

On 6 August 1999 the Commission filed proceedings in the Federal Court Sydney against Colin Ronald Dixon, Vital Earth Company Pty Ltd and its director Darryl John Jones, and Raylight Pty Ltd and its director Herbert Nathan, alleging breaches of ss 52 and 53 of the Trade Practices Act.

Raylight has marketed alternative therapy products including the 'Parasite Zapper' and the 'colloidal silver kit'. Advertisements published in *Nexus New Times*, a health magazine, claimed that the 'Parasite Zapper' passes an electric current through a person's blood and that this effectively treats a number of serious medical conditions including HIV, hepatitis and herpes as well as obesity. Raylight has also claimed that the colloidal silver kit is able to produce colloidal silver and that this effectively kills intestinal bacteria and viruses.

Vital Earth has marketed various products including the 'Vital Silver 3000 Zapper' and the 'Vital Silver 2000' which it represents as being able to create colloidal silver which, it is claimed, has been used successfully to treat some serious medical conditions including AIDS, leukaemia and cholera.

Representations about products marketed by Vital Earth were posted on Internet sites operated by Colin Ronald Dixon.

The Commission is seeking refunds, injunctions and corrective advertisements.

The next directions hearing is scheduled for 23 November 1999.

Country Snack Delights

False or misleading representations (s. 53)

On 10 August 1999 the Commission obtained consent orders in the Federal Court Melbourne on the fat content labelling of the Harvest Bake So Slim line of slices manufactured by Country Snack Delights.

Labels on the Muesli & Apricot and the Fruit Cocktail varieties of the Harvest Bake So Slim features the words '98% fat free'. However, tests revealed that the So Slim Slices with use-by dates of August 1999 and September 1999 contained significantly higher levels of fat than the represented 2 per cent.

Under the consent orders Country Snack Delights agreed:

- not to supply for sale or resale bakery products with labels that understate the average fat content of those products;
- place corrective advertising in the *Leading Edge*, a bakery and food service industry journal; and
- instruct all of its distributors to recall any remaining products bearing misleading labelling — offering them either refunds or replacement of that remaining stock with new stock containing the correctly represented fat content.

Country Snack Delights has also given court enforceable undertakings to implement a corporate compliance program. As part of the compliance program, it will establish a product register which will enable it to monitor the recipes of the food products it produces.

Country Snack Delights was also ordered to pay the Commission's agreed costs.

Australian Billboard Connections Pty Ltd

Misleading or deceptive conduct (s. 52), false or misleading representations about work-at-home schemes (s. 59(2))

On 7 July 1999 the Commission filed proceedings in the Federal Court Adelaide against Australian Billboard Connections Pty Ltd, Mr Michael Hollingsworth, the Managing Director of the company, and Mr Kevin Hall, the National Sales Manager, alleging misleading representations.

The respondents sold franchises or regional managerships in South Australia in 1994 and 1996. The price of the franchises ranged from $40 000 to $69 750.

The Commission alleges that the franchisor misrepresented:

- the level of income that could be earned;

- the profitability of the business;
- prospective capital gains;
- the level of training and support that would be provided; and
- the existing and future demand for the products.

The Commission is seeking injunctions, declarations and findings of fact.

Acepark Pty Ltd

Misleading or deceptive conduct (s. 52), false or misleading representations (s. 53), unconscionable conduct in consumer transactions (s. 51AB), false or misleading representations about work-at-home schemes (s. 59)

Acepark Pty Ltd has given court enforceable undertakings in relation to its computer-betting software which claims to predict winners of horse races.

The Commission received complaints from consumers alleging that Acepark made false representations about the scheme's profitability. Investors expected to earn up to $3000 a week by using the scheme. They had confidence in the scheme as it was alleged that the company claimed an affiliation with the TAB.

One consumer bought the scheme to enable her to work at home while caring for her critically ill partner. It was alleged that, despite being aware of the consumer's situation, Acepark used unfair pressure and tactics in selling the software and sought to execute a bill of sale over the consumer's car in circumstances where she was not given the opportunity to seek independent advice.

