REAL ESTATE INSTITUTE OF AUSTRALIA
ANNUAL POLICY CONFERENCE

Hyatt Hotel
Canberra
15 October 1998

"ASPECTS OF A NATIONAL COMPETITION POLICY"

Presented by
David Lieberman
Commissioner
Australian Competition
and Consumer Commission

INTRODUCTION

Thank you for inviting me to speak here today. There are a number of matters I would like to cover. I would also welcome any questions.

I would like to discuss with you the national competition policy reforms and how they impact on your profession, and I would also like to give you an insight into the Commission's application of the merger provisions contained in the *Trade Practices Act* and how merger action is viewed and assessed by the Commission.

First, a bit about the Commission and its role. The Australian Competition and Consumer Commission is a Commonwealth statutory authority whose primary responsibility is ensuring compliance with the *Trade Practices Act 1974*, which is Australia's principal instrument of competition and national consumer protection policy and to administer the *Prices Surveillance Act 1983* plus various other pieces of competition and consumer legislation. My discussion today will concentrate on the *Trade Practices Act*.

The Trade Practices Act 1974

The objectives of the *Act* are to prevent anti-competitive conduct, thereby encouraging competition and efficiency in business, and resulting in a greater choice for consumers (and business when they are purchaser) in price, quality and service; and to safeguard the position of consumers in their dealings with producers and sellers and business in its dealings with other business.

Essentially the *Act* is divided into the following parts:

- Part IV which deals with anti-competitive practices;
- Part IVA which deals with unconscionable conduct;
- Part IVB which deals with mandatory codes of conduct;
- Part V which deals with unfair trading practices
- Part VA which deals with the liability for defective goods; and
- Part IIIA - which deals with access to essential infrastructure facilities.

Part IV

There are two broad principles which underlie Part IV of the *Act*. These principles are:

- That any behaviour which has the purpose, or effect, of substantially lessening competition in a market should be prohibited.

- Such behaviour should be able to be authorised on the basis of the current authorisation tests, which essentially gives the Commission power to authorise anti-competitive conduct which is likely to result in a benefit to the public.

I will return to the authorisation process later in the context of mergers.

The Commission is actively investigating a number of significant anticompetitive agreements, including a matter involving the Real Estate Institute of Western Australia. On 16 June 1998 the Commission instituted proceedings under the *Act* and the Competition Code Western Australia against the Real Estate Institute of Western Australia Incorporated (REIWA), its Executive Director, and various other parties in relation to an alleged price fixing agreement. The Commission also alleges that certain REIWA rules of practice are anti-competitive.

The Commission alleges that in June and July 1997, REIWA distributed an agreement to five colleges of TAFE in Western Australia in relation to a training course known as Certificate III in Property Services.

The agreement contained a clause by which the colleges agreed not to provide the training course to students at a fee less than $780. It is alleged that two colleges, South West Regional College of TAFE and West Coast College of TAFE (then known as North Metropolitan College of TAFE), entered into the agreement with REIWA.

The Commission alleges that the agreements contravene the price fixing provisions of the Trade Practices Act and that REIWA's Executive Director and its legal adviser were involved.

The Commission also alleges that certain of the REIWA rules and rules of practice for member real estate agents are anti-competitive in that they have the effect of:

- requiring that, where any member of a franchise group wishes to become a REIWA member, all franchisees of that group also be members;

- preventing members from approaching vendors who are dealing exclusively with another agent; and

- preventing members from offering certain incentives or inducements to consumers.

It is seeking orders against all parties including declarations, findings of fact, injunctions, costs and orders requiring the publishing of public notices and the institution of trade practices compliance programs.

Parts IVA & IVB

Part IVA of the *Act* contains the prohibitions against unconscionable conduct.

The Commission recently instituted proceedings against the owners of Farrington Fayre Shopping Centre in Western Australia, alleging that the owners dealt with certain tenants in an unconscionable manner in contravention of section 51AA of the

Trade Practices Act. The Commission believes that the term "unconscionable conduct" covers cases where:

- a party to a transaction suffered from a special disability, or was placed in some special situation of disadvantage, in dealing with the other party; and
- the other party was in a superior bargaining position; and
- the weaker party's disability was sufficiently evident that the stronger party knew, or ought to have known, about it; and
- the stronger party took unfair advantage of its superior position or bargaining power.

The ACCC alleges that in 1996 and early 1997 the owners implemented a strategy whereby they refused to grant renewals, variations or extensions of leases to three tenants unless those tenants withdrew from legal proceedings before the WAS Commercial Tenancy Tribunal against the owners and/or agree not to pursue legal rights against the owners.

