Chapter 4

Mergers

Output 1.1.1: The proper administration and enforcement of the *Trade Practices Act 1974*, the *Prices Surveillance Act 1983* and related laws; and

Output 1.1.2: Performance of actions that promote competition and fair trading and enable well-functioning markets.

PERFORMANCE INDICATORS

- Merger proposals likely to have an anti-competitive effect opposed or authorised where there is sufficient public benefit.
- Granted statutory immunity from legal proceedings where there is sufficient public benefit concerning some anti-competitive practices (as prescribed by the Trade Practices Act).

Why is the Commission concerned about mergers?

Mergers perform an important role in the efficient functioning of the economy. They allow firms to achieve efficiencies such as economies of scale, synergies and risk spreading. They also encourage an active 'market for corporate control' in which under-performing firms and managers are replaced by better ones.

However, in some cases mergers may also have anti-competitive effects by altering the structure of markets and hence the incentives for firms to behave competitively. This is the concern of the Act and the Commission.

The primary reason for this concern about mergers and joint ventures, especially between direct competitors, is that they increase the likelihood that the merged firm could set prices above the competitive level, or otherwise distort competitive outcomes, either alone or in coordination with other firms in the same market.

Merger and acquisition analysis constitutes an important part of the Commission's work. The Commission's role in mergers and acquisitions arises from s. 50 of the Trade Practices Act, which prohibits an acquisition if it has the effect, or would be likely to have the effect, of substantially lessening competition in a market.

This test explicitly recognises the link between market structure and market power, and the need to respond to potential threats arising from the exercise of unilateral or coordinated market power. The Commission also examines joint venture arrangements within the same conceptual framework.

National champions argument

It is often argued that Australian industries need to develop the critical mass necessary to compete internationally. However, obstacles to export growth may face industry participants of all sizes. It is not apparent that, simply by entering a collaborative arrangement like a merger or joint venture, a participant's ability to compete internationally is enhanced. Size is often not necessary to be able to compete on world markets.

Internationally competitive businesses are more likely to develop when there is effective domestic competition, rather than national dominance. In many cases, domestic rivalry rather than national dominance is more likely to breed businesses that are internationally competitive. When firms merge with the aim, for instance, of enhancing exports, domestic prices may rise until they reach import parity (if the goods were previously priced below import parity) while exports are at a lower price. A merged entity may use its market power to increase domestic prices and so subsidise its export price. Ultimately, Australian consumers and industry may be forced to pay a higher price to underpin the merged entity's export sales.

It is more likely that intense domestic competition leads to dynamic gains as firms are forced to improve and innovate while actions that limit competitive pressure may actually lead to poorer export and international performance.

The Commission's publication, *Exports and the Trade Practices Act,* identifies the arguments that the Commission considers most relevant to claims for mergers that will enable Australian firms to operate effectively in world markets. The Act is a flexible piece of legislation that allows for the use of s. 87B undertakings, authorisation, or the formation of collaborative arrangements for export that fall within the protection of s. 51(2)(g) of the Act.

Sometimes the trade off between loss of competition in the home market and benefits to Australia from a firm playing a role in world markets is unfavourable in terms of the public interest. And while in some cases mergers create monopolies or 'home champions' in the home market, they are not necessarily firms well prepared to compete in world markets.

The Commission takes full account of real and potential import competition and does not oppose mergers when imports can be shown to provide effective discipline on domestic businesses. The Commission also assesses the dynamic market factors affecting a particular entity, including the international environment in which the company operates. Examples include the marketing arrangements between Bega Cheese, Bonlac Foods and the New Zealand Dairy Board; the acquisition of North Forest Products by Gunns; and Southcorp Wines, acquisition of Rosemount Estates.

