

1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TRADE PRACTICES AMENDMENT BILL 1990

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General
the Honorable Michael Duffy, MP)

TRADE PRACTICES AMENDMENT BILL 1990

OUTLINE

The purpose of this Bill is to amend s.50 of the Trade Practices Act 1974. Section 50 prohibits mergers and acquisitions which result in a corporation achieving a position of dominance in a substantial market, or where the corporation is already dominant, in having that position of dominance substantially strengthened. The amendments expand the prohibition to bodies corporate which are not corporations but which are related to or associated with a corporation and permit the market position of all bodies corporate which are related to or associated with the relevant corporation to be taken into account in assessing dominance. An associated body corporate is a body corporate over which another body corporate is in a position to exert a substantial degree of influence. Corporations essentially are bodies corporate that are foreign, trading or financial companies.

FINANCIAL IMPACT STATEMENT

2. The proposals in the Bill will have no financial impact.

NOTES ON INDIVIDUAL CLAUSES

Clause 1 Short title

Clause 2 Commencement

3. Clause 2 provides that the Act is taken to have commenced on 21 December 1990.

Clause 3 Mergers and other acquisitions

Subclauses (a) and (c)

4. Subparagraph 50(1)(b)(i) now provides that in determining whether there has been a strengthening of a position of dominance regard is had to whether the target body corporate or a body corporate that is related to it, is or is likely to be a competitor of the acquiring corporation or a body corporate that is related to it. Subparagraph 50(1A)(b)(i) provides similarly in relation to an acquisition by a person. The amendment to the subparagraphs will include references to associated bodies corporate in addition to related bodies corporate.

5. Subclause (b) expands the application of s.50 of the Principal Act to specifically cover acquisitions by bodies corporate which are not corporations. Proposed s.50(1AA) prohibits a body corporate which is related to or associated with a corporation from acquiring shares or assets in another body corporate if as a result of the acquisition, the corporation would be or would be likely to be in a position to dominate a substantial market for goods or services, or would have an existing position of dominance substantially strengthened. In assessing the question of dominance, the market shares of the corporation and bodies corporate related to or associated with the corporation can be taken into account and aggregated.

6. Subclauses (d), (e) and (f) amend subsection 5 (2) to extend the aggregation provisions so that they apply not only where the relevant corporation/bodies corporate are in a position to dominate a market but also to those instances where they are likely to be in such a position. These amendments will ensure consistency with the prohibitions in ss 50(1), (1AA) and (1A).

7. Subclauses (g) and (i) insert new ss.50(2AA) and 50(2AB). Their purpose is to make it clear that the words "together are" and "together with" in ss.50(2) and (2A) are not restricted to situations where corporations/bodies corporate act in concert.

8. Subclause (h) amends s.50(2A). This subsection defines when one body corporate is to be taken to be associated with another body corporate, the test being whether one body corporate is in a position to exert a substantial degree of influence over the activities of another. The amendment extends the test to a position where a body corporate is likely to be able to exert that influence.

9. Subclause (j) makes a change to s.50(2B), consequential on the change to s.50(2A), by adding a similar reference to the likelihood of being able to exert a substantial degree of influence.



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