The ACCC believes that these tenants were at a special disadvantage when bargaining with the owners because of their financial dependence upon renewal, variation or extension of their leases. The ACCC alleges that it was unconscionable for the owners to take advantage of their superior bargaining position to have legal proceedings withdrawn and/or rights to future proceedings waived.

Despite this current action, the problem with section 51AA is the relatively high threshold of proving "special disability". In September 1997 the Government released its *New Deal, Fair Deal* report, setting out proposals to provide small business with much improved legal protection against unfair trading and access to effective enforcement mechanisms. As a result of this report, legislation amending the *Trade Practices Act* was passed in April this year. The *Trade Practices Amendment (Fair Trading) Act 1998* inserted into the *TPA* a new section 51AC, which is designed to fill the gaps in the existing section 51AA and to protect small business from unconscionable commercial conduct. In addition, a new Part IVB has been inserted, which provides for industry codes to be enforced under the *Act*.

The new unconscionability provision now has a "shopping list" of matters that the Court can take into account but, unlike s.51AA, it is restricted to transactions for the supply or acquisition of goods and services to a value of less than $1 million.

The new unconscionable conduct provision (s. 51AC) aims to provide protection for small business against exploitative business conduct. It will prohibit the stronger party exploiting its bargaining advantage to impose contractual terms, or engage in conduct, that would be unconscionable in the context of the particular commercial relationship between the parties.

Under the new s. 51AC, the court may take into account a range of circumstances in determining whether a business has been subjected to unconscionable conduct.

One of the interesting things that Courts can now take into account in determining unconscionability is whether the requirements of industry codes (both applicable

codes and otherwise) are observed. This means that compliance with mandatory codes such as the Franchising Code and Oilcode, and voluntary industry codes such as that being developed for the film industry, may be taken into account in determining whether conduct by a larger party is unconscionable.

Part V

Part V of the *Act* contains a range of provisions aimed at protecting consumers and businesses. These provisions can largely be seen as a means of promoting fair competition by addressing problems of insufficient information in markets.

COMPETITION POLICY

There has never been greater recognition than in the past three years of the need for an effective competition policy in Australia.

Federal, State and Territory Governments, business, unions, community groups and the Australian public generally accept that competition in markets for goods and services is essential for economic efficiency. Whilst markets left on their own very often produce competitive outcomes, there is also general acceptance of the need for the adoption of competition policies and pro-competition strategies.

In fact, the 1993 Hilmer Committee Report highlighted that:

- competition policy is the key to achieving greater efficiency in the Australian economy in the remainder of the 1990s - and no doubt in the first decade of the new millennium;

- competition policy is much broader than just the *Trade Practices Act*, important though that is;

- a substantial redesign of competition policy is needed, with an extension of its coverage and the use of new policy tools and institutions in newly covered areas;

- competition policy needs to have a national focus but, at the same time, to be based on Federal-State co-operation;

- competition policy needs to apply universally to all forms of business enterprise; and

- competition policy needs to be general, not industry specific, in its rules and administration.

Competition policy is not just trade practices law. It includes both policies which are specifically directed at promoting competition, and policies which have an indirect impact on competition. Its impact may be on either market structure — influencing the incentives for competitive conduct, or have a direct impact on market conduct.

This embraces a wide range of policy instruments concerning trade, intellectual property, foreign investment, tax, small business, the legal system, public and private ownership, occupational licensing, contracting out, bidding for monopoly franchises and so on, as well as both the restrictive trade practices and consumer protection provisions of the *Trade Practices Act*. Some of these policies have an obvious direct effect on competition, whilst others affect the general economic environment and, ultimately, the general climate of competition in the country.

Competition policy questions arise at all levels of government. At Commonwealth level, recent examples include policies concerning telecommunications, Pay TV and aviation, to name but three. At State and Territory level, competition policy includes issues concerning privatisation, deregulation of public utilities and agricultural marketing boards, occupational licensing, the professions and many others. At local government level it includes issues such as contracting out.

Competition policy is not simply a series of measures that positively promote competition, such as the application of the *Trade Practices Act*. A large element in competition policy is the removal of legislative obstacles to competition. For example, deregulation affects market structure and the incentives for competitive conduct. This however is the provence of governments and review of Commonwealth, State and Territory legislation.