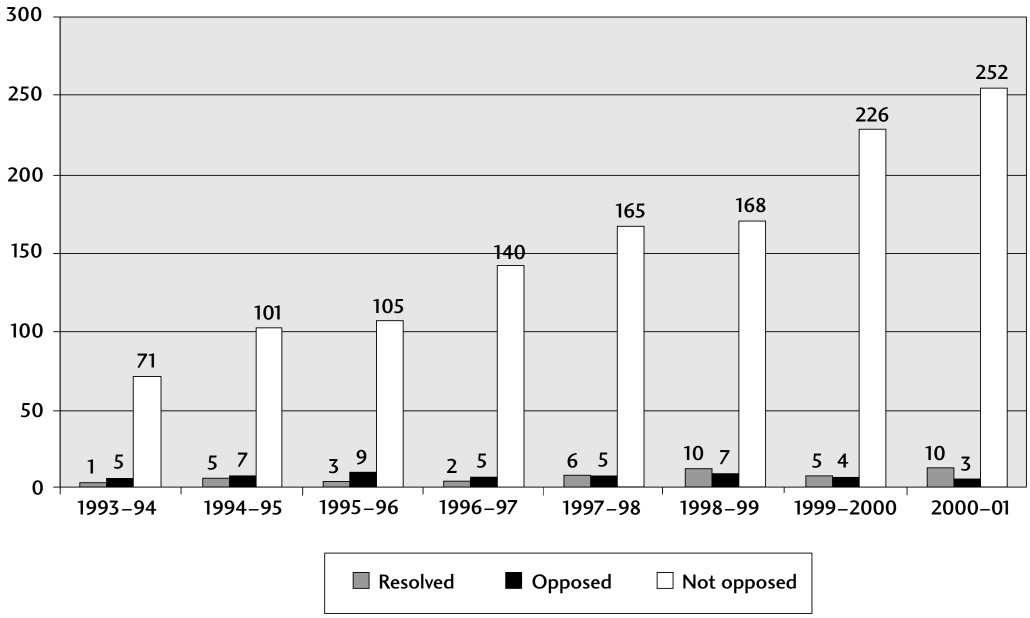
Year in review

Key statistics

In 2000–01 the Commission considered 265 mergers, asset sales and joint ventures. Of these it objected to 13 on the basis that they were likely to substantially lessen competition. Ten of these proceeded following the provision of enforceable undertakings under s. 87B of the Act. The remaining three were withdrawn following Commission objection. Another major matter was withdrawn before decision following expressions of Commission concern.

As the chart illustrates below the number of merger matters examined by the Commission has steadily risen over the past few years. The chart also shows that the Commission only opposes a small percentage of mergers brought to its attention. In fact the proportion of mergers which the Commission believes substantially lessen competition has remained roughly constant at 4–5 per cent a year.

Figure 4.1. Mergers not opposed, opposed and resolved with the ACCC



The past year saw major activity in the resources, building materials, airlines, agribusiness and supermarket sectors. Most mergers in the resource sector raised little concern given its global nature. High levels of imports or internationally set prices mitigated many of the concerns about increased concentration.

The building material industry continues to achieve efficiencies and maintain competitiveness through mergers and joint ventures. The Commission considered several proposals, some of which were not completed because of commercial considerations. There remains considerable activity in the concrete and associated quarrying and aggregates sectors. Tolling and other joint arrangements continue to be proposed and this activity is likely to continue.

