

1986

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TRADE PRACTICES (TRANSFER OF MARKET DOMINANCE) AMENDMENT BILL 1986

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General,
the Honourable Lionel Bowen, M.P.)

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OUTLINE

The purpose of this Bill is to amend the Trade Practices Act 1974. The amendment contained in the Bill is designed to make clear that the Act does not apply to the acquisition of a body corporate with existing market dominance, provided the acquirer is not thereby in a stronger position to dominate that market. Such acquisitions are commonly called 'bare transfers of monopoly power'.

FINANCIAL IMPACT STATEMENT

The Bill will enable cost savings to be made as the Trade Practices Commission will no longer be required to consider applications for authorization for such an acquisition nor will the Commission have to devote resources to enforcement as a result of such acquisitions occurring either without authorization or after authorization has been refused.

NOTES ON INDIVIDUAL CLAUSES

PART 1 PRELIMINARY

Clause 1: Short Title

Clause 2: Commencement

Clause 2 provides that the Act will come into operation on a date to be fixed by proclamation.

Clause 3 Acquisitions of Market Dominance

This amendment, which adds a new sub-s.50(2C), is designed to make clear that s.50 (mergers and other acquisitions) of the principal Act does not apply to the mere acquisition of an existing dominant body corporate, i.e. to acquisitions which do not increase existing market dominance.

In TPC v Ansett Transport Industries (Operations) Pty Ltd and Ors (1978) ATPR 40-071 at page 17,713, Northrop J held that 'subject to any authorisation that may have been granted under Part VII of the Act, a corporation which, by the acquisition of shares in the capital of a body corporate, acquires a controlling interest in a body corporate which is in a position to control or dominate a market for services, thereby contravenes s.50(1)(a) of the Act'. Acquisitions of this kind which merely transfer an existing position of market dominance without enhancing it in any way are anomalous in a competition based statute as they are competition neutral. Consequently the amendment provides that the Act does not subject such acquisitions to scrutiny.