The *Trade Practices Act* is arguably the most important single piece of micro-economic reform ever effected in this country and it will continue to have a profound, pro-competitive, economically beneficial effect in coming years, especially as its effects spread to new areas, a matter which must be the top priority for national competition policy.

The Council of Australian Governments (COAG) agreed generally to the principles of the competition policy articulated in the Hilmer Committee Report. COAG agreed to a National Competition Policy which has been compassed in Federal legislation; the Competition Policy Reform Act 1995.

IMPLICATIONS FOR THE REAL ESTATE INDUSTRY

What are the implications of the National Competition Policy for the professions and, in particular, real estate agents?

For constitutional reasons the *Trade Practices Act* mainly applied to corporations and to other organisations engaged in interstate trade and commerce and not to unincorporated enterprises operating intrastate. Although in the Territories the Act had total effect.

By and large, real estate agents conduct their business as incorporated entities, and they and their institutes are within the jurisdiction of the *Act*. However, any Commonwealth, State or Territory law can specifically authorise conduct that would otherwise breach the *Act*. For example, real estate agents in some States and Territories abide by fee scales which have been laid down by Governments. The inability of the individual agents to determine his or her own fees imposes an obvious

limitation on the way in which agents might compete in the market. However, when fees, or a scale of fees, are set by a government there is no contravention of the Trade Practices Act.

Similarly the imposition of a requirement to obtain a licence to practice, and the setting of qualifications to be met before this can be achieved, constitutes regulation which has implications for competition for the services to which the licensing requirement pertains.

It will be clear to you, therefore, that one of the six recommendations of the Hilmer Report - namely that concerning review and reform of anti-competitive regulation - has direct consequences for the real estate agent industry.

In this regard I note that the real estate agent industry is closely regulated by State and Territory governments. However, a number of those States and one Territory are currently examining the scope and nature of that regulation.

The former Prices Surveillance Authority made the following comment about the licensing aspects of that regulation in its Report on the real estate industry.

> "The Authority concludes that the current approach to licensing in Australia warrants critical examination. The licensing requirements are excessive and constitute a barrier to innovative entry to the market. In particular, the educational qualification and experience requirements for agents exceed those necessary to reduce the potential risks for consumers arising from dishonest or incompetent agents.
>
> The requirements inhibit competition on fees and innovative service provision through restricting entry into the industry. Industry costs are increased through compulsory educational courses, fees and restrictions on operational flexibility. Also the multiplicity of licensing schemes, eight in total, creates inefficiencies in interstate operations and adds to the cost of agency business".

COMMISSION REVIEW OF REAL ESTATE AUTHORISATIONS

This leads me naturally to the issue of authorisations the ACCC has granted in the past, and our obligation to ensure that, by the means of the authorisation process, we do not entrench practices or arrangements which might otherwise have evolved, or been discarded, in response to market forces. This review seeks to support deregulatory moves and not to inhibit these.

The Commission has the role, through the authorisation process, of adjudicating on proposed mergers or certain anti-competitive practices that would otherwise breach the *Act*. Authorisation provides immunity from court action and is granted where the Commission is satisfied that the practice would deliver significant public benefits. This power is almost unique among world competition authorities. This protection is against Commission and private action.

Authorisation has particular relevance in markets which are being deregulated. Authorisation will often supplant legislation including licensing schemes. The process of deregulation and regulation review is expected to result in further applications for authorisation.

Quite simply, since many authorisations were granted, micro economic reform, industry reform and technological change have radically changed the operating environment. Along with these changes, public expectations have also changed and with them the meaning of 'public benefit'.

The Commission therefore has an obligation to systematically review past authorisations because if it does not, there is a risk that the authorisation itself may result in market distortion. The *Trade Practices Act* gives the Commission the power to review authorisations on a number of bases, the most relevant of which, for present purposes, is 'material change of circumstances'.

The mechanism by which an authorisation review is commenced is the issue of a notice under section 91(4) of the *Act*. This notice must set out the basis for the Commission's review. Some time ago the Commission issued three notices - one each to the REI of the ACT and the REI of South Australia concerning their respective maximum fee scales, and one to the REIA with respect to the code of ethics which is adopted Australia-wide.

Firstly, with respect to authorised maximum fee scales.

Maximum fee scales have been in operation in South Australia and the Australian Capital Territory for many years. It is incumbent on the Commission to look at the appropriateness of these authorisations in the current environment. The rationale for authorisation, in both cases, was that the fee scale comprised part of a package that would serve to stimulate fee negotiation and price competition in the industry.

