ASSESSING THE PUBLIC BENEFIT

The adjudication role

The welfare of Australians may be enhanced in some cases by anti-competitive conduct, but only if the public benefits of the conduct outweigh its costs.

The adjudication process essentially involves weighing the public benefits and detriments resulting from certain anti-competitive practices and, if there is a net public benefit from the conduct, the Commission may grant statutory immunity from legal proceedings under the Act. The adjudication role is therefore an essential element in achieving the Commission's aim to improve market processes.

The two ways in which the Commission can grant such statutory immunity are through an application for authorisation or notification of exclusive dealing. The Adjudication Branch of the Commission is responsible for processing and examining authorisation applications (except those relating to electricity and gas distribution and marketing which are dealt with by the Commission's Regulatory Affairs Division), and notifications of exclusive dealing. The branch also assesses the rules for the use of certification trade marks under the Trade Marks Act. The Commission aims to:

- assess applications and notifications in a timely and informed manner
- provide a high level of quality in analysis
- ensure decision making is undertaken in a transparent and consultative manner.

Authorisation

Authorisation provides protection from court action by the Commission or any other party for potential breaches of the competitive conduct provisions of the Act. The Commission can only grant authorisation if it is satisfied that there is a net public benefit from the relevant conduct, and only after it has conducted public consultation and assessment.

The Commission cannot compel parties to seek authorisation but it does have a statutory obligation to rule on the applications it receives. The Commission has the power to revoke or review an authorisation if it believes that it was originally granted on the basis of false or misleading information, contains conditions that have not been complied with, or there has been a material change of circumstances since the authorisation was granted.

Notifications

The notification process applies only to exclusive dealing conduct, but gives similar protection as an authorisation. However, it is procedurally different. Immunity takes effect from the time when the notification is lodged (or soon after in the case of third line forcing). The Commission has the power to revoke this immunity if it considers the public detriments flowing from the notified conduct are not outweighed by the public benefits.

Certification trade marks

The Commission is also responsible for assessing the rules for the use of certification trade marks (CTMs) under the Trade Marks Act. In assessing CTMs, the Commission must be satisfied that:

- the owner or approved certifiers are competent to certify that the goods or services in question meet the required standard
- the rules governing the use of the CTM:
  - (i) would not be to the detriment of the public
  - (ii) are satisfactory having regard to the principles relating to: restrictive trade practices in Part IV of the Act; unconscionable conduct in Part IVA; and unfair practices and product safety information in Part V.

Table 5.1 Authorisation applications, notifications and considerations 2001–02

Authorisation applications subject to Commission consideration 2001–02

	Opening balance	New applications	Applications withdrawn	Applications decided	Balance at end of year
Authorisation applications	28 (83)	18 (36)	1 (1)	19 (51)	26 (67*)
Minor variation applications	6 (6)	3 (3)	-	9 (9)	0
Revoke and substitute authorisation applications	5 (5)	1 (1)	-	-	6 (6)
Total	39 (94)	22 (40)	1 (1)	28 (60)	32 (73)

Figures in brackets indicate total applications including electricity and gas matters.

* Total figure includes 30 applications relating to electricity distribution and marketing arrangements and 11 applications relating to gas distribution and marketing arrangements.

Notifications subject to Commission consideration 2001–02

Opening balance	New applications	Under review at start of year	Withdrawn	Decided	Balance
63	307	1	1	281	89

Australian Competition Tribunal applications for review 2001–02

Opening balance	New applications	Withdrawn	Decided	Balance
0	3[(a)]	2[(b)]	1[(c)]	0

(a) Marven Poultry ADJR appeal not included in this figure.

(b) Application for review of Agsafe determination withdrawn on 11 July 2002.
Application for review of Sydney Recycling determinations withdrawn in August 2002.

(c) Application for review of Australian Dairy Farmers determination resulted in a consent agreement between the applicant for authorisation (ADFF), the applicant for review (National Foods) and the Commission, being agreed to by the Tribunal on 27 August 2002.

Certification trade marks consideration 2001–02

Opening balance	New applications	Withdrawn	Decided	Balance
45	19	-	20	44

The year in review

During 2001–02 the Commission received 36 new applications for authorisation and 307 notifications for exclusive dealing. The Commission made 51 determinations, three of which were subject to applications for review by the Australian Competition Tribunal.

