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Competition Policy and the Internet

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Professor Allan Fels

Chairman

Australian Competition & Consumer Commission

Introduction

Let me begin with a quote,
"As the century closed, the world became smaller. The public rapidly gained access to new and dramatically faster communication technologies. Entrepreneurs, able to draw on unprecedented scale economies, built vast empires. Great fortunes were made. The Government demanded that these powerful new monopolists be held accountable under antitrust law. Every day brought forth new technological advances to which the old business models seemed no longer to apply. Yet, somehow, the basic laws of Economics asserted themselves, Those who mastered theses laws survived the new environment. Those who did not failed.

A prophecy for the next decade? No. This is a description of what happened a hundred years ago when the twentieth century industrial giants emerged, Using the infrastructure of the emerging electricity and telephone networks, these industrialists transformed the world economy, just as today's entrepreneurs are drawing on computer and communications infrastructure to transform the world's economy."
From C Shapiro, and Hal R Varian, *Information Rules*, Harvard Business School Pres 1999 pp 1 (quote slightly altered)

My theme tonight is that the forces of new technology, globalisation and policy liberalisation which are transforming the modern economy are generally beneficial for the process of competition, for economic growth and for most consumers and sellers of all kinds. But there needs scrutiny on the part of competition and consumer protection regulators all around the world to ensure a maximum contribution to the economy and the public.

These forces which of course are reflected in the Internet itself can create new products, new sources of supply, new means of distribution and greater efficiency; they greatly widen consumer choice. However, these forces while generally promoting competition can give rise to new sources of market power and to new forms of anti-competitive behaviour which require vigilance by competition regulators everywhere. In addition while consumers generally benefit, significant consumer protection issues arise which require action both by consumer protection

regulators and by business itself.

One reason for my conclusions is simply the fact of human nature. So long as we have businesses and a market economy business will wish to maximise profits. The key aim is not to necessarily maximise public welfare but to maximise the outcome for their own business. As Adam Smith pointed out long ago, this generally works for the benefit of the whole economy and whole population so long as there is competition. But, in the absence of any competition and consumer protection laws there is often an incentive for business to engage in anti competitive behaviour and as the nature of the economy changes to engage in new forms of anti competitive behaviour adapted to the new circumstances. In the absence of a competition law, cartels, anti competitive mergers and misuse of market power become tempting to business because they typically create opportunities for greater profit. Also, in the absence of consumer protection laws, there are some opportunities to enhance profits at least on the part of businesses taking a short-term view at the expense of uninformed or otherwise exploited consumers.

I am sometimes asked if competition and consumer protection law will one day become unnecessary in the New Economy. My answer is "no" so long as we have a market economy and human nature, but it needs to adapt to recognise how the new forces at work in the economy greatly lessen the need for application of competition law and consumer protection policy in many areas, while creating needs for its application in other new developing areas of the economy in certain circumstances.

Growth in the use of Internet is fundamentally changing the way that Australians communicate with each other and the rest of the world.

Last year almost half of the adults in Australia accessed the Internet. Australians are increasingly using the Internet to do business, transfer funds, pay bills, search for information and communicate with each other. Over 2.7 million homes are now connected to the Internet with adults now accessing the Internet more often from their home connection than any other.

The explosion of growth in this industry in the last few years, and its increasing importance to both consumers and business, has seen an increasing amount of attention paid to way in which Internet services can be delivered and the way in which Internet products are sold.

Take new technology. Whilst the new technology generally liberates competition, in some cases it creates new monopolies and new sources of market power. These new monopolies may also be able to successfully use their power in one set of markets and "tip it" or leverage it into related markets. This is a notable feature of the Microsoft case. This may be assisted by the control by these monopolies of networks, the use of which is essential to operate in other sectors.

One view is that competition law should not apply in these sectors. Some economists, most notably those inspired by the Austrian school of Hayek and Schumpeter, believe that competition law should have no role in high technology areas. They argue that any market power will soon be displaced by further advances in new technology itself. Each new form of technology will quickly be superseded by newer forms of

technology. Moreover they contend that regulators and courts will be quite unable to understand and foresee the effects of technology and their decisions are therefore likely to be mistaken.

