
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

Snowy Hydro Trading Pty Ltd

In relation to the extension of notional unit derogation from 31 March to 30 September 2001 (A90776-8)

- Draft determination issued on 29 March 2001.
- Final determination issued on 9 May 2001.

The Snowy Mountains Hydro Electricity scheme consists of seven power stations cascaded over several river systems. Snowy Hydro Trading Pty Ltd (Snowy) is responsible for the operation of the power stations. Capability of each station depends on the operation at other stations because of water (the energy source) inter-dependencies. Individual generating units are also constrained by factors such as rough running bands, minimum loads, intermediate pond level control, variable efficiency curves, ramp rate restrictions, and surge tank draw down.

Snowy is able to rapidly change its outputs over a wide operating range at immediate notice, a capability of immense potential benefit to the national electricity market (NEM). To maintain this flexibility and manage the water inter-dependencies and individual unit constraints, it is necessary to be able to adjust the allocation of total Snowy generation between power stations in real time, that is, at the time of dispatch. This is achieved by the

automatic generation control (AGC) which receives a single signal from National Electricity Market Management Company Ltd (NEMMCO) via TransGrid and automatically changes the generation between units and stations in real time.

Before the NEM started, Snowy participated in the national electricity market stage 1 (NEM1) markets using five notional generating units, each equivalent in size to Snowy's total capacity. Those units were 'notional' in the sense that there was not a direct mapping to physical generating units. However, the total capacity offered for the five notional units had to exactly match the total available physical capacity. In the NEM1 arrangements Snowy generated to a single aggregate dispatch target.

The proposed amendments to the code allow for an extension to an existing chapter 8 derogation for up to six months. The derogation allows Snowy to bid its generation capacity as if from five notional generating units, rather than having to place separate bids for each of its 31 individual generating units, or bids for a number of aggregated units.

Snowy is currently upgrading its data acquisition control (DAC) and AGC systems, and its interstate data protocol (IDP) communications link with NEMMCO. It is also developing an aggregate unit planning and bidding (AUPAB) system. These new communication and control systems are being designed so that the derogation will no longer be necessary, allowing Snowy to operate on an aggregated unit basis rather than a notional unit basis. However, delays encountered in the upgrade mean that Snowy has asked for a six-month extension to the derogation, from its existing expiry date of 31 March 2001 to 30 September 2001.

The Commission concluded that the proposed changes in arrangements provided sufficient public benefit to outweigh any anti-competitive detriment likely to result from them.

The Commission authorised the arrangements and conduct subject to the following conditions.

- Snowy and NEMMCO must negotiate the necessary amendments to the notional unit agreement so that it provides required system information such as that regarding short-term projected assessment of system adequacy (PASA) and pre-dispatch, interconnector constraints and forecasting power transfer capabilities and appropriately enhanced safeguards for the market.
- Snowy must report to the National Electricity Code Administrator (NECA) monthly from 31 March 2001 on progress with acceptance testing of the new systems. Those reports should include an assessment of the scope for introducing those systems in advance of an absolute deadline of 30 September 2001.
- Snowy must proceed with alternative arrangements for its communications and control systems to enable it to participate in the NEM from 30 September 2001, without the derogation being in place.

Authorisation will expire 30 September 2001.

SFE Ltd

In relation to the requirement that, for each applicant to become a clearing participant, they must be or have been admitted as either a full participant or associate participant (A90781, A90790)

- Draft determination issued on 24 May 2001.
- Final determination issued on 20 June 2001.

On 27 February 2001 the SFE Clearing Corporation Pty Ltd (SFECC) sought authorisation of various arrangements and conduct concerning the development of a new project by the SFECC, namely, the bond and repurchase agreement clearing project (BRC project).

The SFECC currently clears futures contracts which have been traded on markets operated by the SFE Corporation Limited¹ and registered with the SFECC. The current authorisation application relates to SFECC's intention to add the clearing of bonds and repurchase agreements to the range of products it clears.

Briefly, the arrangements for which the applicant is currently seeking authorisation are as follows.

- SFECC clearing by-laws which specify membership criteria which must be met by applicants to become BRC clearing participants. These include being of good character, in good standing and showing high business integrity and financial probity.
- Disciplinary provisions set out in the SFECC clearing by-laws, which specify circumstances for which BRC clearing participants can be fined, suspended or their services terminated.
- Various categories of financial requirements, set out in the SFECC clearing by-laws, and which BRC participants are required to meet. BRC participants are required to meet a net tangible asset requirement of \$5m.
- Membership of the Reserve Bank information and transfer system (RITS) and Austraclear — to become a BRC participant an applicant must have all necessary operational arrangements in place to carry out its obligations as a BRC participant. From a practical point of view, this requires that BRC participants be full members of the settlement depositories, RITS and Austraclear. The Commission notes the submission of the applicant that this would not pose an additional burden on BRC participants as those who currently invest and trade in bonds and repurchase agreements will already be members in RITS and Austraclear.

