

APPENDIX 3

ACCC court cases on sections 45D & 45E, 1997 - 2007

- Correspondence from Mr Brian Cassidy, Chief Executive Officer, Australian Competition Consumer Commission to Mr Peter Hallahan, Secretary, Senate Standing Committee on Economics, 30 August 2007.

Case/Matter	Other Party	Section	Breach	Outcome	Media release	Filing Date	Conclusion
<u>ACCC v TWU</u>	Transport Worker's Union of Australia (QLD Branch)	45D 45E	Secondary boycott conduct against a number of smaller companies in Qld, which had not entered into enterprise bargaining arrangements with TWU.	Consent orders, injunctions, compliance program, and contribution to ACCC's costs.	MR 102/97	22.08.97	13.08.98
<u>ACCC v TWU</u>	Transport Worker's Union of Australia (QLD Branch)	45D 45E	Secondary boycott conduct against transport companies whose drivers were not financial members of the TWU.	Consent orders, injunctions, compliance program, and contribution to ACCC's costs.	MR 167/97	12.12.97	13.08.98
<u>ACCC v CFMEU</u>	Construction Forestry Mining and Energy Union	45D	CFMEU hindering Collie Crane Hire and other crane hire businesses within WA from supplying services to C because C refused to sign its employees and sub-contractors to an EBA put forward by CFMEU.	Consent orders including undertakings and \$15,000 towards ACCC's costs. CFMEU also agreed to pay \$29,087.89 to ACCC on behalf of Western Portables by way of reimbursement of costs incurred by Western Portables.	MR 115/99 MR 170/97	15.12.97	02.07.99
<u>ACCC v CEPU</u>	<u>Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia</u>	45D	Number of contraventions of secondary boycott provisions of TPA, occurring between 11/97 and 2/98.	Consent orders gained restraining union from engaging in secondary boycott to exclude contractors from fire protection industry.	MR 049/98 MR 188/98	18.03.98	13.10.98
<u>ACCC v MUA</u>	Maritime Union of Australia	45D 45E	MUA acting in concert with International Transport Workers Federation– International Boycott Action	Patrick's to pay \$7.5m compensation and MUA gave undertakings for 2 years.	MR 166/98	22.05.98	03.09.98
<u>BLF (QLD Branch)</u>	Builders Labourers Federation (QLD Branch)	45D 45E	BLF agreed to restrict access to a building site for Quality Concrete Constructions.	87B undertaking accepted that the conduct of that type would not continue, that those who assisted the ACCC would not be discriminated against & that BLF will implement a TPCP.	MR 120/00	N/A	17.05.00

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<u>ACCC v AMWU & AWU & CEPU and Ors</u>	1. Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union2. Australian Workers' Union3. Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia	45D	Secondary boycott: maintenance of a picket at the construction site of the Patricia Baleen gas plant (Victoria) obstructing construction workers and vehicles delivering materials from entering.	Consent orders: Declarations; Injunctions; Other orders - Each Respondent to implement compliance program and publicise the orders. Penalties (\$100,000 for each respondent.	MR101/03 MR 075/04	16.05.03	30.04.04
<u>ACCC v Showmen's Guild of Australasia & Ors</u>	Showmen's Guild of Australasia; Lewis Osborne; James Marshall; Marshall Amusements Pty Ltd; Peter Short; Spy Amusements Pty Ltd; George Pink, Aaron Pink, Broderick Pavier, Doreen Brown, and Yvonne Seymour.	45D 45E	On three occasions the Showmen's Guild, certain individual members and their affiliated corporations agreed not to supply amusement services to the independent organisers of the amusement areas of those events.	Declarations as to breach of section 45, injunctions for a period of 5 years, costs and court enforceable undertaking.	MR 014/04 MR 100/06	19.02.04	10.05.06
<u>ACCC v CFMEU and Ors</u>	1. Construction Forestry Mining & Energy Union (CFMEU)	45D 45E	Alleged secondary boycott - Canberra building industry. It is alleged that in April 2003 BLL wrongly terminated the supply	In litigation Federal Court	MR 192/06	23.08.06	Ongoing - hearing September 07

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	2. BLL		contract between BLL and Bemmar after reaching and arrangement or understanding with the CFMEU, in breach of section 45E.				
<u>ACCC v Edison Mission Operation & Maintenance Loy Yang Pty Ltd</u>	1. Edison Mission Operation & Maintenance 2 Loy Yang Pty Ltd	45D 45E	In August 2001 Edison Mission Yang Pty Ltd allegedly entered into an agreement with the CEPU to allow only employees who are governed by the NECCIA to work at the Long Yang B Power station and are with the CEPU. Stopped acquiring services from DJN Electrical as a result.	In rejecting the union appeal, the Full Federal Court upheld the penalty of \$125 000 imposed by the trial judge noting that: "had the matter been open to us to review... we would observe the penalty was at the lower end of the range for behaviour of the kind in which the CEPU engaged.	MR 023/05 MR 032/07 MR 222/07	07.02.05	17.08.07
<u>ACCC v CFMEU and Ors</u>	1. Construction Forestry Mining & Energy Union (CFMEU) 2. Construction Forestry Mining and Energy Union of Workers (CFMEUW) 3. Mr Joseph McDonald 4. Mr Michael Buchan 5. Mr Michael Powell	45D(1) 45E	secondary boycott: hindering or preventing the supply of goods or services by third parties to Doric Constructions Pty Ltd at the then Holiday Inn construction site in Burswood, Western Australia	Consent orders: 1st R \$50 000 penalty, implement a trade practices compliance program, publish a notice to members detailing the substance of the court orders; 2nd R \$50 000 penalty, implement a trade practices compliance program	MR 288/05 MR 305/06	24.11.05	12.12.06
<u>ACCC v Knight and Ross</u>	1. John Lincoln Knight 2. Iain Kenneth Ross	45D	Alleged secondary boycott by Adelaide cardio thoracic surgeons hindering or preventing another surgeon from providing services at a private hospital.	Court outcome did not include findings of breach of s45D.	MR 028/07	05.02.07	05.07.07

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