In the Microsoft case, the antitrust division of the Department of Justice, and now Judge Jackson, have signalled the opposite. They believe that some areas of new technology give rise to large accumulation of market power in a short time. The scope for large scale exploitation of consumers and for large scale anti-competitive conduct and for restraints on innovation itself is immense. Furthermore, the damage can occur in a very short time. They see a need for fast, strong and effective application of competition law in these situations. They are particularly concerned at the use of market power in one market to spill over into the weakening of competition in other related markets and the exploitation of consumers.

Moreover, the Department of Justice also believes that it is not so difficult to understand what is happening in many of these markets. The Microsoft case is a good example. Despite the technological complexity it became quite clear what was occurring. It was made even clearer by an examination of the internal documentation and the e-mails within Microsoft. Competitors of Microsoft, as well as some customers, were able to fully inform the Department of Justice about the extent of the conduct.

At this stage everyone is waiting to see what the outcome of the case is. Penalties would seem inadequate and insufficient. An attempt to deal with Microsoft by achieving behavioural undertakings failed in the mid 1990s. Divestiture of a vertical or horizontal kind seems to be the main option under consideration. One of the most interesting aspects of the Microsoft case - and a point for the future - is that more complex, and in some instances, more drastic remedies may be required in competition law cases as they deal with more complex subjects.

It should not be thought that the Microsoft case is an isolated one. In recent years there has been a great deal of activity by US regulators in high tech areas, with interventions in mergers being especially notable.

A key focus has been on network economics where the accumulation of market power in sector after sector seems to be very great. The field of network economics raises new and important challenges for competition policy in the utilities area and the high technology areas and in the financial sector and will be at the centre of much antitrust action for years ahead. Intellectual property issues often arise in these settings. They too will move to the centre of competition policy in the years ahead even in Australia.

Globalisation

The increased interdependence between the nations of the world is generally beneficial for competition and for consumers. More sources of supply become available. There are more diverse offerings, there are more competitors than in a closed market, consumers have a wider choice and more suppliers to choose from. One consequence of globalisation is that many more economic transactions are of an international character involving participants in different nations, supplying goods and services on a multinational basis and making decisions that affect many countries

simultaneously.

Anti-competitive behaviour is not exempt from this trend. There are an increasing number of international transactions that raise serious issues about the effects on competition. These include global mergers, global cartels, global misuse of market power and global consumer protection questions.

The simple fact is that whenever Governments liberalise and seek to unleash the forces of competition, elements in the private sector will seek to resist. Their actions will take various forms. The sharp increase in the number of international cartels detected in recent years, although partly reflecting better detection methods, also probably reflects an increase in business actions designed to counter the effects of reductions in trade and investment barriers. As trade barriers fall, businesses in different countries, which have previously had national markets largely reserved to themselves find, on the one hand that they face the prospect of competition from larger players overseas who had been denied entry into their markets previously, and on the other hand have the opportunity of entering the very markets of those players which threatened them in their own markets. These circumstances often set the scene for attempts by business in different countries to enter into international conspiracies and cartels to share markets, to agree on prices and to avoid undue competition with one another.

A further reaction is that merger activity may be triggered for the same reason. This is not to say that much global merger activity is not a logical commercial reaction to the integration of world markets made possible by trade liberalisation as well as new technology and falling transport costs. However, some international mergers seem to be a calculated attempt to ward off the pro-competitive effects of international liberalisation.

Competition agencies are organised on a national basis. There has been very limited cooperation between them over the years. In some cases the governing statutes make cooperation well nigh impossible since confidential information cannot normally be shared. Despite the potentially serious effects of neglecting the development of an international approach to competition policy in today's world, the state of cooperation and harmonisation between the competition laws and agencies of different countries is quite backward compared with the developments which have been occurring in areas such as corporate frauds, securities law, tax law, money laundering and so on.

There is starting, however, to be a significant upgrading of the international dimension to competition policy. Cooperation, agreements and treaties between countries are all on the increase. At the bilateral level Australia and the United States have recently concluded the most progressive treaty in the world concerning the sharing of confidential information . Australia stands to benefit from this before long as a result of USA investigatory activity in the area of global cartels (information cannot be shared in relation to mergers). Cooperation in a working sense between the USA and the European Union has greatly increased in recent years. There is also a great amount of plurilateral and multilateral activity at the OECD, World Trade Organisation, APEC and in other regional groupings around the world. A group of Munich academics have even proposed a world competition law, but this lies many decades off and may well be an obstacle to the advancement of practical cooperation

in the short term.