It is permissible, I think you will agree, for the Commission to think, aftera significant period of time, that the package has either worked - in which case there is price competition at a level that makes the need for maximum fee scales irrelevant. Or alternatively, that the package has not worked, and significant price competition does not occur - in which case the authorised conduct is at best useless in promoting price competition, or at worst, detrimental to it.

As it turned out, the REISA supported the revocation of the authorisation of the maximum fee scale. It asked, however that the revocation not come into effect until 1 January 1996 so that it could educate both its members and consumers about the proposed change. The Commission agreed to this request.

The particular changes on which the Commission relied to revoke the REISA's authorisation were;

- that fee negotiation is characteristic in the SA market;
- that the maximum scale of fees has not been updated regularly; and

- training provided by the REISA to its members means that they are better equipped to negotiate an appropriate fee.

The Commission has also been negotiating with the REIACT in relation to the possible revocation of the authorisation granted to its maximum fee scale. I understand that the matter is currently being considered by the Commission.

Now returning to the REIA's code of ethics which the Commission authorised in July 1981, and which authorisation was subsequently revoked in 1994..

There has been growing recognition that the code needs to be updated. It remained unchanged since 1981, and as I think I have made clear, since then some significant changes have come to bear on the industry.

The Commission has done its own brief evaluation of the code, and I have to say that if this code was presented to the Commission for authorisation today, there is doubt that authorisation would be granted.

Let me explain.

In terms of the Commission's standards for authorisation of codes, and in terms of community standards, the real estate code of ethics is dated. This will increasingly be the case as fees and other regulatory controls are de-regulated. That this will happen is, I think, more likely to be the case than not.

The code was formulated in an environment of close government regulation of the industry in every jurisdiction. The code seems to be more concerned with relationships between the service providers, than with the relationships between those service providers and consumers.

It possibly would not achieve authorisation today in its present form on account of what is absent, and on account of requirements which are more onerous than the general law without some obvious offsetting public benefit.

Examples of gaps are:

- *lack of enforcement provisions incorporated in the scheme of the code itself.* These should be provided for in the interests of completeness, credibility and consumer confidence. As this code is intended to apply uniformly, **nationally**, it would be reasonable to expect uniform standards for enforcement.

- *complaints and disputes* - the code provides for dealing with controversies between members, but does not appear to provide any facility to the public for handling and resolving consumer complaints. In this way, it appears member focussed without a balance of consumer focus.

- *review* - the code does not contain provision for its own review. This capacity would equip the code to adapt to changing circumstances and would enable the code to move with the dynamics of the industry.

- *ability improve the standard and quality of service* - a code of ethics and/or practice has the ability to do this. In a general sense the code promotes honest behaviour. It could do a lot more here. It could reflect a greater recognition of the operating environment, a greater customer/client focus and focus on the industry's relationship with the community in general.

- *external participation* - this is not provided for in the code. The willingness of an industry to permit external participation can be a measure of its ability to be accountable to and responsive to the public it serves, and hence a measure of its ability to deliver the public benefit offered by a code of ethics or practice.

When the Commission contemplated taking its first formal move in relation to the code of ethics authorisation, we contacted the REIA. We had discussions with that organisation. We were very impressed to discover that the REIA had already constituted a committee whose task it was to draft a fresh code of ethics and a code of practice. I understand that the REIA has lodged an application for authorisation for its Code of Conduct, and it is currently being considered by the Commission.
.

MERGERS

I now intend to turn to a discussion of the merger and acquisition provisions of the Act, which are contained in Part IV and Part VII. These provisions have become more relevant to professionals in recent years, including architects, due to the moves towards rationalisation that have been occurring in many professional service industries.

The Commission has the role of enforcing s.50 of the Act. This section prohibits acquisitions which would have the effect of substantially lessening competition in a substantial market in a State or in a Territory.

In 1992 the Commission published Meger Guidelines, to be used as an indication of the Commission's thinking in assessing mergers. These Guidelines were revised in 1996. The Revised Merger Guidelines reflect the Commission's experience in assessing over 500 mergers since the publication of the draft Guidelines in 1992.

Experience shows the basic approach, which follows overseas practice and Court and Tribunal decisions, to be sound. There has been little or no change in the core analytical approach outlined above, adopted in 1992. However, some changes have been made in the application of the guidelines in the light of experience in the past four years. There has been greater recognition of (a) the role of merger law in deregulating sectors and (b) the increased exposure of business to global markets.