The Commission has continued to receive and consider applications relating to distribution and marketing arrangements in the electricity industry, particularly those relating to the national electricity market. The Commission has also received and considered several applications regarding gas distribution and marketing arrangements. These are discussed in chapter 6. Excluding gas and electricity matters, the Commission received 18 new authorisation applications, three applications for minor variations of authorisations, and one application for revocation and substitution of authorisation previously granted.

The Commission's adjudication workload continues to reflect changes resulting from industry deregulation and the impact of competition policy reform on areas once beyond the reach of the Act. Many authorisations being considered by the Commission are complex and raise challenging public benefit and detriment issues. The main adjudication issues that emerged during 2001–02 resulted from authorisation applications and are outlined below. A discussion of some of the major authorisations issued by the Commission is at the end of this chapter.

Rural and regional

As in previous years, many businesses operating in rural and regional Australia have taken advantage of the authorisation process to help them make the transition from a regulated to a more competitive environment. In particular, the Commission has considered applications relating to collective bargaining arrangements between primary producers and their processors.

For example, the Commission has assessed two applications for authorisation of collective bargaining arrangements in the Australian dairy industry. These applications were made following the full deregulation of the dairy industry in July 2000. In late 2001 the Commission decided to authorise Premium Milk Supply Pty Ltd (on behalf of a number of dairy cooperatives) to collectively bargain farm gate prices and milk standards with Pauls Limited in Queensland. The second application in the Australian dairy industry was lodged by the Australian Dairy Farmers Federation (ADFF). The ADFF sought authorisation of collective negotiations between groups of dairy farmers and their processors in Australia more generally. The Commission proposed to authorise these collective negotiations to take place subject to various conditions intended to safeguard competition in the industry. However, National Foods Limited sought to have some aspects of the Commission's determination reviewed and the Australian Competition Tribunal subsequently issued a determination with the consent of the Commission, National Foods and the ADFF—see discussion below.

During the year the Commission also granted authorisation to eight small to medium-sized hospitals located throughout Sydney and regional NSW for conduct set out in an inter hospital agreement (IHA). Authorisation was also granted to an agricultural and veterinary chemical (agvet chemical) industry self-regulation compliance program overseen by Agsafe Limited.

The Commission is also considering some applications for authorisation of collective negotiations between chicken growers and the processors to whom they supply in NSW and SA. A challenge by the Victorian Farmers' Federation (Chicken Meat Group) to a decision by the Commission allowing collective negotiations to take place in this industry in Victoria was dismissed on 27 August 2002 by the Federal Court.

Federal Court review—Marven Poultry Pty Ltd

On 29 June 2001 the Commission granted authorisation to allow collective negotiations between Victorian chicken growers and their individual processors in light of proposed industry deregulation. The authorisation allows growers contracted to each processor to negotiate collectively and enter into standard growing contracts with their processor in line

with minimum standards and conditions outlined in a proposed code of conduct.

On 23 July 2001 the president of the Victorian Farmers Federation Chicken Meat Group lodged an application for order of review of the Commission's decision on the grounds of denial of natural justice and improper use of Commission powers. The matter was heard before Justice Weinberg in the Federal Court in Melbourne on 4 March 2002. The court dismissed the appeal on 27 August 2002 and the authorisation granted by the Commission remains in force.

The professions

As the Commission focuses more on anti-competitive conduct in the professions, the number of applications for authorisation has increased from professional or occupational associations, particularly in the health sector. Some of those authorisation applications include:

Australian Institute of Mining and Metallurgists

The Commission issued a draft determination on 13 March 2002 for an application from the Australian Institute of Mining and Metallurgists to revoke two authorisations—A234 and A90517—and grant a replacement authorisation covering various Institute codes and guidelines. The Commission proposed to revoke and grant a replacement authorisation with conditions. It has deferred further consideration of the application until the end of the year at the Institute's request while the Institute reviews its code of ethics.

Royal Australasian College of Surgeons

On 24 November 2000 the Royal Australasian College of Surgeons (RACS) applied for authorisation of its processes in:

- selecting, training and examining surgical trainees in each of the nine specialities in which it conducts training
- accrediting hospital posts as being suitable for training surgeons
- assessing the qualifications of overseas-trained practitioners.