Liberalisation

Liberalisation of both international trade and foreign investment and of the domestic economy in the form of deregulation will also be central to the agenda of Competition Policy in the future.

Liberalisation also tends to be beneficial for consumers. However, for liberalisation, whether international or domestic, to work effectively, it needs to be complemented by an effective competition policy. Without an effective competition policy the beneficial effects of liberalisation will largely be undone.

There is a similar picture regarding domestic deregulation. Deregulation is occurring continuously on a large scale in numerous countries, including Australia. One has only to look at the high rate of merger activity in deregulating areas such as the dairy industry, the energy sector, the telecommunications sector and so on to understand how deregulation, whilst generally having the effect of promoting competition, also establishes incentives within the private sector for anti competitive behaviour. The behaviour may take the form of cartel activity, the potential misuse of market power or anti competitive mergers. In the same way that globalisation and new technology drives many commercial mergers, deregulation, with its broadening of markets, often requires substantial restructuring of an industry and often brings about mergers which simply are a logical and efficient response to the market broadening. However, a subset of mergers in deregulating areas may have the effect of undoing the pro competitive effects of deregulation. These mergers and other forms of anti competitive activity that may emerge - anti competitive agreements and misuse of market power etc - would all come under the scrutiny of competition regulators and will be very high on their agenda of concerns.

I have some similar views about consumer protection questions, but before doing so, I would like to comment on some specific competition issues. These are:

- E-commerce;
- Broadband access, and;
- Intellectual property law.

E-commerce

In its "first stage" of development, most so called "New Economy" competition issues arose in the context of infrastructure development and access - mainly the telecommunications and information technology sectors and newly introduced information products which developed to be distributed over the Internet.

Over the last 12 months we have seen the development of new Internet applications - e-commerce applications which essentially have broad implications for all business and consumer activity.
Examples of e-commerce applications include new distribution channels for

information and other products which can be delivered electronically such as computer software, CD's, financial products, professional services. Also, other products can now be traded over electronic means and then physically delivered by mail, parcel, truck etc. Such transactions can occur at the retailing level (B2C), or at various points of the supply chain (B2B).

A fundamental question in all this is whether the "information explosion" created by the Internet delivers price transparency and more efficiencies to markets, or whether such opportunities also contains some dangers for competition and consumer protection.

As a general rule, its business as usual at the Commission in the New Economy - the same Part IV rules and access regulation issues arise in the New Economy, just as they did in the Old Economy. But there are some new challenges emerging that I will speak about briefly tonight.

Application of competition regulation to new structures such as B2B collaborative marketplaces
Lately, regulators have been giving a great deal of thought to the treatment of B2Bs under competition laws. At the heart of the matter, competition regulators see that when a group of competitors get together to create a central communications centre (ie an electronic "hub") for trading then this can raise competition issues. Electronic hubs can deliver greater price transparency.

By this I mean that a buyer can access prices from a range of sellers located anywhere in the world at the press of a button. This can clearly stimulate competition as buyers have an opportunity to compare prices and other offerings from the widest range of sources instantly, and accordingly are put in a better negotiating position.

From a seller perspective B2B give them a wide range of immediately accessible customers from all around the world and the ability to enhance the efficiency of their own operations, for example, by standardising their order forms in an electronic format. This can reduce processing costs and errors, and reach a wider range of potential trading partners cheaply.

There may however be more opportunities for competitors to manipulate prices. The types of questions to be asked are: Will the owners of the hub be in a position to see who their competitors are trading with, when they are trading and at what price? Will this facilitate price fixing or collusion? Will the owners be in a position to exclude their competitors from using the hub or develop rules which favour their own ability to trade via the hub? Will small business be able to afford to participate in these hubs? If the hub is established by a group of buyers rather than sellers, will this lead to lower prices and greater consumer welfare? If the strongest players in an industry get together to form a hub, will this prevent the development of competing hubs?

A key consideration is to assess whether alternative delivery mechanisms will still be effective competitors to B2B hubs. One of the values of a hub is that it enables many buyers and sellers to compare each other's prices, or participate in auctions. In this environment, the number of participants is critical to the success of a hub, and as a hub achieves network efficiencies, this may raise barriers to entry for other hubs and

delivery mechanisms.

