

---

# International developments

## Visit by European Competition Director-General

The Director-General for Competition at the European Commission (Directorate-General IV), Dr Alexander Schaub, visited the ACCC in the first week of June 1996 as a guest of the Department of Foreign Affairs and Trade, which had sponsored his visit to Australia under its Special Visits Program. Dr Schaub is one of the most influential figures on the world competition policy scene, with Directorate-General IV involved in formulation of competition policy, fact-finding, and enforcement of competition laws throughout Europe. Dr Schaub's predecessor, Dr Claus Dieter Ehlermann, visited the Trade Practices Commission in August 1994.

Dr Schaub has had a distinguished career, with over 20 years experience at the European Commission, where he has acted as Director responsible for trade-related questions in the industrial sector at the Directorate for External Relations and Trade Policy, Deputy Director-General at the Directorate for the Internal Market and Industrial Affairs, and Deputy Director-General at the Industry Directorate. He has participated in seven Economic Summits (G7) and numerous European Council meetings.

As head of the Competition Directorate, his areas of activities are competition policy formulation and enforcement, with particular focus on state aids, cartels, mergers, abuses of dominant positions, as well as the competition aspects of various industries such as transport, telecommunications and energy.

The visit provided the European Commission with an opportunity to learn more about recent reforms to Australia's national competition policy, and it gave the ACCC the opportunity to learn about recent developments in European competition law enforcement. It also provided both parties with an occasion to discuss future cooperation arrangements between the two competition authorities.

As part of the visit, Dr Schaub spent a considerable time at the ACCC briefing senior staff on developments in European competition law and policy, and being briefed by the Commissioners and Senior Assistant Commissioners on the ACCC's enforcement work.

Dr Schaub also presented two seminars to audiences consisting of ACCC staff, trade practices lawyers, academics and competition policy officials: one in Melbourne on 'Recent developments in competition law and policy of the European Union', and one in Canberra on 'Competition regulation in the European Union — with special reference to the regulation of mergers'.

## Visit by Professor Trebilcock

Professor Michael Trebilcock visited the Commission on 6 June 1996 and addressed staff on 'Rethinking consumer protection policy'. Professor Trebilcock is a Professor of Law at the University of Toronto in Canada and Director of the University's Law and Economics Programme. His teaching and research interests in the area of law and economics include a long-standing interest in the economics of consumer protection. He is

currently involved in a major research project on rethinking consumer protection policy in Canada.

Professor Trebilcock's talk covered three interrelated themes as they applied to consumer protection in North America, the United Kingdom and Australasia:

- the legacy of consumer protection policy embodied in competition and consumer legislation dating from the 1960s and 1970s;
- the influence on consumer protection policy of developments in economic theory over the past 10 to 20 years; and
- the implications for consumer protection policy of past, present and future changes in the external environment (technology, the economy and society).

In addressing the first theme, Professor Trebilcock analysed the effectiveness of the 1960s–70s legislation in addressing various categories of market failure: imperfect competition, externalities, and information asymmetries.

Much had been achieved to reduce monopolies and oligopolies, especially with the deregulatory push for greater domestic and overseas competition in recent years. With regard to externalities, product liability legislation had helped to reduce the risk imposed by unsafe or dangerous products while environmental labelling offered a means for consumers to sanction producers whose activities were causing ecological damage. The evidence here was somewhat more mixed, especially as regards enforcement, although gains had been made.

Gains had been most limited in the area of overcoming differences in information levels between consumers and suppliers. Remedies such as standard form contracts, post-sale documentation and information guides for consumers were not as effective as once hoped because they were not always read or carefully considered by consumers. This response by many consumers is a rational one in that finding, reading and analysing all the material

(gaining a full set of information) imposes costs of time and effort (opportunity and transaction costs).

Recent developments in economic theory had shown that the optimal amount of information for many consumption decisions was often very small because of the opportunity and transaction costs involved. Requirements to provide significant amounts of pre-sale, point of sale and post-sale information to individual consumers may therefore fail to achieve the desired results. Nevertheless, it was possible that less informed consumers may benefit indirectly by 'free riding' on the consumption decisions of better informed consumers who have digested this information.