RACS lodged a supporting submission on 30 March 2001. The Commission has granted interim authorisation to RACS allowing it to engage in the arrangements for which authorisation is sought while the Commission consults on and considers the merits of the arrangements.

Royal Australian College of General Practitioners

The Royal Australian College of General Practitioners (RACGP) lodged an application for authorisation on 31 August 2001 in relation to fee setting by general practitioners within the same practice. It lodged a supporting submission and amended application on 18 January 2002. Specifically, the RACGP is seeking authorisation to allow GPs to agree on fees if they work within a general practice structured as:

- a partnership where at least one of the partners is a body corporate
- an associateship where the GPs are co-located and share an interest in a service entity responsible for managing and/or maintaining a common reception, common fee collection, common bank account, common trading name, common medical records (i.e. share patients) and common accreditation.

The RACGP is also seeking authorisation for GPs working in general practices within the above categories which employ GPs as contractors or on a freelance locum basis.

The Commission issued a draft determination on 20 June 2002 proposing to grant authorisation subject to conditions for four years. At that time, interim authorisation previously granted by the Commission to the conduct for which authorisation was sought was extended until a final determination is released. A pre-decision conference has also been held, at the request of a number of interested parties.

Health Purchasing Victoria

On 3 December 2001 Health Purchasing Victoria (HPV) sought authorisation on behalf of several public and one private health service in metropolitan Melbourne and Geelong. In particular, HPV sought authorisation for the

calling and awarding of tenders by it for the exclusive acquisition of temporary agency nursing staff from nursing agencies by these health services. HPV amended the terms of the proposed tender on 16 January and 9 April 2002. The latter amendments significantly changed the potential impact of the tender process. On 27 June 2002 the Commission issued a draft determination proposing to grant authorisation. A pre-decision conference was held in August 2002.

Aviation

In consultation with the International Air Transport Association (IATA), the Commission has begun a review of authorisations granted 16 years ago covering IATA's activities. As part of this process IATA lodged an application in May 2001 seeking revocation of an authorisation dealing with IATA's Passenger Agency Program and the issue of a substitute authorisation. The IATA program is based on resolutions passed by IATA's airline members relating to arrangements between airlines and travel agents in Australia.

On 13 May 2002 the Commission issued a draft determination proposing to authorise the program subject to several conditions. The Commission recognised that most international air travel is sold in Australia through travel agents and an effective travel agent industry in Australia is therefore important in achieving competition between international airlines. Conditions proposed by the Commission addressed aspects of the program that could affect the financial position of agents at a time when the travel and aviation industries are under significant pressure. A pre-decision conference was called by IATA and the Australian Federation of Travel Agents in response to the Commission's draft determination. The Commission expects to commence work on the review of IATA's other activities including passenger services, passenger tariff coordination and air cargo in late 2002.

On 11 April 2002 Air New Zealand sought authorisation on behalf of airline members of the Star Alliance to jointly offer fares and other incentives to corporate customers and convention delegates and organisers. The Commission is currently considering this application following public consultation.

Banking and financial markets

During the year the Commission finalised its assessment of several authorisation applications for the Sydney Futures Exchange's clearing arrangements and the clearing arrangements for the Australian Stock Exchange's derivatives market.

On 20 May 2002 the Commission received an application for authorisation lodged by the Australian Bankers' Association (ABA) on behalf of 10 member banks. The ABA is seeking authorisation for an arrangement in which each applicant will offer a basic bank account with the following minimum features:

- no account keeping fees
- no minimum account balance required to open an account
- no minimum monthly balance requirements
- unlimited number of deposits provided free of charge each month
- up to six non-deposit transactions provided free of charge each month (including up to three 'over the counter' withdrawals each month).

Member banks will agree to make a basic bank account available to at least the holders of Commonwealth Government health concession cards, but each member bank is otherwise free to determine the eligibility criteria of their individual account.

On 4 June 2002 the Commission wrote to interested parties seeking submissions in relation to the ABA's application for authorisation. The Commission is currently assessing this application for authorisation.