In many cases, the developers of B2Bs will say that regulators misunderstand the technology, because B2Bs are not always about achieving better prices, or squeezing suppliers. They say that many B2Bs are about enabling industries to develop internal efficiencies and to enable computers to process routine transactions automatically rather than wasting human hours on time consuming paperwork. This may be the case, and those issues will be taken into account. However, regulators must still consider the implications of greater price transparency - which in some cases will be good, but in others, not.

Also, this is an area where global considerations are very important. Electronic hubs can provide opportunities for Australian exporters to access overseas markets, and for importers to provide greater choice to Australian businesses, and ultimately, consumers. However, regulators around the world will need to take a coordinated approach to ensuring that hubs do not form networks that could stifle competition.

The Commission has established ongoing dialogues with a number of B2B developments - some public and others still at a confidential stage. Our aim in this process is to ensure that we fully understand the nature and scope of each project and to provide views on whether particular proposals are likely to raise concerns. At this stage, proposals are still at the preliminary stages so the Commission has not published views on any particular proposal at this stage. An article outlining the issues in more detail has been issued in the current ACCC Update.

Management of global aspects of e-commerce impact upon evidence gathering, investigation, and coordination of investigations with other jurisdictions

E-commerce businesses are global in nature because a website can be physically located anywhere in the world, and can be accessed by anyone in the world. This raises a number of enforcement challenges.

To undertake such investigations requires the Commission to invest in a certain degree of technical expertise in "tracking down" the location of websites and identities of the operators, and in capturing, securing and presenting electronic information for court. For example, in many cases evidence could be found within a piece of software code which will need to be decrypted and translated into English in order to be understood by a court.

In some cases, we will need to seek the assistance of Regulators in other jurisdictions in order to obtain evidence. Dealing with such issues will increasingly require higher levels of co-operation between the ACCC and its counterparts in other jurisdictions in establishing dialogue on cross border policy issues and coordination of investigations. As discussed above, the ACCC has been active in this area, particularly through the establishment of co-operative agreements with the United States.

Broadband Access

Broadband infrastructure is of particular and growing importance to the future of Internet services. For the Internet to develop beyond its existing technical and

commercial limitations, which are characterised by slow-speeds and consequently limited applications, it needs the benefit of broadband technologies and in particular broadband access technologies to be made available on a reasonable basis which connects customers to a faster, richer and more sophisticated menu of services and applications.

Along with other countries, Australia is progressively developing its broadband infrastructure networks: these include fixed networks like broadband cable, the traditional copper network using DSL technologies, and various radio-based technologies of both the stationary and mobile type, such as LMDS, satellite and prospective 3rd Generation mobile technologies. This is occurring already and will continue to develop over the next 5 years or so.

Until late last year, access to the Internet from the home was largely confined to use of 56K dial up, or if available in the street, cable. Certainly satellite access has been available and utilised largely in rural areas. However it is business customers using a variety of access technologies and residential customers whose homes are passed by either of the two HFC networks who account for the vast majority of current high speed data use. The potential to utilise the existing telephony copper network, a network that passes basically every Australian household, to deliver high speed Internet access is now upon us.

XDSL technologies utilising the unbundled local loop offer many opportunities for greater levels of broadband penetration into the residential space. Exactly how the take up rates of this new technology will play out is difficult to predict. However, what appears clear is that ADSL is unlikely, in the short term, to be the all-pervasive highband width access technology.

What is clear is that consumers, and particularly residential consumers, are prepared to put a value on being connected to high bandwidth services. The limited penetration of cable modem service at their current pricing levels tells us that. Dial up access is readily available at $25-30 per month. High speed cable modems priced in excess of twice that rate are struggling to make a dent in the residential

Internet market.

Early indications show that with ADSL pricing in excess of that available for cable modems Telstra and its competitors are initially looking at using DSL primarily as a technology to deliver high bandwidth data services to businesses in the CBD. There has also been a range of reasons other than price put forward by commentators and industry to explain the reluctance of network owners to commit to a business case for widespread residential ADSL offerings, including:

- the apparent lack of 'killer applications' for broadband in the home, and;

- the tightening of capital markets holding back the required investments in new technologies.
  Nevertheless, the Commission has been doing a lot of work in bringing forward the potential to deliver DSL services to a broader audience.

Australia was at the forefront of moves around the world to open up hitherto closed monopoly controlled local loops when the Commission mandated direct access to Telstra's copper in August 1999. Declaration was expected to influence significantly the development of competition for local telephony services and high bandwidth carriage services and to enhance competition for long distance telephony services. One of those services envisaged by the Commission was the delivery of broadband Internet over existing copper wires using ADSL technology.