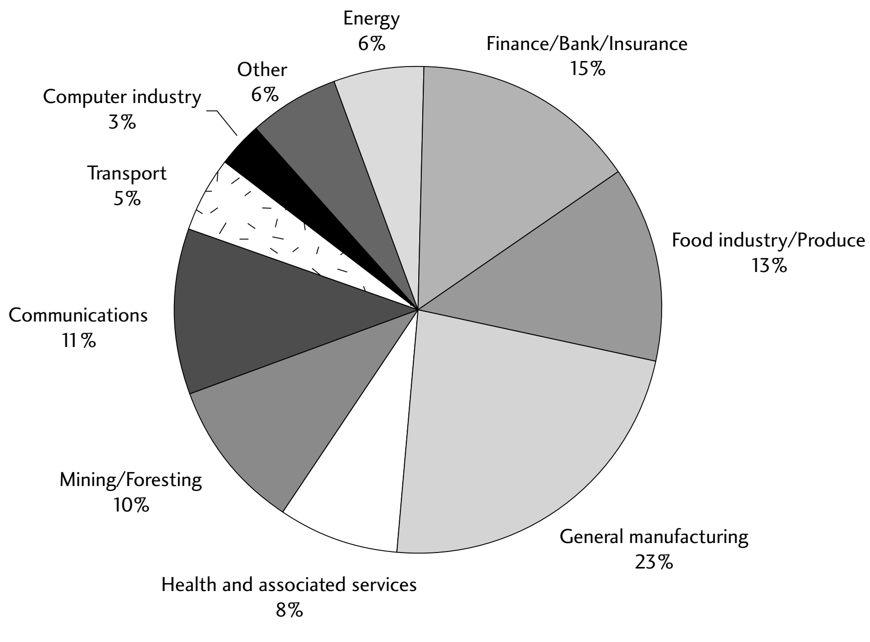
The airline industry was shaken by the problems encountered by regional airlines and new entrants to interstate routes. The outcome is higher concentration in the hands of the two major airlines. The Commission obtained s. 87B undertakings to ameliorate competition concerns, especially regarding slot access at Sydney airport.

The agribusiness sector is also being influenced by structural change, international trading pressure and deregulation. The milk industry (fresh and manufactured product), grain handling, storage and trading, timber, and rural merchandise wholesaling, distribution and retailing were all areas in which the Commission was involved in the past year.

The demise of Franklins was of major concern to many in the supermarket industry, as its competitive impact, along with the independent sector, has always been viewed as an important counter and alternative to the major chains. The Commission accepted undertakings to address concerns about the competitive effect of the sale of Franklins stores. Major chains in the wine and liquor retailing sector have attempted to consolidate their positions. Several smaller independent chains have been acquired by the majors and this activity shows no signs of abating.

A breakdown of mergers by industry is outlined below. The highest number of mergers occurred in general manufacturing (23 per cent) and second highest was finance, banking and insurance with 15 per cent. Although health and associated services accounts for only 8 per cent, this is higher than previous years and is expected to continue to rise.

Figure 4.2. Percentage of mergers by industry



The Commission is pleased to note the four star rating of its merger handling by the Global Competition Review. The rating endorses the Commission's approach to its merger responsibilities — the general consensus being that staff are well prepared and the overall process is handled efficiently and speedily.

International liaison

Another recent trend has been a major increase in the number of global mergers, with commentators forecasting this continuing, particularly in sectors driven by technological change or when economies of scale need to be achieved. Examples include resource-based industries, pharmaceutical industries and media and finance. Mergers such as De Beers/Ashton Mining, Metso/Svedala, Glaxo Wellcome/Smithkline Beecham and Warner Music/EMI have generated competition issues in many countries. Australian companies have also engaged in substantial overseas acquisitions, such as BHP/Billiton.

Consequently, the level of contact between the Commission and overseas agencies on merger matters has grown. Agencies have also discussed mergers which may not have been transnational in character, but about which they have been able to provide information, especially regarding market definition. The Commission has particularly valued information about the gas, electricity and telecommunications industries from EU, UK and US authorities.

In assessing De Beers, proposed acquisition of Ashton Mining Limited, the Commission liaised with the Canadian, United States and European Union competition authorities. Liaison with the EU was particularly extensive and useful, allowing the Commission to develop a better understanding of the global trade in diamonds.

Contact with overseas jurisdictions was also used extensively in assessing the global rock and mineral processing equipment merger between Metso and Svedala. In this case the EU obtained divestiture orders from the parties which greatly reduced the anti-competitive impact of the transaction worldwide and on Australian markets.

