



ACCC

as super media regulator

IF Professor Allan Fels heads the new Australian Competition and Consumer Commission (ACCC), the specialist media regulators might be job-seeking, but Kerry Packer's path to control of Fairfax might be smoother than expected.

These two straws were cast in the wind when the Trade Practices Commission chairman addressed the media law interest group at Melbourne University on 11 May.

Professor Fels showed a consistent preference for the converging media and communications industries to be regulated under general competition principles by the new Hilmer-inspired agency. He conceded that there may be a role for specialist legislation covering technical and licensing matters. But it would not surprise if the ACCC absorbed, or acquired functions of, the Australian Broadcasting Authority, Spectrum Management Agency and Austel during the reshaping timed for 1997.

Without mentioning Packer or Fairfax, Professor Fels observed that the acquisition of a newspaper by an owner of a TV station would be unlikely to raise trade practices problems because different markets were involved and the TV station owner would be considered a new entrant in the newspaper market.

In the abstract, the point may hold, but we hope the TPC considers the impact on readership and advertising markets of any prospective merger of the Fairfax papers and magazines with Packer's extensive magazine holdings (see *CU*, February 95).

Professor Fels said broadcasting is currently the most dynamic media sector, with formerly separate industries merging in order to stake a place in the nascent pay TV and broadband services industries. As strategic alliances have formed, the TPC has had to consider the competition implica-

tions of the links between pay TV operators and free-to-air broadcasters. This task has been complicated by the fact that at present, the pay TV market barely exists. The TPC must also consider the potential for telephony and broadband services to form part of the equation.

The Foxtel alliance between News Corp, Telstra and Australis appeared to concentrate control of a significant proportion of pay TV delivery in the hands of one player. However, the TPC did not object to the partnership because the evidence suggested that free-to-air broadcasters could constrain this concentration of market power.

Interestingly, Professor Fels noted that free-to-air and pay TV could evolve into separate markets, in which case, if one pay TV operator became dominant, the TPC could intervene.

Perhaps, but by then the fox will have eaten the chickens that some other competing animals could have used for sustenance.

We wonder whether the alliances now being formed, with their potential for dominance of the market yet to emerge, means that the TPC should be considering whether there is a market in the raw materials of pay TV, as distinct from the market in subscribers or advertisers for it.

The market in raw materials would include, say, ties with Hollywood studios, rights to televise sporting events, interests in existing hardware suppliers and relationships with free-to-air broadcasters as well as access to their program libraries and program-making facilities. That raw materials market is the subject of much current activity, and if the TPC felt able to intervene to prevent substantial lessening of competition, it might enhance the chances of the long-promised diversity.

Otherwise, we may see a duopoly at best, or even a monopoly, and very high costs of alternative raw materials which would deter new entrants. That scenario is depressingly familiar from press history.

Professor Fels said the Broadcasting Services Act gives the Trade Practices Act a role only in relation to the impact on competition of the grant of satellite pay TV licences. This demonstrated a major lack of foresight on the part of the framers of the Act, who seemed to ignore the potential for other pay TV delivery mechanisms such as cable and MDS to give rise to competition issues.

Professor Fels concluded by arguing the case for a continued role for the TPC - and its successor - even in an increasingly converged environment.

No-one raised with Professor Fels the issue of regulatory capture. It would have seemed like bad manners since such a charge could certainly not be made about his terms as head of the Prices Surveillance Authority or the TPC. But chairmen come and go, as governments do, and it remains for debate whether it is wise to create a super regulator like the ACCC, which may take over the specialist regulators in media or other industries but then itself become too amenable to the views of the industries it is supposed to regulate.

There have been times in recent years when, lacking action (or even a hearing) from a specialist regulator or the politicians, public interest groups have been grateful for the opportunity to approach an independent TPC. □

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