Since the declaration in August 1999, there has been growing interest around the provision of high bandwidth Internet services utilising ADSL technology. With consumers crying out for 'more bandwidth' and the end to the 'world wide wait' the ability to provide users with high speed Internet connections via existing infrastructure is a great opportunity for ISPs.

Having declared the Unconditioned Local Loop (ULL), and with industry having undertaken the enormous task of developing operational and technical codes to support DSL, the next step for the Commission was to ensure that service providers were actually being granted access to exchanges in a manner that would allow competition to develop. In mid 2000 as Telstra began preparing to release its retail ADSL services the Commission began to see signs that suggested that competition was, in part, being frustrated by access seekers not being granted timely access to exchanges.

The Commission spoke to both access seekers and Telstra about these concerns. As a result of what we learnt from this inquiry we now require Telstra to provide us with extensive detail on a weekly basis on the way in which Telstra would provide access seekers with prompt access to exchanges as well as the scope and timeframes in which it delivers services on the ULL to itself and to other access seekers. It was felt that, as Telstra was both a wholesaler and retailer of ADSL services and controlled access to exchanges, it was necessary to make Telstra's role in the delivery of high-speed data services more transparent. It was also important to gain a commitment from Telstra that it would not launch its retail ADSL products before its competitors had available a wholesale product to ensure competition at the retail level.

The Commission is aware that there are still some unresolved issues surrounding ADSL services. For potential wholesale providers of ADSL services these include the price of access to the ULL and being restricted to providing ADSL services only on vacant copper pairs. For purchasers of the Telstra wholesale ADSL services these include both the pricing of Telstra's wholesale and retail ADSL offerings and non-price terms and conditions of the Telstra wholesale ADSL service. In addressing these types of issues the Commission is currently arbitrating ULL access pricing (and has made a number of interim determinations in these arbitrations) as well as investigating issues surrounding the Telstra wholesale ADSL product. The Commission will continue to play its part.

For instance, we have received complaints from ISPs that the Telstra wholesale ADSL product is so highly priced that an ISP hoping to offer residential customers ADSL connections would not be able to compete given the price of the Telstra retail offering. Similarly, larger ISPs and carriers have also raised with the Commission their concerns about the technical limitations inherent with the Telstra wholesale

product. Again, such complaints centre on Telstra's conduct and the inability of Telstra's wholesale customers to offer ADSL services that are competitive in terms of price, functionality and customer support.

As I mentioned earlier, many factors impact upon the offering and take-up of broadband services other than access to infrastructure and access to competitive broadband wholesale offerings. Indeed, the actions of the potential ULL access seekers has also been seen by the Commission to have delayed infrastructure rollout as they were slow in lodging orders for access or had not completed preparing their own networks to be able to offer the new services.

If we look to some overseas experience, the issues that the industry and Commission are considering are not unique to Australia. For instance Oftel, the UK industry regulator released ULL statistics last week. In the UK with some 34 million available lines, to date, BT has activated just 30,000 ADSL services. Notwithstanding 5,600 local exchanges, the UK regulator recently reported that only 4 of these were being used by ULL access seekers for the purpose of trialing ADSL deployment.

Regulators across many jurisdictions are grappling with issues such as the effect of line sharing in speeding up the availability of DSL to the residential markets, the effect of the ongoing replacement of copper with fibre and the impact that "voice over IP" services may have on competition.

Cable Broadband Networks

I would also like to say something about the Commission's approach to the regulation of cable broadband networks. The Commission has mandated access to cable (HFC) networks to enable service providers to deliver analogue pay TV services in competition to those already provided by Foxtel and Optus. However, the Commission has so far refrained from regulating access to HFC and satellite networks for the delivery of digital Pay TV or any other digital services.

When it last looked at this matter, in 1999, the Commission considered that there was too much uncertainty about the emerging digital environment to conclude that regulation was necessary to promote the long-term interests of end users, but that it would keep this under review.

There has been some speculation recently, with rumours of the impending digitisation of the Telstra and Optus HFC cable networks, about whether the Commission would or should revisit this issue and make a more definitive decision about the need for regulation of digital services. I understand there has also been some disquiet, particularly from Telstra and its Foxtel partners, that the possibility of regulation of these networks is acting on a brake on new investment to digitise these networks.