Future outlook and priority areas

The Commission expects the increase in merger activity to continue. Many factors, largely outside the direct control of the Commission, have driven this growth and will continue to do so. They relate mainly to the commercial domestic and international business environment and include the effect of continuing deregulation, privatisations and asset sales, the impact of a more liberal trading environment and rapid, sometimes extreme, technological change.

There is likely to be a push for increased consolidation in several already concentrated industries and in the recently disaggregated utilities. Pressure is likely to continue arising from convergence and cross ownership in many industries, with the utilities again prominent.

Industry areas of particular priority to the Commission are likely to be financial services, telecommunications and broadcasting, electronic commerce, transport and energy. The health sector, which is currently undergoing significant structural change, is also of major interest. Consolidation is likely to accelerate in areas such as medical practices, ancillary services (pathology, radiology) and private hospitals, with vertical arrangements in the broader industry more likely to come under closer scrutiny.

Agribusiness continues to experience considerable pressure to restructure and, in many instances, consolidate.

Section 87B undertakings

When the Commission has had concerns about the competitive implications of a proposal it has generally accepted court enforceable undertakings addressing those concerns. Section 87B undertakings are an important tool under the Trade Practices Act to improve competition and efficiency in markets. They are a flexible alternative to the Commission simply opposing an acquisition that is likely to substantially lessen competition.

The Commission looks most favourably on proposed undertakings that address structural issues in the relevant market. Structural solutions can promote long-term competitive markets. Regulatory costs are one-off and do not require a permanent or semi-permanent role for the

Commission. The divestiture of particular assets or divisions of the merged company may sometimes remove competitive concerns.

Over the past year the Commission accepted s. 87B undertakings for 10 matters, listed below in table 4.1. The Commission keeps a public register of s. 87B undertakings granted and further details are available in the *ACCC Journal.*

Table 4.1. Section 87B undertakings relating to mergers and acquisitions accepted by the ACCC in 2000–01

Acquirer	Target	Date accepted
Glaxo Wellcome Australia Pty Ltd	Smithkline Beecham Holdings (Australia) Pty Limited	6 July 2000
BP Australia Ltd	Burmah Castrol Australia	7 December 2000
Mayne Nickless Ltd	Australian Hospital Care	29 January 2001
PaperlinX	Spicers Paper Ltd	30 January 2001
Wesfarmers Dalgety Limited	IAMA Limited	8 February 2001
Ansett	Hazelton Airlines Limited	8 March 2001
Smorgon Steel Group Ltd	Email Limited	20 March 2001
Qantas Airways Limited	Impulse Airlines	21 May 2001
Woolworths Limited	Dairy Farm/Franklins	7 June 2001
Gunns Ltd	North Forest Products	21 June 2001

Major merger matters assessed

Smorgon Steel Group Limited and Email Limited

On 1 June 2000 the Commission announced it would not oppose Smorgon Steel Group Limited's proposal to acquire Email Limited.

Smorgon and Email are major distributors of metal products in Australia. Together they account for about 50 per cent of all metal products distributed. BHP accounts for another 25 per cent and small, independent distributors the remaining 25 per cent.

In assessing the likely competitive effects of the acquisition the Commission considered the effect that importers and imported product play in the market, the relatively homogeneous nature of the commodities involved and the barriers to entering the metals distribution market.

Although the Commission considered that the acquisition would result in a high degree of concentration, it concluded that the continued presence of a large, vertically integrated competitor in BHP, together with the existing and potential import competition, was likely to ensure that the merger did not result in a substantial lessening of competition.

Joint bid by Smorgon Distribution Limited and OneSteel Limited for Email Limited

Following the Commission's acceptance of Smorgon Steel Group's bid for Email the proposal was varied when Smorgon entered

into an agreement with OneSteel Limited in October 2000. The agreement involved breaking up Email's metals distribution businesses between Smorgon and OneSteel and the sale of Email's other businesses (whitegoods, metering and security).