Australian Competition Tribunal

Australian Dairy Farmers' Federation (ADFF)

On 12 March 2002 the Commission issued a final determination granting authorisation to the ADFF to allow groups of dairy farmers to collectively negotiate pricing and supply arrangements with dairy processing companies. The authorisation, granted until 1 July 2005, was subject to various conditions.

The Commission considered that the conditional authorisation of collective bargaining by dairy farmers would result in the following public benefits:

- a likely increase in competition in the supply of raw milk by allowing dairy farmers to take advantage of additional market opportunities for their milk
- an increase in the confidence of individual dairy farmers in dealing commercially with processors which may increase the input dairy farmers have into supply contracts, reducing the likelihood of harsh or unfair contractual terms
- facilitating the transition to a deregulated market
- to the extent that the ability to collectively negotiate would stop the exit of efficient farmers from the dairy industry, the rural communities that rely on dairying would benefit through the maintenance of employment and commercial activity.

On 2 April 2002 National Foods Limited, a major dairy processing company, applied to the Australian Competition Tribunal to review some of the conditions the Commission imposed in the determination. Following a hearing before the Tribunal in August 2002 a position consented to by National Foods, ADFF and the Commission was agreed to by the Tribunal. Groups of dairy farmers with a 'shared community interest' are authorised to form collective bargaining groups through which they may collectively negotiate terms of supply, including pricing, with a dairy company that each member of the group wishes to supply.

Sydney recycling

On 6 June 2002 the Commission granted authorisation to Resource NSW, which applied on behalf of 11 Sydney councils, to collectively negotiate with recycling facility operators.

The councils are: 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.

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

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) for sorting, which then 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 a contract with MRF operators to sort and dispose of their DRM.

The Commission decided that both applications would result in a small public benefit. These benefits mainly arise from improved efficiency, such as reduced transport costs, and 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. This appeal was withdrawn in August 2002.

Agsafe Limited

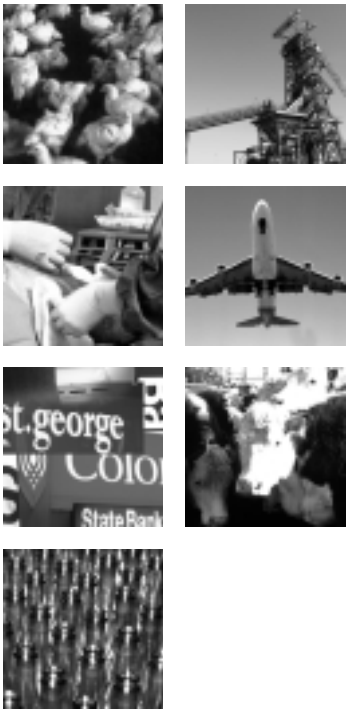
On 22 May 2002 the Commission granted authorisation for five years to a self-regulation compliance program for the agricultural and veterinary chemical (agvet chemical) industry, overseen by Agsafe Limited.

Authorisation was granted to 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 means Agsafe can 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, it authorised a change in the definition of agricultural and veterinary chemicals that need to be accredited, and second, it authorised a change in the obligatory threshold, which determines if premises need accreditation.

The Commission considered that the arrangements may result in some lessening of competition but that the anti-competitive detriments as a result of the scheme were limited. In particular, the Commission believed that appropriate safeguards exist to ensure that Agsafe's powers to impose trading sanctions are not used 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.

On 12 June 2002 the Veterinary Manufacturers and Distribution Association (VMDA) applied for review of the Commission's decision to the Australian Competition Tribunal but withdrew its appeal on 11 July 2002.



Major authorisations and notifications finalised during 2001–02

Inter hospital agreement involving the Alwyn Rehabilitation Hospital, Wolper Jewish Hospital, Hornsby Day Surgery Centre, Longueville Private Hospital, Poplar Private Hospital, Mayo Private Hospital, Calvary Private Hospital Wagga Wagga and Hunter Valley Private Hospital

On 24 December 1999 several independent private hospitals in NSW applied for authorisation for conduct set out in a proposed inter hospital agreement (IHA). The IHA will provide, among other things, for joint negotiations of hospital purchaser provider agreements with health funds and the Department of Veterans Affairs. It will also allow the applicants to share information about fees and non-fee services through a common agent.

