Decision dated 23 November 1977. Copies of the full text of this decision are available at a cost of $1.70.

Decision No. 21 (Abridged)

This decision follows upon and correlates with the Commission's decision No. 18. It relates to appeals filed by Akrad Radio Corporation Ltd. and Pye Ltd. (the appellants) against decisions of the Secretary of Trade and Industry (respondent) as contained in special approvals F40 and F41 relating to the wholesale and retail prices respectively of "Pye" and "Ultimate" brands of colour television receivers manufactured by the appellants incorporating the new Vidmatic-SRU-CT103 technology.

Decision 18 of the Commission in effect resolved certain issues of principle but did not have any effect on actual prices as it related to colour television receivers, manufactured using an earlier technology, which had all been sold prior to the hearing of the appeals concerned.

It was acknowledged by respondent that, in making his decisions embodied in those special approvals Nos. F40 and F41, he applied the same principles, and made the decisions upon the same grounds, as he had applied in making his decisions embodied in the earlier special approvals No. F25 and F26, the subjects of the original appeal. Further, it was agreed by appellants and respondent that the evidence before the Commission was comprehensively applicable to both the original and this further appeal and the Commission was satisfied that that was so.

The Commission received a joint statement by appellants and respondent which is set out in the text of the full decision.

In the circumstances of the grounds of appeal being the same as those of the original appeal, respondent's decisions having been made applying the same principles and upon the same grounds, and the evidence before the Commission applying comprehensively to both the original and this *later* appeal, the Commission applied its determinations on the original appeal, stated in its decision No. 18, in this *later* appeal with, however, one exception. That exception concerns the rate of profit return to be applied to average assets for the purpose of this *later* appeal.

The grounds of appeal and the Commission's determinations on these is summarised below as stated in decision No. 18:

(a) That respondent was not justified in departing from the Price Tribunal Decision No. 5300 formula of 30 percent on factory cost in approving the wholesale prices.
Appellants' submission is rejected.

(b) That factory costs and the value of assets should be allowed on the basis of "replacement" or "current" cost accounting and not on the historical cost basis.
Appellants' submission is rejected.

(c) That depreciation of fixed assets should be allowed on the "straight line" method on the replacement cost of assets.
Appellants' submission is rejected.

(d) That, if the value of assets is to be taken as their written-down historic cost, the appellants require a profit return not of 15 percent but of at least 20 percent.
The Commission determined in decision No. 18 that 15 percent was a fair rate of return. However, for the reasons set out in the full text of this decision the Commission determined that the appellants be allowed a rate of return on average assets, before interest and before income tax, of 16 percent and that that rate of return should be allowed until appellants make their first application to respondent for amendment of prices subsequent to their audited accounts for the year ending 31 December 1977 being presented to the respondent.

(e) That exchange losses on moneys borrowed overseas should be taken into account.
The Commission consider that, for the purpose of this appeal, it can take this question no further, pending any decision the Minister may take following the Commission's report and recommendations arising out of its recent inquiry into the subject of exchange gains or losses on moneys borrowed overseas.

(f) That a sum of $440,000, claimed by respondent to represent an amount of costs over-recovered by appellants in a past period, should not be brought into account to reduce appellants' wholesale prices.
Appellants' submission is upheld and accordingly the Commission orders, pursuant to section 101 (3), that the sum of $440,000 be not brought into account in determining appellants' prices resulting from this determination by the Commission or in any subsequent applications made by appellants to respondent.

The Commission determined, pursuant to section 102 of the Act, that appellants' application of 11 July 1977 and respondent's related decisions embodied in special approvals No. F40 and F41 be referred back to respondent for reconsideration and that the matters specified in (d) and (f) above should be taken into account in such reconsideration.

Decision dated 7 December 1977. Copies of the full text of this decision are available at a cost of 90c.

Decision No. 23 (Abridged)

On 6 September 1977 the Golden Bay Cement Co. Ltd. (the appellant) filed an appeal against a decision of the Secretary of Trade and Industry (respondent) given effect to in special approval D829 dated 17 August 1977. This decision discontinued a grant of 57c per tonne for bagged and bulk cement given to the company by decision No. 2 of the Commerce Commission in March 1976.

The appellant's submissions were that the appeal should be upheld on the grounds that the decision of the respondent was erroneous in law (for the reasons stated in the full text of the decision). Alternatively if the decision of the respondent was not erroneous in law, that it is just and equitable that the grant of 57c per tonne for bagged and bulk cement should be continued.

The respondent submitted that the appeal should be dismissed on the following grounds:

(1) That the grant of 57c per tonne for bagged and bulk cement had been given effect to.

(2) That the grant of 57c per tonne made by the Commerce Commission in its decision No. 2 was an unauthorised exercise of the powers conferred on the Commission by the Commerce Act 1975 and was invalid for the reasons set out in the full text of the decision.
In addition the respondent lodged an application to the chairman (pursuant to section 122) "To state a case for the opinion of the Supreme Court on the following questions of law:
(1) Whether the grant of 57c per tonne for bagged and bulk cement made by the Commerce Commission in its decision No. 2 on the 12th day of March 1976 had any effect in law other than authorising the maximum selling prices recorded in Schedule B attached to the said decision, and, if so, what effect?
(2) Whether the said grant of 57c was valid?
(3) On an appeal in respect of an application based on annualised accounts is the closing date for the accounts that date which was the basis of the application to the Secretary of Trade and Industry?
(4) On an appeal under section 99 of the Commerce Act 1975 against a decision of the Secretary under section 92 (4) of the Act:
(a) What weight should the Commerce Commission attach to the Secretary's decision?
(b) What is the nature of the appeal?"

The Commission considered the submission of both parties and for the reasons set out in the decision resolved:

(i) To dismiss the application, lodged by the respondent pursuant to section 122 of the Commerce Act, for a case to be stated on certain questions of law.

(ii) To determine the appeal before the Commission by ordering that the grant of 57c per tonne for bagged and bulk cement, be continued until such time as the company receives a decision from the Secretary following an application by it either for a review of its allowed profitability rate or for a price adjustment, based on annualised accounts, to enable it to achieve its allowed rate of return, whichever of such applications is made the earlier.

Decision dated 15 December 1977. Copies of the full text of this decision are available at a cost of 80c.

D. J. KERR, Executive Officer.