There are several major thoughts that underly the development of the revised merger guidelines. These include the national competition policy goals, increasing

globalisation and special considerations for mergers occuring in areas that are being privatised.

Merger policy makes an important contribution to the achievement of a competitive and productive Australian economy. Regulation of anti-competitive mergers is an important part of National competition policy. Trade practices merger law conforms with the principles of natural competition policy agreed to by all Australian Governments when the Hilmer Review was established. These principles included:

1. No participant in the market should be able to engage in anticompetitive conduct against the public interest;

2. Conduct with anticompetitive potential said to be in the public interest should be assessed by an appropriate transparent assessment process, with provision for review, to demonstrate the nature and evidence of the public costs and benefits claimed. (See Hilmer Inquiry, Terms of Reference).

Regarding globalisation, the Commission has not opposed any mergers in markets with substantial import competition in the past five years.

Merger policy is critical to ensure competitive input markets for trade exposed sectors. The Commission's priorities remain with mergers in the non-traded goods and services sector.

The Commission has recently published a detailed statistical analysis of mergers. The statistics show that in the latest year available 1996-97 that only about five per cent of mergers were opposed and of them some were later not opposed once satisfactory undertakings had been given. In some respects the five per cent figure overstates the extent of the Commission's opposition because many mergers do not raise competition issues at all and are not considered by the Commission. On the other hand, there may be some mergers that are not brought forward to the Commission because the nature of the section 50 prohibitions is well known. However it is not the Commission's impression that business people are shy in coming forward to sound it out about possible mergers, even impossible looking mergers, There have not been many of these.

Business people frequently raise the question of whether or not the merger provisions of the *Trade Practices Act* prevent the mergers necessary for Australian firms to be of the size necessary to take part in global markets.

The answer to this is rarely, if ever, and, if so, then in circumstances where it is on balance undesirable because of the anti-competitive effect in the Australian market. The fact is that the Commission has not in the last seven years opposed mergers where imports make up more than 10 per cent of the relevant market (this is not a rigid rule but it is a fact of history). In other words, the Commission has not opposed mergers in sectors already exposed to international trade competition. It is in this sector that the argument for firms needing to be large to take part in world markets is most relevant. Moreover, even where there is no important competition, the

Commission opposes relatively few mergers, and where it does some of them can be resolved by undertakings.

If a merger is anti-competitive, authorisation is possible on public benefit grounds. Since 1993, the Act explicitly has stated that export generation, import replacement or contributions to the international competitiveness of the Australian economy are public benefits.

I would also like to point out that the real agenda of merger policy relates largely to the deregulating sectors of the economy. Deregulation gives rise to circumstances in which mergers are likely to occur. Some mergers are necessary for efficiency and should not be blocked. Others are sought to undo the pro-competitive effects of deregulation and may need to be opposed.

Merger policy is not some necessary evil. Rather it has a positive contribution to make to Australia's international competitiveness. If mergers are allowed to occur without the application of competition law, then our exporters and import competitors will be supplied uncompetitively and inefficiently and their capacity to compete in world markets will be hindered.

Increased exposure to global markets is placing pressure on domestic firms to reduce costs, improve quality and service and innovate in order to become more competitive in those markets. Mergers can play an important role in achieving such efficiencies. These factors are reflected in the revised Guidelines, which:

- provide clear guidance on the Commission's assessment of import competition; and
- place greater emphasis on the relevance of efficiency in merger assessments.

Specific steps taken by the Commission include:

- greater emphasis on the relevance of efficiency considerations under section 50. Traditionally when firms argue that a merger may lead to greater efficiency this has been regarded as most relevant to applications for authorisation of mergers. The Guidelines now expressly recognise that in certain circumstances a merger that reduces costs may contribute to improved competition and that this may be taken into account at the stage of considering whether or not a merger is likely to breach section 50 (which prohibits mergers likely to substantially lessen competition).

- adoption of an indicative position of not opposing mergers where a sustained and competitive level of imports exceeds ten per cent of the market.

- a review of other less direct impacts of internationalisation of trade and commerce on domestic competition to see whether any further general revisions should be made to the Guidelines.

- adoption of the Industry Commission's suggestion to consider the implications of liberalising the market share thresholds below which mergers will not be

scrutinised. The Commission will in 1996-97 review all mergers against both the current thresholds and those suggested for consideration by the IC and publish the results of that review.

- in the (many) cases where mergers are notified but fall below the existing thresholds there will be a fast track review process. The same may apply to mergers falling below the threshold suggested for consideration by the IC.