Acepark gave court enforceable undertakings to refund moneys to consumers, discontinue any legal proceedings instituted against these people, review its advertising and selling practices and to implement a complaints handling procedure.

PC Resq

Misleading or deceptive conduct (s. 52), false or misleading representations (s. 53)

On 14 July 1999 the Commission accepted a court enforceable undertaking from PC Resq in relation to PC Resq's promotion of the 'Bugbuster', a correction card designed to make the Real Time Clock (RTC) in a personal computer Y2K compliant.

PC Resq's advertising, its web site and its dealings with clients implied that brand-new computers might not comply with year 2000 standards. Its advertising also suggested that a compliant RTC was necessary to meet the recommendations of Standards Australia.

In fact, Standards Australia's handbook *Year 2000 Compliance Measures for Personal Computers* provides that when people use their computers for non-critical home and office duties, and their computers can be rebooted at the change of the century, it is unlikely that a compliant RTC is necessary.

It is only the highest level of compliance that requires a compliant RTC. This is when the computer is used for critical 24-hour operations (i.e. the computer cannot be rebooted upon century rollover) and the software programs access the RTC directly to obtain the date. Only then could non-compliance cause significant risk of loss or personal injury.

PC Resq agreed to:

- cease making unqualified representations to consumers that imply they need a higher level of Y2K compliance than they actually need;
- print corrective advertising;
- offer refunds; and
- implement a compliance program.

Singapore Airlines

Misleading or deceptive conduct (s. 52)

Singapore Airlines gave the Commission court enforceable undertakings about representations it made on the availability of frequent flyer points.

From October to December 1997 Singapore Airlines represented to a variety of consumers and travel agents across Australia that persons would, or would be likely to, obtain *Global Rewards* points if they travelled as economy class passengers with Singapore Airlines after 1 January 1998.

However, under the terms and conditions of *Global Rewards,* members who travelled economy on Singapore Airlines before 28 September 1998 could not earn frequent flyer points.

The Commission believes Singapore Airlines engaged in misleading or deceptive conduct.

Singapore Airlines will publish corrective advertising in the next three issues of *Travelling Life Rewards Magazine,* which is distributed to *Global Rewards* members. It will offer any member who flew economy or discount economy class in the relevant period and who relied on the representation the appropriate number of frequent flyer points. The airline has also agreed to implement a trade practices compliance program.

The Commission noted Singapore Airlines' cooperation in resolving the matter.

BOC Gases

False or misleading representations (s. 53)

BOC Gases has agreed to stop making unqualified representations about air conditioning gas after expression of concerns by the Commission.

BOC Gases used the image of a frog, the words 'green', 'green air conditioning', 'environmentally preferred' and the logo 'Ozone Care™' in association with FR 12™ in its technical and promotional materials to air conditioning installers.

FR 12™ is a replacement gas used in automotive air conditioners and contains an ozone-depleting potential component referred to as R124.

The Commission was concerned that consumers would rely on representations made to installers and erroneously expect that FR 12™ is the most environmentally friendly air conditioning gas available.

BOC Gases has agreed to clarify the environmental and performance comparisons, cease using general terms such as 'environmentally preferred' or general 'green' claims for FR 12™.

It will also not associate the frog image and the Ozone Care™ logo directly to FR 12 in future publications of technical and promotional materials and will implement an internal policy to prevent misleading environmental representations being made in the future.

National Foods Limited

Misleading or deceptive conduct (s. 52), country of origin claims (s. 65AC)

National Foods Limited will remove the 'Product of Australia' representation on its strawberry yoghurt and strawberry Fruche® products after expressions of concern by the Commission.

The Commission was concerned that National Foods was engaging in misleading and deceptive conduct in regard to country of origin representations on strawberry Fruche® and yoghurt products. The *Trade Practices Amendment (Country of Origin Representations) Act 1998* was introduced to remove the uncertainty surrounding the relevant test of what is a false or misleading representation about the origin of goods.

National Foods buys a fruit preparation from suppliers in Australia for use in manufacturing the products. The strawberries used in the preparation are imported. The Commission was of the view that the strawberries within the fruit preparation were a significant ingredient.