In response to the Commission's concerns about this proposal, the parties offered undertakings limiting their ability to exchange information, setting deadlines for the division of assets and requiring some assets to be sold rather than divided between the parties. On the basis of the undertaking offered, the Commission decided on 16 January not to oppose the acquisition. The undertaking was finalised on 21 February 2001.

Mayne Nickless Limited and Australian Hospital Care

On 30 January 2001 the Commission announced that it had decided not to intervene in the proposed acquisition of Australian Hospital Care (AHC) by Mayne Nickless Limited (MNL) on the basis of undertakings provided by Mayne Nickless to divest four of the AHC hospitals.

The Commission had already informed Mayne Nickless that the acquisition, as it was originally proposed, was likely to result in a substantial lessening of competition. After the acquisition MNL would have had almost 90 per cent market share on the Gold Coast and 40 per cent in Melbourne. Without it, AHC would remain as a competitor to MNL with equivalent capacity and coverage in the relevant regions. The Commission considered that the merged entity could increase prices or reduce the level of service quality.

MNL subsequently offered undertakings to the Commission to divest four hospitals: Allamanda on the Gold Coast and Northpark, Mitcham and South Eastern in Melbourne. On the Gold Coast the undertaking will maintain current market concentration levels. In Melbourne the proposed divesture will reduce the merged entity's market share of private hospital beds in metropolitan Melbourne to about 30 per cent and prevent high concentration levels in localised areas.

The divestitures mean that health insurers will have an option other than Mayne Nickless when negotiating hospital purchaser provider agreements, constraining the ability of the merged firm to increase prices. The Commission considered that the proposed divesture satisfactorily addressed its competition concerns.

BP Amoco and Burmah Castrol

On 6 July 2000 the Commission announced that it would not oppose BP Amoco's acquisition of Burmah Castrol.

The main competitive overlap between BP Amoco and Burmah Castrol was in the manufacture and supply of lubricant products and in fuel retailing.

The Commission found that numerous other lubricant manufacturers competed with BP Amoco and the other domestic oil refiners. It concluded that competition in the retail market for automotive lubricants is quite intense and was unlikely to be diminished by this merger as BP Amoco had not aggressively marketed its own brand lubricant products in Australia.

Most of the business of Burmah Castrol's retail fuels business, Burmah Fuels, had been transferred to other parties before the acquisition was completed. Its wholesale fuels business had been sold to international oil trader, Trafigura. Control of around half of the retail fuels network had been transferred to 7-Eleven, and various other retail outlets had been sold.

However, the Commission had concern about BP Amoco's continuing interest in a number of Burmah Fuels' retail service station sites. BP Amoco agreed to an undertaking relating to divestiture of those sites. By the end of June 2001 BP Amoco had divested its interest in 25 former Burmah Fuels sites.

Wesfarmers and IAMA

On 8 February 2001 the Commission announced that it would not oppose Wesfarmers' proposed acquisition of IAMA but only after significant undertakings were provided by the parties.

Wesfarmers Dalgety is a fully owned subsidiary of Wesfarmers. IAMA and Wesfarmers Dalgety are two of the largest rural merchandise wholesalers and retailers in Australia.

The Commission had concerns that the proposed merger would substantially lessen competition in several markets for farming inputs in Western Australia.

The distribution of fertiliser in Western Australia was a primary concern. CSBP was the dominant supplier of fertiliser to grain farmers in WA. CSBP along with Wesfarmers Dalgety was owned by Wesfarmers. CSBP was distributed through the Wesfarmers Dalgety, Elders and RTC rural merchandise retail networks. CSBP's main competitor in the market for fertiliser in WA was Summit Fertilisers. The primary distributor for Summit in WA was IAMA, which until August 2000 had also been Summit's exclusive distributor.