- the impact of deregulation and privatisation on market definition and the Commission's role in reviewing privatisations and mergers in deregulating industries, have been specifically dealt with in the revised Merger Guidelines.

- the impact of changes over time and functional dimensions of competition on market definition has been clarified.

- detailed guidance on the Commission's approach to accepting and enforcing section 87B undertakings.

- discussion of the circumstances in which the Act will apply to overseas transactions and partial share acquisitions.

- discussion of the extension of the Act to mergers in the non-corporate sector and the removal of State powers to exempt mergers, following the Hilmer review process

- clarification and further discussion of the Commission's approach to efficiency factors in the authorisation process.

Treatment of efficiency gains

Efficiency gains by one firm will generally improve its competitiveness relative to its rivals. However, in the context of the TPA, the focus is on the competitive process within the market. Generally, efficiency gains from mergers are thought of in association with authorisation; nevertheless, they may be relevant also in relation to section 50. This will be the case wherever the outcome of efficiency gains are such that the market becomes more competitive despite possibly increased market concentration, higher entry barriers and the like. For example, had Davids Holdings proposal to acquire either Composite Buyers or QIW been brought to the Commission under section 50, it may not have been objected to because the efficiency gains from the merger were likely to increase competition between independent grocery retailers and the national grocery chains within the market for the supply of groceries to consumers.

Globalisation has encouraged Australian firms to increase their efficiency in production, distribution and management; and has encouraged innovation. The Commission has from time to time been criticised for its merger decisions on the grounds that it prevents Australian companies which operate in a small domestic market from achieving the necessary economies of scale to enable them to compete in international markets or to compete with imports. A particular company may argue

that although its proposed acquisition will lessen competition in the Australian market, its activities are of such minor significance in relation to the whole economy, that this should be overlooked because the cost savings thus achieved will improve Australia's balance of payments. Yet if a number of mergers were allowed to proceed on this basis, the effects on the domestic economy and hence on international competitiveness may not be negligible. This is really an argument which involves weighing costs and benefits and so is more properly considered under authorisation.

It should be recognised, however, that, like imports, internationalisation of markets can impose competitive constraints on the behaviour of an exporter in its domestic market(s). For example, Australian firms trade with the subsidiaries of multi-national companies in Australia and overseas. They are unlikely therefore to be able to raise domestic prices to the Australian subsidiaries of those companies following a merger, while charging lower prices overseas. Similarly, they are unlikely to charge higher prices to otherwise similar Australian companies without overseas links.

In addition, with declining tariffs and lower freight costs, it is more difficult to prevent arbitrage in tradeable products and so the efficiency improvements required to enter international markets are also likely to flow through to domestic consumers. Consequently, efficiency gains resulting from a merger aimed to increase international participation may be relevant in assessing a merger under section 50 of the TPA

The Role of Authorisation

Even where a merger would breach section 50 of the TPA, it may be authorised. If there are sufficient public benefits to outweigh the public detriment from the substantial lessening of competition associated with the proposed merger, then the parties may be advised to proceed via the authorisation route. In assessing whether a merger results in a net public benefit, a variety of factors are considered. In addition, a 1992 amendment to the authorisation provisions requires consideration as a public benefit of any significant increase in the real value of exports and/or a significant substitution of domestic products for imports, and all other matters that relate to the international competitiveness of any Australian industry.

Conclusion

In conclusion, I would like to reiterate that the real estate industry is subject to the Act in many ways, under both the consumer protection and the competition parts of the Act.

Certain anti-competitive agreements and codes of conduct between competitors and industry participants have been the subject of ACCC authorisations, because sufficient public benefits exist from those arrangements to outweigh the anti-competitive effect. To the extent that such behaviour is authorised, companies may continue to use such agreements, but any further agreements between competitors as to price, exclusive dealing arrangements or any other matter that is usually the subject of competition would breach the Trade Practices Act.

Australia's current era of competition policy and economic reform is taking place together with the increasing globalness of the marketplace. Already the implementation of the microeconomic reform agenda has seen massive change within the Australian economy and the changes to the Trade Practices Act is likely to promote competition on a fair and efficient basis throughout the whole economy for the benefit of both business and consumers.
Review and reform of ancti-competitive regulation, together with universal application of the TPA, together have ramifications for those professions with which your industry is closely associated. The Commission has undertaken studies of the benefits of exposing profesisons to the disciplines of market competition as a means of improving efficiency and competitiveness and the welfare of the community at large.

Thank you.