In its original authorisation application (subsequently amended), the SFECC requested authorisation of an additional requirement, namely that clearing participants be members of the SFE Corporation. The Reserve Bank of Australia expressed concern about this requirement. In response the SFECC amended

¹ At the time of lodging the authorisation application, the SFE Corporation Limited was called the Sydney Futures Exchange Limited (SFE). The Commission was subsequently informed that as of 28 May 2001, the SFE had changed its name to the SFE Corporation Limited.

its application to withdraw its request for authorisation of this requirement.

The Commission concluded that the arrangements and conduct, the subject of the applications, yield sufficient public benefit to outweigh any anti-competitive detriment likely to result from them.

The Commission granted authorisation for five years.

Marven Poultry Pty Ltd

In relation to collective negotiations of chicken growers in Victoria with their processors (A90750)

- Draft determination issued on 12 December 2000.
- Final determination issued on 29 June 2001.

On 21 September 2000 Marven Poultry Pty Ltd lodged an application for authorisation for itself and on behalf of five other chicken meat processing companies operating in Victoria: Inghams Enterprises Pty Ltd, Bartter Enterprises Pty Ltd, Eatmore Poultry Pty Ltd, Hazeldene Chicken Farm Pty Ltd, and La Ionica Farming Operations Pty Ltd, and current and future contract growers to those processors.²

The applicants asked the Commission to authorise the contracted chicken growers of each processor to engage in collective negotiations with their respective processor for standard growing agreements (including the agreement of a common fee), in accordance with a code of conduct.

Authorisation was also sought for an industry code of conduct that would govern the collective negotiation process.

Currently the chicken meat industry in Victoria is regulated by the *Broiler Chicken Industry Act 1978* and *Broiler Chicken Industry Regulations 1992*, under which the Victorian Broiler Industry Negotiation Committee (VBINC), among other roles, determines standard growing fees applicable across the industry.

² The application was originally lodged under the name Victorian Chicken Meat Council (Processors). The application was later amended to be in the name of Marven Poultry for itself and on behalf of the five other processors and current and future contract growers to those processors.

A November 1999 national competition policy (NCP) review of the existing chicken meat industry legislation in Victoria considered that the conduct of processors and growers under the relevant legislative arrangements might breach the Trade Practices Act. The review concluded that retaining the legislation was not established to be of net benefit to the community (in accordance with the principles of legislative review under national competition policy), and recommended its repeal.

The Victorian Government is still considering its response to the NCP review. However, the Government has expressed its preference for a Commission authorisation to allow collective negotiation at an enterprise level. The Minister for Agriculture has stated that the development of an authorisation that will provide for the on-going stability of the industry is a key plank of the Victorian Government's response to the NCP review.

The current application is lodged in anticipation of industry deregulation. The proposed arrangements represent a compromise between the current arrangements and full industry deregulation.

The Commission concluded that the public benefits likely to result from the proposed arrangements would outweigh any anti-competitive detriment that may arise, subject to certain conditions being complied with. Accordingly, the Commission granted authorisation for five years.

Notifications

The following notification was withdrawn.

Aerial Taxi Cabs Co-Operative Society Limited

In relation to proposed third line forcing conduct which involved the forced purchase of taxi cab security cameras from a nominated supplier (N90860)

- Notice lodged 20 April 2001.
- Notice withdrawn 7 June 2001.

Aerial Taxi Cabs Co-Operative Society Limited (Aerial) lodged a notification in relation to proposed third line forcing conduct.

This was the supply of taxi services, through the radio-telephone booking dispatch system, on the condition that the operator acquire a specific type of Sigtec security camera directly or indirectly from Sigtec.

Aerial claimed public benefits would result from the installation of camera including improved security and safety for drivers and the public. Aerial also claimed that cameras provided an alternative to driver shields and capsules which may have inherent occupational health and safety problems.

Aerial submitted that it tested three types of security cameras for its taxi cabs and that only the one from the specified supplier was practical and compatible.