The Commission is just as interested as the Internet community, as well as the broader community, in Australia developing all its broadband capabilities that are commercially viable and efficient to enable both service providers and customers the ability to share in the benefits of seamless access to information services, such as e-commerce, education, entertainment, personal or other services.

In our view, this requires broadband platforms to be open rather than closed. An open access environment ensures the competitive provision of services, which better meets the diverse needs of customers and provides real opportunities for service providers and customers to maximise their use of new technologies, applications and services. An open environment can also mean a more efficient and more effective use of broadband networks to the benefit of network owners.

An open access environment is one characterised by non-discriminatory access, that is, where the owners of digital platforms provide access to service providers, such as ISPs, content providers and applications service providers, on a non-discriminatory basis. Those owners who have integrated wholesale and retail service provider operations using these networks should not favour their own internal service operators as compared to third party or independent operators.

It is also important that access to third party service providers is provided on reasonable terms and conditions to ensure that competition is promoted and that the networks are used and developed efficiently. Companies that have invested heavily in this infrastructure are entitled to a fair but not excessive return on this investment.

However, the achievement of such an open access environment does not and should not mean that regulation of all broadband platforms is necessarily required. The Commission has decided to regulate one particular platform (the ubiquitous copper network) because it is still the main way of reaching practically all customers in Australia.

The case for regulation of other access platforms, however, is not as clear-cut. For example, unlike the copper network, other digital platforms are likely to be characterised by greater degrees of competition and new entry over time.

I am confident that cable, satellite and other operators in developing their digital platforms will see the commercial and other advantages of an open access environment for their customers. Digital networks will have enormous carrying capacity - digital cable networks for example are expected to have nearly ten times the capacity of that currently available on analogue Pay TV networks. It is also likely that over time competition between different digital platforms will intensify thus providing even greater choices and benefits to consumers.

Digital platform providers therefore have a choice. They can take the early initiative in opening up their networks for digital services, thereby creating significant opportunities and benefits for both themselves and their customers or they can take the regressive step of maintaining closed shops - and then facing the gauntlet of demands from service providers, governments and customers for regulatory intervention.

In the Commission's view, regulation of other digital platforms will only need to be considered where commercial forces are being deliberately undermined and where the objective of an open access environment is being stifled. Legitimate market drivers should be given the opportunity to do their job.

Intellectual Property

The Commission's various studies have shown that parallel import restrictions have harmed Australia and caused high prices over many years and they have restricted supplies and have no justification. The Commission welcomes the government's decision to introduce legislation to remove parallel import restrictions on books and computer software.

The Commission also welcomes the recent report of the Ergas Committee, which the government established to look into the relationship of Intellectual Property Law and Competition Policy. The Commission in particular welcomes the Ergas Committee recommendations that all restrictions on parallel imports in relation to intellectual property law be lifted. For this speech however I want to make a couple of general comments about intellectual property law having already said that in general it does not conflict with the promotion of competition in our economy. The first is that the balance of intellectual property law both globally and in Australia has been too much on the side of international producer interests. Effectively over the years intellectual property law making has been captured by the interests of foreign producers at the expense of Australian users and consumers. We need to take this into account both in reviewing our own intellectual property laws and in making contributions to global forums where intellectual property law is made in. In my own view for example, the TRIPS (Trade Related Intellectual Property Rights) policy making has been tilted in favour of US interest unduly. A clear example of this is the extension of patent law rights from 15 to 20 years in the last global trade round. Australia is far from being the only loser. Other losers include most developing countries. I also have the opinion that Europe on balance is a loser from parallel import restrictions and I note that the issue is becoming a much more important one these days in Europe for which itself notably prohibits parallel import restrictions within Europe and in my view is a net loser from continuing to allow there to be import monopoly arrangements in relation to products supplied from the rest of the world to it.

The Commission also supports the thrust of the other recommendations made by the Ergas Inquiry which relate to achieving a better balance between competition law and intellectual property law but these details are for consideration on another day

Consumer Protection

I believe that I have already adequately stressed tonight the benefits to consumers from the Internet and more generally from new technology, globalisation and policy liberalisation. However, I want to refer also tonight to some general problems that arise for consumers from Internet trade some of them have been referred to by other speakers at this conference notably by Commissioner Thompson from the United States Fair Trade Commission. Some of the questions are standard consumers ones. Some of them are old problems that take a new form others are old problems that pose particular difficulties because they arise from the global character of much Internet commerce. Briefly some of the key consumer protection problems are:

- problems arising from misleading and deceptive conduct by suppliers;
- problems arising from products which prove to be faulty or defective or unsafe;

- problems arising from credit card misuse;
- problems arising from credit card fraud; and
- problems arising from privacy abuse.