In addition, the existence of considerable transactions (legal, search and information) costs had also been a major barrier in preventing consumers enforcing their rights through legal and other means. This partly explained why private enforcement in the areas of product safety/environmental labelling had been reasonably limited until recently.

In Professor Trebilcock's view, information asymmetries are pervasive and represent the core issue for consumer protection policy and enforcement in the coming years.

Professor Trebilcock pointed to the arrival of the 'information revolution' as a key challenge for consumer protection policy. With the growth of on-line commerce and home banking the need for consumers to access and filter the appropriate information will be paramount, especially given the more ephemeral nature of information, the targeting of niche markets and the jurisdictional issues involved. Since legislative/regulatory solutions are likely to lag behind developments and expectations in this area, on-line information brokers are likely to develop to provide services for on-line consumers.

Because of the complexity of financial transactions, information issues will remain an important issue in the finance sector, especially when coupled with the increased use of remote mechanisms (phone, on-line and smart card banking) for servicing clients. The ageing of the population will also bring a shift in

emphasis toward retirement instruments and away from credit instruments in this sector. Other demographic changes, especially those relating to the structure of households, will also have an important impact on consumer protection issues.

In conclusion, Professor Trebilcock pointed to the pressing need for research into information issues so as to inform consumer protection policy and enforcement. Information issues, as distinct from competition issues, will define consumer protection activity in the future. Analysis of consumers' use of information, the likelihood of information asymmetries in particular markets and the cost of generating certain forms of information is needed. In approaching these issues, a risk based approach to information provision should be adopted so that research, regulation and enforcement in this area is targeted to where it is most needed.

## From New Zealand

*These items were extracted from the June–July 1996 issue of the New Zealand Commerce Commission's newsletter Fair's Fair.*

*The Commerce Commission enforces both the Commerce Act 1986, which contains restrictive trade practices provisions, and the Fair Trading Act 1986, which deals with consumer protection matters.*

### Commerce Commission's twentieth anniversary

The Commerce Commission has released a new publication marking the tenth anniversary of the Commerce Act 1986 and the twentieth anniversary of the Commission.

The book, *Commerce Commission 1975–1996 — the coming of age of competition law in New Zealand*, contains chapters written by each of the past Chairpersons of the Commission and the current Chairman, Dr Alan Bollard. The authors give their views about developments in competition law during their term, as well as changes that occurred in the Commission and major issues and achievements.

The Commerce Commission was established in November 1975 to coincide with the coming into effect of the Commerce Act 1975. The 1975 Act included the law relating to restrictive trade practices, mergers, takeovers, monopolies and price control.

The Commerce Act 1986 was seen as part of the economic liberalisation process, with its general prohibitions on anti-competitive behaviour replacing the previous raft of sector-specific legislation and regulation. The 1986 Act also changed the role of the Commission from being solely a quasi-judicial authority to being an enforcement authority, with an authorisation role in relation to mergers, takeovers and restrictive trade practices.

Copies of the book are available from the Commission. Contact the Records Officer, Leo Van Schyndel, phone (04) 498 0929, fax (04) 471 0771.

### Warnings to associations

The Commerce Commission has recently warned three associations that they were at risk of breaching the Commerce Act by trying to restrict to whom their members could supply goods.

Two complaints related to organisations involved in breeding animals and concerned the associations trying to stop members supplying animals to businesses which were not association members.

Another body which supplies plant varieties tried to restrict supply of plants to its registered members.

Commission Commerce Act Manager Tony Iltott said individuals, even the association itself, may not consider themselves to be in business. But if their rules or other arrangements affect competition, then the Commerce Act could apply.

### Commission clears acquisition of Ansett

The Commerce Commission has cleared News Corporation to acquire up to 100 per cent of Ansett New Zealand and also cleared Air New Zealand to acquire 50 per cent of Ansett Holdings, subject to News and Air New Zealand

undertaking to dispose of all the assets and shares owned and held by Ansett Australia Holdings in Ansett New Zealand.