The Commission had serious reservations about allowing the situation to develop whereby Wesfarmers not only owned the dominant brand of fertiliser in CSBP, but also took majority ownership of IAMA, the primary distributor of CSBP's main competitor in Summit.

The Commission accepted an undertaking from the parties that the new business in the next two years would take no steps to constrain the terms on which the agents and affiliates of the new business deal with fertiliser suppliers and would continue the existing distribution agreement between IAMA and Summit.

The Commission was also concerned by the high level of market concentration that a merged Wesfarmers Dalgety and IAMA would have in herbicides and animal health and nutrition products and the possible ramifications this could have on competition for these products in Western Australia.

These concerns were addressed through an undertaking by the new business to sell one of the two rural merchandise outlets that it would have had in Esperance, Katanning, Merredin, Narrogin and Geraldton. The new business was required to sell to another retailer of rural merchandise unaffiliated to the new business.

Woolworths Limited and Franklins Limited

On 22 May 2001 the Commission announced that it had reached in-principle agreement with Franklins Limited and Dairy Farm Management Services Limited for the sale of stores in the Franklins supermarket chain. The Commission agreed, subject to being given appropriate undertakings, not to intervene in the sale of 67 stores to Woolworths Limited and the balance of 200 stores being offered to the independent sector. The Commission considered that the proposal would facilitate the entry of two new players, Foodland Associated Limited and Pick 'n Pay, into the eastern Australian supermarket industry. The Commission believed the proposal gave independent grocery retailers in Australia a major boost and provided a strong competitive force in the supermarket industry.

On 7 June 2001 the Commission announced that it had accepted s. 87B undertakings from Dairy Farm, Franklins and Woolworths. They primarily deal with issues such as the utilisation of brands owned by Franklins, the number of stores to be acquired by various purchasers and a requirement for Woolworths to divest a number of stores. The Commission therefore decided not to oppose the proposal.

Qantas Airways Limited and Impulse Airlines Holdings Limited

Qantas Airways Limited and Impulse Airlines Holdings Limited publicly announced a proposal to enter into a commercial arrangement on 1 May 2001.

Impulse claimed that it was a failing firm and would become insolvent on 14 May 2001. The Commission independently evaluated this claim and concluded that the withdrawal of support by certain investors had prevented Impulse from remaining viable.

The likely failure of Impulse and the lack of alternative buyers led the Commission to consider the impact of two alternatives on longer term competitiveness in domestic aviation. These alternatives were to allow Impulse to go into receivership or allow Qantas to acquire the company.

After extensive evaluation the Commission concluded that while the acquisition would lessen competition, the competition concerns could be addressed by undertakings. Under the other alternative, that is a receivership for Impulse, a less competitive outcome was likely.

The undertakings accepted from Qantas address the Commission's concerns by including assurances on access to peak slots (7 a.m. to 9 a.m. and 5 p.m. to 7 p.m.) to enable new and emerging airlines to compete more effectively on interstate trunk routes.

On routes operated only by Qantas and Impulse, Qantas provided an undertaking about maintaining services (with regard to frequency and capacity) and restrictions on airfare increases.

The Commission also welcomed the commitment made by Qantas to the Tasmanian Government to maintain services to Tasmania.

After taking into consideration the undertakings, the Commission decided not to oppose the proposed merger.

PaperlinX Limited and Spicers Paper Ltd

On 30 January 2001 the Commission accepted a court enforceable undertaking from PaperlinX to address concerns about its proposed acquisition of Spicers.

The undertakings include the divestiture of the Edwards Dunlop and Commonwealth Paper merchant businesses. It also secures the transfer of a major brand name to the Edwards Dunlop business. PaperlinX has also agreed in the undertakings to a process for assessing future anti-dumping complaints.

The undertakings follow the Commission's decision late last year that the original proposed acquisition was likely to breach s. 50 of the Trade Practices Act by substantially lessening competition in the market for the supply of fine paper by merchants.