Some of these problems are exactly the same as there are in any forms of the provision of consumer goods and services and can be adequately be dealt with under consumer protection law. Others however are more challenging because they arise in an international setting are provided from overseas and that can be jurisdictional problems for competition and consumer protection regulators.
One of the solutions is greater cooperation between regulators around the world and this is starting to happen but it has a long way to go.

Another problem however is that I believe that business needs to take action of its own to protect the reputation of trading on the Internet and it is not enough to rely on government regulation.

In this regard I believe that business needs to take collective steps to try to protect the reputation of Internet trading. For example, one device is to have codes of conduct. These codes of conduct would establish standards that give consumers assurance that if there is misleading or deceptive conduct or faulty products or credit card misuse that they will be protected by both members of business who subscribe to the codes of conduct. Consumers can then be informed which businesses subscribe to these codes of conduct. It would be necessary for both businesses which do subscribe to actually comply with the standards and quiet often there needs to be rigorous policing to ensure that there is actual compliance by those who have signed up and subscribed to meeting these standards.

Against that background I would like to mention some recent ACCC activities in relation to consumer protection

Consumer Protection

Many ISPs will be aware that the Commission issued a publication in mid February called 'fair.com' that is directed at helping ISPs better understand their obligations under the consumer protection provisions of the Act. The publication is available from all Commission offices and is on the Commission's website. It has been endorsed by the IIA. The Commission has found that as competition in Internet service provision continues to increase, the level of consumer complaints to the Commission also increases.

There were two main developments in products offered by ISPs last year that triggered the launch of this publication: offers of free Internet connections and the increasing use of acceptable user policies as a means to limit Internet products.

In relation to offers of free Internet connections, the Commission is concerned that these offers be genuine and that ISPs promoting free services have a reasonable expectation of being able to provide those services. Where it is likely that there will be time delays between registering for the service and the offering of a connection by

the ISP, consumers should be informed of this delay. Where services are restricted to particular geographic areas, this also needs to be brought to the attention of consumers.

The use of 'acceptable user policies' is also an area of interest to the Commission. Last year the Commission took action against an ISP who was advertising their Internet service as 'unlimited' where the service was in fact limited by an acceptable user policy under which the ISP would terminate services to users who the ISP deemed were using the service too much. It was the Commission's view that it was misleading to advertise a service as unlimited in terms of download where the acceptable user policy acted as a limit on the amount of data that could be downloaded.

Whilst the use of acceptable user policies may not by itself be illegal, ISPs need to ensure that consumers are aware that the policy exists and how the policy will be applied so that consumers know exactly what they are contracting for.

Other areas covered by the publication include information that should be provided to consumers concerning pricing and costs and claims about performance. Added costs should not be hidden in the fine print or many web pages behind the original offer. Consumers are not lawyers. It is important that the impression that they receive about the product is an accurate one.

In the same vein ISP cannot assume that customers will be technical experts. Complex technical qualifications on service provision are not likely to be sufficient to correct initial claims about the service

I have said previously that all companies need to be good website gardeners. If ISP are advertising online or offerings sign up to services online that information needs to updated to ensure that the information is timely.

ISPs should be careful to manage consumer expectation of Internet products. New technologies allow room for consumer confusion about products and services offered. Clear and accurate explanations reduce complaints to the Commission and to bodies such as the Telecommunications Industry Ombudsman.

Consumer policy issues

On consumer protection, regulators should be carefully examining the pros and cons of developing codes of conduct, alternative dispute resolution and self-regulatory mechanisms. The Commission is currently participating in international forums, for example OECD roundtable discussions regarding the merits of self-regulating codes of conduct.

Conclusion

The Internet is a powerful new medium. Its potential to enhance consumer choice seems to be unparalleled. Experience to date shows that as with any new medium, the same questions surrounding the aggregation and use of market power will arise. These questions will require the close and continuing attention of a vigilant competition regulator and you can all be assured the Commission will play just such a role.