At the time of considering the notification, Yellow Cabs (Canberra) Pty Ltd (Yellow Cabs) was about to enter the ACT taxi services market in competition with Aerial. However, for Yellow Cabs to successfully enter the market it would have to attract operators from Aerial as all taxi licenses for the region were currently held by Aerial affiliated operators and the ACT Government did not intend to issue any new licenses. Yellow Cabs advised that it was introducing a dispatch system that was incompatible with the Sigtec camera required by Aerial. Therefore, operators transferring from Aerial to Yellow Cabs would be required to acquire a new security camera.

The Commission considered that the installation of security cameras in taxi cabs is in the public interest. However, in considering the notification it was required to assess the public benefits and detriments from the requirement to install the specific Sigtec camera.

The Commission was advised that adaptations to enable the use of either of the alternative cameras tested by Aerial, which are compatible with the Yellow Cabs system, were relatively inexpensive.

The Commission was concerned, given the current nature of the ACT taxi services market, that the requirement that all operators acquire and install the Sigtec camera system may have significant public detriment implications.

As Yellow Cabs must gain operators from the Aerial network in the ACT region, the conduct would require those who have recently installed the Sigtec camera system, to incur additional expenditure in the acquisition of an alternative camera compatible with the Yellow Cabs system. These additional costs over a short period, especially for fleet operators, may impede operators transferring from Aerial to Yellow Cabs and may hinder the ability of Yellow Cabs to establish itself as a viable competitor in the market.

The Commission concluded that the likely benefit to the public from the notified conduct (i.e. installation of the Sigtec camera) would not outweigh the likely detriment to the public from the conduct. However, it accepted that a specification to acquire a camera of certain qualitative characteristics may be acceptable. The Commission notified Aerial of its concerns and suggested an amendment to the conduct whereby operators would be able to install any of the cameras trialed by Aerial, so long as they met certain specifications, for example, for indestructibility. In response, Aerial withdrew its notification.

Notifications finalised

The following third line forcing notifications have been allowed to stand.

Robert and Patricia O'Brien/Ing Honorius Rachmantio (N70198) Proposing to require all purchasers of building strata lots within an area of land in west Perth to execute a building works contract with Bob O'Brien Homes.

Insurance Manufacturers of Australia Ltd (N90864) Proposing to offer a discount to customers of IMA on condition they acquire goods or services from an RACV Group member.

SAAB Automobile Australia Pty Ltd (N40445) Offering a payment of bailment charges on condition dealers acquire wholesale finance from the related company, General Motors Acceptance Corporation.

Tropic Distributors Pty Ltd (N90850) Proposing to offer a specific per litre fuel discount on presentation of a Churchills shopping docket.

Commonwealth Bank Group Australia (N31102) Provision of discount on products from Commonwealth Bank on condition that customer also acquires another product from Allianz Australia Insurance Ltd.

Commonwealth Bank, Commonwealth Insurance Ltd & ACP Publishing Pty Ltd (N31133-5) Proposing to offer discounts on products to customers who acquire products from ACP Publishing.

Telstra Corporation Ltd (N90866) Proposing to offer 'exchange lots' on condition the purchaser enter into a building works contract with Tranfield Services Australia Pty Ltd.

Caltex Australia Petroleum Pty Ltd (N31132) Require Star Mart and Star Shop franchisees to purchase a designated range of goods and services from approved suppliers specified by Caltex.

Movie Masters (N70200) Proposing to offer a discount, allowance, rebate or credit on movie tickets to a customer on condition they become an RAC member.

The Law Society of Western Australia (N70199) Proposing to offer discounts on professional indemnity insurance to law firms participating in the quality practice standard.

BP Southland (N90869) Proposing to honour discount coupons or better discount coupons offered by Safeway and other traders by up to 10 per cent of face value member.

Asgard Capital Management (N90863) Offer of Asgard share portfolio account on condition that investors maintain trust account with St George Bank and select from a limited panel of brokers for the execution of transactions.

Pirelli Cables Australia Ltd and Pirelli Power Australia Pty Ltd (N31106-7) Proposing a loyalty scheme under which distributors will receive loyalty points redeemable for certain goods, and a discount card for purchases from certain retailers.

Hoyts Cinema Ltd — Coca Cola promotion (N31108) Proposed promotion with Coca-Cola South Pacific Pty Ltd — receipt of two adult movie tickets with the purchase of two 600 ml bottles of Coca-Cola and provision of the labels to Hoyts.

UBS Warburg (N90870-1) Proposing to offer UBS Management Service and its broking services to investors on condition that investors maintain a cash management account with UBS Cash Trust.