The Commission believed that many public benefits were likely to result from the proposed conduct, especially in terms of likely efficiency gains resulting from access to an improved contracting and negotiating process.

The Commission also took into account that few of the hospitals compete with each other and their relatively small size. It also considered the possibility that the reimbursement paid to each of the hospitals would not be the same, even though a common agent represents them in negotiations, and that the IHA will not allow collective action through a group boycott.

Subject to one condition the Commission concluded that the public benefits likely to result from the proposed conduct would outweigh any detriment to the public. The Commission therefore granted authorisation for three years.

The Australian Pensioners League of Western Australia

On 10 January 2001 the Australian Pensioners League of Western Australia (APL) applied for authorisation for an agreement between the APL,

Western Australian Funeral Directors Association (WAFDA) and certain non-WAFDA funeral directors to supply fixed-price discount pre-paid funerals to members of the APL.

The APL funeral fund is a funeral pre-payment scheme for aged, invalid and widowed pensioners in Western Australia, as well as certain superannuants. It gives the elderly the benefit of planning a burial or cremation, at a substantially reduced cost to the funeral fund member.

The fixed rate offered by the funeral fund is negotiated annually on behalf of its members with the WAFDA, and with individual non-WAFDA members who choose to participate in the scheme.

The Commission considered that the arrangements were likely to result in a lower price to fund members than could be negotiated otherwise and that there was a public benefit in providing funeral directors services to an underprivileged section of the community at a price much lower than the market price. The Commission concluded that the public benefits likely to result from the proposed arrangements outweighed any anti-competitive detriment that may arise. The Commission granted conditional authorisation for five years.

Clearing arrangements for the Sydney Futures Exchange and the Australian Stock Exchange's options market

On 14 November 2001 the Commission authorised clearing arrangements for the Sydney Futures Exchange and the Australian Stock Exchange's options market. The authorised arrangements involve the third line forcing of clearing services. The ASX requires that trading participants on its options market acquire clearing services either directly or indirectly from the Options Clearing House Pty Ltd (OCH), a wholly owned subsidiary of ASX. The SFE requires that trading participants on the SFE's markets clear all trades through the SFE Clearing Corporation Pty Ltd.

The Commission has previously authorised these arrangements.

The regulatory environment for providing clearing house services to financial markets was changed significantly by the passage of the *Financial Services Reform Act 2001*. The reforms contained in the FSR Act are intended to increase competition by lowering barriers to entry and by encouraging new participants to operate competing markets and clearing and settlement facilities. In particular, these reforms will permit (but not require) more than one clearing and settlement facility to handle transactions executed on the one financial product market.

In this context, the Commission noted the consensus between regulators at a roundtable meeting on 20 September 2001 at which the Commonwealth Treasury, the Reserve Bank of Australia and the Australian Securities and Investments Commission (ASIC) agreed that barriers to competition between clearing houses should be removed in line with the policy objectives of the FSR Act. However, ASIC did express the view that a decision to allow more than one clearing house to service the one financial market should not be taken until after any problems with the transition to the new regulatory regime have been ironed out. In response to ASIC's concerns, Treasury and the Reserve Bank noted that this issue could be addressed through the licensing provisions of the FSR Act.

However, in light of the regulatory changes in the FSR Act, the Commission considered that it was not appropriate to authorise the current clearing arrangements for an extended period of time, given the conduct is not consistent with the policy objectives of the FSR Act.

The Commission decided, therefore, to grant authorisation for 12 months on the basis that this provides for a reasonable transition period.

The Commission also granted authorisation for five years for the membership criteria, disciplinary provisions and financial requirements contained in the SFE Clearing Corporation's by-laws. This was done on the basis that there are significant public benefits associated with having measures in place which ensure clearing participants maintain a high standard of conduct at all times.

Premium Milk Ltd

On 12 December 2001 the Commission authorised Premium Milk Supply Pty Ltd to collectively bargain farm-gate prices and milk standards with Pauls Limited on behalf of participating south-east Queensland dairy farmers.

Under the proposal, a milk management committee consisting of three Premium representatives and three from Pauls will facilitate collective negotiations. Neither Pauls nor member producers are bound to buy or sell at any particular price established by the committee. Member producers may enter into individual supply arrangements with Pauls, or any other processor, by first giving Premium six months' notice.

