ficiencies which it suggests are fostered by the current regulatory scheme. The Report goes on to propose that the existing inefficiencies might be cured by fostering competitive forces and by adopting accepted economic reasoning that competition increases efficiency - an efficiency which is of course in the interests of all Australians.

The ATUG Report makes several major recommendations. The first of these proposes the removal of barriers to entry in the provision of all domestic and international networks and services, and involves amendment of the Act to remove restrictions on the establishment, maintenance, operation and resale of telecommunications facilities and networks and the provision of all services. However, until open competition is implemented, Telecom and OTC should continue to be restricted to their present lines of business to ensure the private sector can effectively compete with government business enterprises.

Secondly, pro-competitive safeguards should be introduced, requiring all carriers to provide non-discriminatory interconnection of their networks.

Thirdly, AUSSAT should retain its current line of business restrictions until it is privatised (which should occur as soon as possible). When AUSSAT is privatised, it should be able to compete openly in all telecommunications markets. If necessary, the government should refinance AUSSAT to prepare it for sale if it has a negative market value. Further, Telecom should be removed as a shareholder and board member of AUSSAT and should not be allowed to bid for AUSSAT when privatisation is effected.

Its fourth recommendation is that Telecom should retain the current line of business restrictions to provide only domestic telecommunication networks and services for a period of five years or until it is privatised. During this period, Telecom should be separated structurally into three arms length companies - one to provide network facilities (local and trunk), one to provide services (local, trunk, STD and enhanced (value added)) and a third to provide and operate CMTS (MobileNet).

OTC should retain the current line of business restriction to provide only international and maritime telecommunications networks and services for a period of five years or until privatised.

In addition, OTC and Telecom should not be merged since this would further delay open competition and would prejudge the combination of international and local business operations as the most efficient in the open market.

The Report also recommends that price caps be removed, since competition would constrain monopoly pricing by the carriers.

Finally, competitors should be allowed the same rights of way as the carriers.

The Report alleges that Telecom's requirement to provide community service obligations (CSOs) has often been used as an excuse for wasteful ventures. It notes that Telecom has used CSOs as a justification for cross-subsidisation and in this way a justification for retaining its monopoly rights. The Report also notes the minor cost of CSOs to Telecom and proposes that in the medium term AUSTEL undertake further analysis of CSOs. It concludes however that in the short term no arrangements need to be made regarding CSOs.

Conclusion

In summary, the Report recommends that the present monopoly boundaries established under the Act for the benefit of the carriers should be eliminated to permit open competition. However, until open competition is fully implemented and accepted, Telecom and OTC should continue to be restricted to their present lines of business. AUSTEL appears implicitly to support one of the ATUG Report's recommendations. In the Sydney Morning Herald of 9 April 1990 it was reported that AUSTEL is recommending to the Minister that three mobile telephone operators should operate in Australia by the end of the year. One of these operators would include Telecom's existing MobileNet. The operators would be required to pay an annual fee of between 5 and 10% of their yearly revenue for a 20 - year licence. AUSTEL notes that MobileNet would have to be properly separated from Telecom with a separate accounting system and would have to operate as an arm's length company, a proposal which is in line with the recommendations of the ATUG Report.

While the eventual outcome of the Ministerial Review is as yet unknown, it is encouraging for the industry to note that the government's intention appears to be to accelerate micro-economic reform in this area, and that AUSTEL favours competition, at least in the Mobile Phone segment. Given this, the ATUG Report appears to have played a significant role in the Review and its recommendations will probably prove to be influential. It may be that the future path of the Australian telecommunications industry is that recommended by the ATUG Report.

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The Friedrich case

Grant Hattam and Craig Richards report on a series of cases in which John Friedrich sought to suppress publication of evidence arising in liquidation hearings into the NSC

John Friedrich was only apprehended after one of the most publicised man hunts in Australia's recent history. The face of the former Chief Executive Officer of the National Safety Counsel ("NSC") was constantly in the press as the search for Friedrich, for details of his alleged mysterious past and for the truth about the NSC's missing $244 million was pursued. Much of what was missing was apparently public money and, as a result, significant public interest existed in its whereabouts. When Friedrich was ordered to attend before the Master of the Supreme Court to be publically examined by the Liquidator of the NSC pursuant to section 541 of the Companies Code, it was inevitable that issues would arise concerning the likely impact that publicity of this examination would have upon Friedrich's subsequent trial. He had been charged with one count of obtaining financial advantage by deception and 91 counts of obtaining property by deception.

On 9 November 1989 Counsel for Friedrich sought suppression orders to have the Examination Court closed, and publication of any report of the examination banned. The application required consideration of a number of competing policies. Not only was it necessary for the Court to balance the familiar competing rights of freedom of speech exercised through the dissemination of information by the press and the individual's right to a fair trial, but the community's interest in the honest conduct

f companies, particularly those which con-ol public funds, also needed to be ap-raised.

After 17 court hearings involving four pplications for suppression orders, appeals nd stays of publication pending appeal, riedrich's evidence finally came into the ublic domain on 14 December 1989. In the nd, Friedrich had been successful in his pplication for a suppression order only nce, in his initial application made to the laster of the Supreme Court of Victoria. he Master's decision was reversed by both n appeal to the Supreme Court before a ingle judge and a further appeal to the Full ourt of the Supreme Court.