For the next three years the undertakings stipulate that before PaperlinX can lodge an anti-dumping application, it has to obtain an opinion from an independent adviser on the application's prospect of success. The independent adviser must certify that the proposed anti-dumping application is not frivolous or vexatious.

The Commission has sought these undertakings to ensure that the divested entity will be a viable and vigorous competitor in the fine paper industry.

Medical Imaging Australasia (MIA) and Benson Radiology

On 23 May 2001 the Commission announced that it would oppose the bid by Medical Imaging Australasia (MIA) to acquire Benson Radiology.

Benson Radiology is one of three main private radiology practices in the Adelaide region along with Perrett Medical Imaging and Dr Jones & Partners. MIA already owns Perrett Medical Imaging.

Overall, the Commission found that the proposed acquisition would lead to a substantial lessening in competition for the provision of radiology services to private patients in the Adelaide region.

The proposed acquisition would have given MIA more than 50 per cent market share for private patients in Adelaide.

The Commission was concerned that barriers to entry for the provision of radiology services are high.

During market inquiries the Commission found there was limited competitive overlap between private radiology practices and public hospital radiology departments. The Commission therefore believes that public hospital radiology departments would not provide an effective competitive constraint against the conduct of the merged entity.

Ultimately the Commission was concerned that the proposed acquisition would result in higher prices for radiology services for private patients in Adelaide. The Commission decided to oppose this acquisition.

Cable & Wireless Optus Limited

C&W Optus announced a strategic review of its business in mid-2000. In early 2001 three bidders emerged for its business: Singapore Telecom, Vodafone Pacific and Telecom New Zealand.

Singapore Telecom

On 26 March 2001 SingTel announced it had reached agreement on the terms of an offer to acquire C&W Optus. The Commission decided on 10 April 2001 that it would not oppose the acquisition. Given that SingTel's acquisition of C&W Optus essentially represents new entry

into the Australian telecommunications industry replacing the company, and consequently will not change the structure of any market in which C&W Optus currently competes, the acquisition is unlikely to substantially lessen competition in any Australian telecommunications market.

Vodafone Pacific

Vodafone proposed to retain Optus Mobile division, on-sell Optus' other business divisions, and divest mobile subscribers and assets to Hutchison. While the Commission did not reach a final view on Vodafone's proposal, it did have significant competition concerns about the proposal. In particular, the Commission was concerned that Vodafone's acquisition of Optus' mobile business would substantially lessen competition in the national market for mobile telephony services because the acquisition would:

- remove one of only three national mobile network operators from the market;
- result in a market structure whereby together Vodafone and Telstra would jointly control more than 98 per cent of all subscribers while One.Tel and Hutchison, the only other mobile network owners in Australia, would account for less than 2 per cent of all subscribers; and
- remove the most vigorous provider of wholesale mobile services from the market.

Before the Commission reached a final view on Vodafone's proposal, Singapore Telecom and Optus announced agreement on the terms of an offer to acquire Optus. Singapore Telecom's acquisition does not raise competition concerns under s. 50.

Telecom Corporation New Zealand

TNZ proposed to acquire C&W Optus' three business divisions: Optus Mobile, Data and Business (D&B), and Consumer and Multimedia (C&M), and on-sell D&B and C&W, while retaining Optus Mobile.

The Commission acknowledged that TNZ proposed to on-sell D&B. At the same time the Commission also noted that, because of the nature of the transaction, TNZ would for a period of time, own the whole of CWO, including the D&B division. The Commission was concerned about the potential for a significant degree of overlap between the D&B businesses of TNZ and AAPT. Although the Commission did not oppose the proposed acquisition, it did express the opinion that these concerns could potentially require s. 87B undertakings. However, since Singapore Telecommunications subsequently made an offer for CWO on 26 March 2001, further analysis of TNZ's offer was no longer necessary.

Howard Smith Limited and OPSM Protector Limited

The Commission found that within the industrial safety equipment market, the merged entity — if Howard Smith Limited acquired OPSM Protector Limited — would hold a market share of about 42 per cent.