The Commission considered there were benefits to the public as a result of the efficiency gains from transaction costs savings. The authorisation would also smooth the transition from a regulated to a deregulated market by providing farmers with an opportunity to develop skills and experience to successfully operate in a commercial environment.

The Commission concluded that the nature of the proposed arrangements as well as a number of structural features in the market were likely to limit the anti-competitive effects.

The Commission authorised the arrangements until 1 July 2005.

Franklins Limited

On 12 December 2001 the Commission granted authorisation to Franklins to make agreements with Action Supermarkets Limited and Interfrank Holdings Pty Ltd (Pick 'n Pay). Under the agreements, each of the parties proposed to offer certain promoted products at no more than the agreed discounted prices.

At the time, Franklins was engaging in a managed selldown of its supermarkets to numerous companies, including Action and Pick 'n Pay.

The Commission considered that the anti-competitive effect of the agreements was limited as they applied only to promotional pricing, specified only minimum discounts, and allowed the parties to engage in other promotional activities if desired. The Commission also noted the strong competition in the supermarket industry. It identified several public benefits that would outweigh any anti-competitive detriment resulting from the conduct.

Authorisation was also granted for Franklins' proposal to sell its stores on condition that purchasers offer the products at no more than the promoted prices for the period in which the purchasers sell Franklins brand products (for a maximum of 30 days).

The Commission granted authorisation until the last Franklins store was sold or closed, or until 1 April 2002.

Real Estate Institute of Western Australia

On 21 December 2001 the Commission granted authorisation to the Real Estate Institute of Western Australia (REIWA) for its articles, codes of practice, multiple listing service (MLS) by-laws and certain standard agreements for five years subject to several conditions.

REIWA is an industry association for real estate agents in Western Australia. Its articles address, among other things, matters relating to membership, disputes involving members and appeals. The codes of practice address relationships between agents and vendors/lessees, other agents and purchasers/lessees. The MLS by-laws address elements of conjunctional

agreements and members' obligations in relation to MLS arrangements. REIWA also applied for authorisation of 10 standard exclusive sales and managing agency agreements it has developed for its members to use.

REIWA applied for authorisation following legal proceedings launched in 1998 by the Commission against REIWA alleging breaches of s. 45 of the Act. These proceedings culminated in Justice French of the Federal Court issuing orders by consent. In response, REIWA reviewed its rules and applied for authorisation.

The Commission considered that public benefits flowed from the fact that members must adhere to professional standards of behaviour and obtain professional indemnity insurance; from the operation of REIWA's dispute resolution processes and MLS; and from its standard contract documentation. However, it considered that some restrictions in REIWA's articles, codes etc. were inappropriate, including certain standard contract terms. Also, REIWA's reporting arrangements were not sufficiently transparent and its appeals process was not independent enough. The Commission granted authorisation on condition that the articles, codes etc. are amended to remedy these and other concerns. Many of the amendments were proposed by REIWA in response to concerns raised by the Commission in its draft determination.

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

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 Ltd (the applicants) 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 concerning that acquisition—that is, the relevant entities within the hospital group after acquisition 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 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 improved efficiency 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.

Hallas Trading Company Pty Ltd and Hallas Franchising Co Pty Ltd

Hallas Trading Company Pty Ltd and Hallas Franchising Co Pty Ltd lodged four exclusive dealing notifications involving full line and third line forcing conduct on 15 April 2002. These superseded earlier notifications lodged for similar conduct on 14 September 2001.

The conduct notified by Hallas Trading and Hallas Franchising required salon owners to sell and use only Ella Baché skin care and sun care products and treatments in their salons. In addition, salon owners could only sell nominated products and treatments not covered by the Ella Baché range.

The Commission decided to allow the notifications to stand. It considered that the full line forcing conduct would be unlikely to substantially lessen competition in any relevant market given that of the approximate 6600 beauty salons in Australia only about 300 use Ella Baché products. Ella Baché products also account for only a small percentage of the total sales of each relevant skin care product and there is a substantial range of competing products.

The Commission considered that the benefits from the supply of a more consistent and uniform service to consumers would outweigh the detriment (if any) in requiring salons to sell only a limited range of supplementary products.