Under s. 65AC of the Act, if a corporation makes a 'product of' claim for a particular country, each 'significant ingredient or component' should be sourced from the country of origin represented and all or virtually all processes involved in the production or manufacture should occur in that country.

National Foods believed that, because of the technical composition of the products, the strawberries in the fruit preparation did not constitute a significant ingredient under the Act.

While the term 'a significant ingredient' is not defined in the Act, the Commission believes that the phrase should not be determined on a percentage basis, but as to whether the ingredient constitutes an essential defining element of the product.

The Commission accepts that National Foods made a judgment in good faith as to the meaning of 'significant ingredient' and did not

intend to mislead consumers. However, the Commission believed that a consumer could be misled by the representation 'Product of Australia'.

Lennock Phillip Pty Ltd

Misleading or deceptive conduct (ss 52, 53(e))

Lennock Phillip Pty Ltd (Lennock Motors, Canberra) has given the Commission enforceable undertakings to not make further representations on the effect of the GST on the price of used motor vehicles. The Commission acted in response to a complaint that Lennock Motors had published an advertisement for used motor vehicles in *The Canberra Times* on 10 July 1999 with the heading, 'Beat the GST'. A previous advertisement on 3 July 1999 was headed 'GST Price Beaters'.

The Commission subsequently alerted Lennock Motors to its belief that the representations 'Beat the GST' and 'GST Price Beaters' were misleading or deceptive, or likely to be misleading or deceptive and therefore breached s. 52 of the Trade Practices Act. The Commission considered that as new car prices will be lower post-GST there will be less demand for used vehicles and they will become cheaper.

Lennock Motors responded immediately to resolve the Commission's concerns and shortly thereafter provided an enforceable undertaking not to make similar representations.

The Commission noted the willingness of Lennock Motors to resolve the matter, including its offer to write to each purchaser of the used vehicles advertised on 3 July and 10 July 1999, and its publication of a corrective advertisement in *The Canberra Times* 14 August 1999.

Austcomm Tele Services Pty Ltd

Misleading, deceptive and unconscionable conduct (ss 51AB, 52, 53(d), 64(2A))

On 11 September 1998 the Commission instituted proceedings in the Federal Court Perth against Austcomm Tele Services Pty Ltd, a Western Australian telephone services reseller; Mr Les Aris, a company director; Mr Greg Erskine, a company manager; and four of its marketing agents — Vision Direct (WA) Pty Ltd, Cheville Corporation Pty Ltd in WA and ADS Marketing Pty Ltd and Kobra Pty Ltd in Victoria.

The Commission alleged they had engaged in the unauthorised transfer of customers from one telephone company to another, or 'slamming' as it is known in the industry.

The Commission alleged that, in the course of reselling telephone services to householders, Austcomm claimed:

- it was offering an auditing or bill checking service;
- its services provided savings in circumstances where savings were not available; and
- it was part of, a branch of, subsidiary or an authorised agent of Telstra when this was not the case.

The Commission also alleged that Austcomm engaged in unconscionable conduct by signing up a person with a special disability who could not read the contract, and rendered accounts without reasonable cause to believe it had a right to payment.

At a directions hearing on 24 September 1998, by Minute of Consent Orders, Austcomm consented to interlocutory orders restraining itself, its directors, servants or agents or otherwise from engaging in misleading or deceptive conduct. It also consented to a range of specific orders addressing the conduct that had led to the Commission's action.

On 26 November 1998 Telstra had an Administrator appointed to Austcomm which ceased signing new customers on 6 December 1998.

Meetings of creditors in March 1999 resolved to liquidate Austcomm. Its business was subsequently sold and the liquidation is continuing.

The Commission's action against Aris, Erskine and the marketing companies was settled by a range of consent orders, accepted by the court, which included injunctions prohibiting the conduct complained of and undertakings not to engage in the conduct in future.

The Commission's action against Austcomm was discontinued on 24 September 1999 as it had ceased trading in December 1998, was being liquidated and no benefits could have flowed to those affected by the conduct by continuing the action.