However, the market is characterised by substantial levels of imports and the barriers to entry are not high. The Commission also found there were many alternate suppliers who could access increased volumes of product from foreign suppliers if the merged entity raised prices.

The Commission also found that direct supply by manufacturers provided a significant competitive constraint and that the large number of major customers possessed a significant countervailing power.

The Commission concluded that the proposed acquisition would not substantially lessen competition and decided not to intervene in the proposed acquisition.

PMP and IPMG

PMP and IPMG, two companies involved in commercial printing, magazine publishing and magazine distribution, approached the Commission in February 2001 proposing to merge their companies.

After extensive market inquiries the Commission decided that the merger would lead to a substantial lessening of competition in the national markets for heat-set web printing services and for distribution of consumer magazines to retail outlets.

Heat-set web printing is used to print large circulation and glossy magazines, retail catalogues and many newspaper inserts. The two companies had a combined market

share of over 75 per cent. Heat-set web printing is the only form of commercial printing that can quickly produce large circulation retail catalogues and consumer magazines of the required quality in sufficient volume.

Entry barriers to this market are high and imports are generally unviable. Substitutes such as cold-set web printing or sheet-fed printing are relevant only at the margin. Moreover there was evidence that the merging parties competed vigorously with each other, and appeared to be each other's greatest competitive constraint.

In magazine distribution the merging parties had a combined market share in excess of 50 per cent, with much of the remainder controlled by a subsidiary of Australia's largest magazine publisher, ACP.

Distribution involves functions such as allocation, packaging, billing and merchandising. Scale was found to be a major barrier to entry. Comprehensive new entry involving these functions would have to occur instantaneously across all of Australia, or else publishers would not be interested in using a new distributor. New entry would probably also involve substantial costs.

The merged entity's vertical integration of publishing and distribution posed significant problems for publishers. This was because the entity would be a major competitor to many smaller publishers that may have to rely on it to distribute their magazines.

The Commission therefore decided to oppose the merger.

Adsteam Marine Limited and Howard Smith

In March 2001 Adsteam Marine Limited announced that it proposed to acquire the towage interests of Howard Smith Limited.

Based on the view that Australian ports generally represent separate markets, the acquisition of Howard Smith's Victorian towage operations transferred market power from Howard Smith to Adsteam in the ports of Melbourne, Westernport and Geelong.

In the other relevant ports where Adsteam and Howard Smith had joint venture operations, Adsteam was already the managing shareholder of most of these towage operations. The Commission considered it was unlikely that the change in the shareholding of the joint venture towage operation in each relevant port would cause a substantial lessening of competition.

Accordingly, the Commission concluded in April 2001 that the acquisition was unlikely to substantially lessen competition.

Amatek Limited and WESFI Limited

On 9 January 2001 the Commission decided that it would not oppose the acquisition of WESFI Limited by Amatek Limited.

WESFI's principal activities are the manufacture and distribution of particleboard, medium density fibreboard and high-pressure laminates. The Amatek Group is a diversified building products manufacturer involved in decorated products, raw boards, concrete construction products, roll-formed steel products, insulation and glass fibre products.

The Commission decided that the proposed acquisition was unlikely to result in a substantial lessening of competition in any Australian market. The main reasons for the Commission's decisions were:

- Carter Holt Harvey (CHH) would potentially provide a significant constraint to the merged firm — it is relevant that Amatek has sourced a substantial part of its particleboard requirements from CHH and this may be met, post-acquisition, by WESFI;
- following the particleboard supply agreement between CSR (acquired by CHH in May 2000) and Amatek, Amatek's only manufacturing operations involved laminating of raw particleboard into decorative particleboard;
- low entry barriers exist into the laminating of raw into decorative particleboard; and
- likely expansion of capacity by Henderson who is also a manufacturer of particleboard.