Supreme Court hearing

Sitting alone to hear the appeal from the laster's decision to grant one of the orders equested by Friedrich, Justice Cummins of he Supreme Court recognised that the real uestion in issue was whether any future ury before whom John Friedrich appeared vould be tainted or prejudiced by the dis-emination of information revealed in the iquidator's examination.

Justice Cummins believed that it was a relevant factor that under the legislation (section 541(12) of the Companies Code) a person being examined annot refuse to answer questions put to him n the ground that it might tend to incrimi-ate him even though such answers would ot be admissible in future criminal pro-eedings. He believed, however, that as the rial was at least six and probably twelve nonths away and that jurors are presumed ntelligent, robust, and drawn from a com-ulsory education system and are also sub-ect to the directions of the trial judge, a ontemporary jury would not be adversely ffected or prejudiced by publication of the iquidation proceedings. This conclusion was reached despite intensive interest in and grand scale publication concerning the facts surrounding the NSC and John Friedrich.

Full Court hearing

The Full Court heard two appeals. The first was from the decision of Justice Cummins; the second from the Master by leave of the Supreme Court. Both of these concerned the Master's refusal to grant an order preventing publication of other witnesses' evidence relating to Friedrich.

The Full Court spent considerable time examining the purpose of section 541(4) which states that examinations can be held in private if special circumstances exist. The court concluded that the purpose of this piece of legislation is to ensure that the public is informed of the affairs of a company which has gone into liquidation, to provide the opportunity for further information in relation to the company to come to light and to deter company officers from behaving fraudulently.

The Full Court assessed that publicity plays an important role in fulfilling these purposes. It did not consider that publication of the facts and circumstances coming to light in the liquidation proceedings was analogous to contempt. In contempt proceedings publishers choose to make a comment on a court hearing, but publicity is not just to be expected of liquidation proceedings, it is actually desired by the legislature. An order for non-publication of information revealed in these examinations would only be granted in the most exceptional circumstances. For example, where the answers to questions raised may directly establish guilt or give pre-trial discovery. This was not the case here.

Risk of interference

The Full Court considered that the main issue before it was whether there was a real or substantial risk that publication of the section 541 hearing would cause an interference with the administration of justice. This, it believed, should be balanced with the policy behind the operation of the legislation - that fair and accurate reports of examinations are in the public interest. On balance, the court did not find in the Friedrich case a real or substantial risk that publication would affect the administration of justice.

The court considered the fact that the trial was at least six and almost twelve months away and that if any element of prejudice borne of the Liquidator's examination continued to exist at the time of the criminal trial, the trial could be further adjourned. It also stated that a jury's intelligence should not be underestimated and that if fairly and accurately reported, the chances of a juror remembering the questions and answers from the examination which related to guilt were remote. The court concluded that the risk of the jury's view of the evidence presented at trial being overwhelmed by the press dealing with the Liquidator's examination must be slight. The Full Court rejected Friedrich's counsel's submissions that a general order should be granted for the reason that some unfair and inaccurate reports of the examination had in fact already occurred. The court stated that if a genuine complaint in this regard existed, the remedy was to take out an injunction against the particular publisher on the basis of proved contempt and the likelihood of repetition.

Liquidator's examination

The judicial decisions in Friedrich's case are strong statements to the effect that the public dissemination of fair and accurate reports of court proceedings will not be impeded simply because of the notoriety of an accused person. Both the Supreme Court and the Full Court of the Supreme Court showed high regard for the jury's intelligence and ability to concentrate on issues at trial. It should be remembered however that these findings were made in the context of the Courts' consideration of the purpose of a Liquidator's examination under section 541, and that publication of material revealed in such examinations was found to be an important factor in the satisfactory operation of the legislation.

The fact that at an examination an examinee may be required to answer incriminating questions means that even though answers to these questions may not be used against him at a criminal trial they can nonetheless be published. On the Court's findings, however, it could be argued (and strenuously as was argued by Friedrich's counsel) that a potential juror could be prejudiced by becoming aware of matters that could not legally be brought to his or her attention at trial.

The case is therefore important. If the court was not prepared to grant a blanket suppression order in these circumstances then this must be seen as a significant boost to the right of the press to fairly and accurately report court proceedings.

It should be noted however that the court did leave it open for the Master actually hearing the Liquidator's examination to suppress any particular question or answer that the Master thought might be prejudicial. This suppression would be subject, of course, to the right of either the press or the examinee to appeal from the Master's decision. Importantly also, the case demonstrates that the judges of the Supreme Court were not prepared to anticipate the content of Friedrich's evidence; and were not prepared to grant a blanket suppression order over any evidence arising in the Liquidator's examination without first knowing what evidence would be.

A final interesting point on the case is its demonstration of how the appeal process can in itself work as a suppression tool. It is not suggested that Friedrich's application and appeals were to achieve this end. Clearly, however - even though the court was not prepared to grant Friedrich's suppression application - the appeals following on from this application worked, in effect, to suppress the publication of evidence concerning John Friedrich. As was strenuously argued by counsel for The Sydney Morning Herald and The Sun newspapers during the proceedings, it appears that Mr Friedrich had achieved by appeal that which no court would grant.

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