

CANADIAN COMPETITION RECORD

FOREIGN AND INTERNATIONAL COMPETITION LAW AND POLICY DEVELOPMENTS

AUSTRALIAN NEWSLETTER

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National Competition Policy Package

The creation of the new Australian competition institutions namely the Australian Competition and Consumer Commission and the National Competition Council has not yet occurred nor have any appointments been announced. This is expected during October/November of this year.

The necessary legislation has passed through the Australian Parliament and the first stage of the package, the changes to the conduct rules of the *Trade Practices Act* came into effect on August 17, 1995. These changes mean that more anti-competitive conduct can be authorized on public benefit grounds, resale price maintenance has been extended to services and the prohibition on price discrimination has been repealed.

The next phase of the legislation will be the establishment of the new institutions and the coming into force of the new access regime for natural monopolies.

States' and Territories' complementary *Competition Policy Application Acts* to fill constitutional gaps and to facilitate the removal of Shield of the Crown in the right of the States and Territories will be introduced in the next year.

Telecommunications Policy

On August 1, 1995, the Minister for Communications and the Arts released a Statement outlining telecommunications policy principles intended to form the basis for a revised telecommunications regulatory environment. This is intended to begin in the latter half of 1997 when there will be no restriction on the number of network providers or installers of network infrastructure.

The most notable principle is that the current telecommunications industry regulator, the Australian Telecommunications Authority ("AUSTEL") will no longer have the role of administering competitive conduct rules for the communications industry. These issues will now come under the jurisdiction of Australia's general competition regulator, the Australian Competition and Consumer Commission (the "ACCC"). AUSTEL will continue to have a role in regulating technical aspects of the industry.

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Notwithstanding a move towards general competition law for the industry, there will continue to be some industry specific rules administered by the ACCC covering interconnection and access rules that seek to ensure the right of interconnection of licensed carriers and service providers to competing networks. The access rules will form part of the *Trade Practices Act*.

Law Reform Commission Report on Remedies under the *Trade Practices Act*

In June 1995, the Government announced its response to the Australian Law Reform Commission's (the "ALRC") Report on *Compliance with the Trade Practices Act*. The Government accepted most of the 57 recommendations made by the ALRC, the more important being that:

- the Trade Practices Commission should be able to take representative actions for contraventions of Part IV (restrictive trade practices) of the Act; currently confined to the consumer protection provisions;
- better access to the Court for private litigants and more extensive remedies;
- contraventions of the consumer protection provisions should be subject to civil as well as criminal liability;
- to facilitate proof in misrepresentation cases, the operation of section 51A be extended to all civil proceedings brought by the TPC in respect of representations that are allegedly false, misleading or deceptive (section 51A deems representations as to future matters misleading

unless the corporation making the representation has reasonable grounds for making the representation); and

- penalties for contraventions of the consumer protection provisions to be significantly increased AU\$1 million for civil offences, AU\$2 million for criminal.

Product Safety

On July 1, 1995, the Trade Practices Commission became responsible for the enforcement of mandatory product safety and information standards and permanent bans of unsafe goods declared under the *Trade Practices Act*.

Public Utilities Information Paper

The Trade Practices Commission has published an information paper "Safeguarding the consumer interest in reformed public utilities and complying with the *Trade Practices Act*". Its aim is to advance one of the issues identified at a 1994 Trade Practices Commission conference on the implications for consumers of the reform of public utilities in Australia.

Qantas/BA - Joint Service Agreement

The Commission decided to grant authorization to a joint service agreement including an agreement on prices between Qantas and British Airways for five years from May 12, 1995, subject to its concerns being satisfied by appropriate conditions. After intensive negotiations over a number of months, the applicants and the Commission agreed to a set of such conditions.

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The major area of concern was the possible effect of the agreement on air fares between Australia and the UK. In particular, the Commission wanted to be assured that the agreement would not enable QF and BA to raise their prices on the Australia/UK routes to an extent greater than might have occurred had the applicants acted independently.

Davids Limited/Composite Buyers Ltd. — Merger Authorization

On May 29, 1995, the Commission granted authorization to the proposed acquisition of grocery wholesaler Composite Buyers Ltd. by Davids Limited.

The Commission has "accepted" legally enforceable undertakings which included improved rebates for retailers, with special arrangements to ensure country retailers are not disadvantaged. The undertakings address concerns that the merger would be anti-competitive and limits any such effects.

On June 19, 1995, Queensland Independent Wholesalers Ltd. and Resource & Industry Limited lodged appeals with the Trade Practices Tribunal against the Commission's decision. The Tribunal's decision was reserved.

Electricity

As part of the regulatory framework for the competitive national electricity market, the Trade Practices Commission (and its successor the Australian Competition and Consumer Commission) will be required to:

- access an application for authorization of the national code of conduct for the electricity industry;
- access undertakings for access to the natural monopoly elements of the electricity industry;
- enforce general market conduct rules; and
- undertake a degree of national pricing oversight.

The Commission has, and will continue to, liaise with, and offer advice to, State and Territory Governments undertaking restructuring of electricity industries and associated reforms.

Small Business Package

On September 19, 1995, the Government released a Small Business Package which included:

- the *Trade Practices Act* provisions on unconscionable conduct relating to business transactions are to be strengthened; and
 - a small business unit is to be established within the proposed Australian Competition and Consumer Commission to focus on small business education and resolution of disputes relating to the *Trade Practices Act*.
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