In clearing the separate but interrelated acquisitions, the Commission accepted undertakings from News and Air New Zealand, as the future equal shareholders of Ansett Holdings, to dispose of all of the assets and shares of Ansett New Zealand within one working day of Air New Zealand acquiring 50 per cent of Ansett Holdings.

Commission Chairman Dr Alan Bollard said that with the implementation of the undertakings Air New Zealand would have no ability to exert influence over Ansett New Zealand and therefore would not acquire or strengthen a dominant position in the New Zealand air transport markets.

The Commission previously declined an application by Air New Zealand for authorisation to acquire up to 50 per cent shareholding in Ansett Holdings. The Commission had concluded that the two airlines would be associated and together would be in a dominant position in the New Zealand domestic passenger air services markets.

After considering the current applications the Commission concluded that, on the basis that News would own 100 per cent of Ansett New Zealand, Air New Zealand would not be able to exercise a substantial degree of influence over the activities of Ansett New Zealand. Consequently the two airlines would not be associated persons and issues of dominance in the New Zealand air transport market did not arise.

### **Westpac/Trust Bank**

The Commerce Commission has cleared Westpac Holdings NZ Ltd to acquire all of the shares in Trust Bank New Zealand Ltd.

The Commission found that the proposal would give Westpac about a quarter of New Zealand's banking business, measured in terms of net loans and advances.

However, the merged bank would be only slightly larger than its largest competitor, the Bank of New Zealand, and two other major banks, ANZ and the National Bank, would continue as substantial competitors. Two other

banks with extensive branch networks, ASB Bank and Countrywide Bank, would provide further competition, as would several others with less extensive branch networks.

The Commission concluded that competition would remain vigorous should the proposal be put into effect.

## **From the USA**

### **Reforms to competition policy**

The Federal Trade Commission (FTC) has released a report based on hearings held in 1995 to re-evaluate consumer protection policies in the context of the increasing globalisation of markets and innovation-based competition.

Recommendations made by FTC staff on competition issues contained in Volume 1 of the report, *Competition policy in the new high-tech, global marketplace*, included the following.

- **Efficiencies** — Current antitrust merger analysis does not consistently require consideration of the probable competitive effects of cost savings likely to be achieved through the merger. In both agency review and court litigation, enforcers should address whether merger-created efficiencies may affect the firm's abilities and incentives in ways that are likely to be pro-competitive.
- **Innovation** — When examining mergers, the FTC should continue the same careful approach to innovation market analysis that it uses for intellectual licensing issues. This approach would ask whether a proposed merger would be likely to harm consumers by eliminating, delaying or lessening the diversity or quality of research and development efforts directed toward a particular product.

In regard to intellectual property protection, the agency should consider how to inform other federal authorities of possible anti-competitive issues if software and biotech intellectual property rights are too broad. According to the report, it is preferable to address any competitive concerns posed by patents which

are possibly too broad before they are issued, rather than to investigate later whether complex business conduct made possible by broad patents may be anti-competitive.

For new technologies involving communications networks and standards, heightened scrutiny of anti-competitive conduct may be necessary.

- Small business — The agency should work with other governmental and private entities to find ways to keep small businesses better informed about what types of collaborative activity do and do not raise antitrust concerns.

Volume 2 of the report, titled *Consumer protection in the new high-tech, global marketplace*, deals with consumer protection policy issues in relation to changes in information technologies. The hearings focused on telephone, television and computer technologies.

The report emphasises that while these technologies will give consumers access to unlimited amounts of information, a global marketplace and more control, they can also provide fertile ground for old-fashioned scams.

'Meaningful consumer protection in the 21st century will take coordinated law enforcement against fraud and deception, private initiatives and public/private partnerships, and consumer education through the combined efforts of government, business and consumer groups,' the report says.

The FTC is reviewing its regulations to ensure that they are relevant to the new global marketplace. The report cites the FTC's current initiative to revamp its Care Labelling Rule for clothing and textile products as an important first step in that direction.

Copies of both volumes of the report are available from the FTC's Public Reference Branch, Room 130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.