



Openness and flexibility essential

by Professor Allan Fels, Chairman, Trade Practices Commission

A constant theme in the Commission's various submissions to the Government's telecommunications review, and public comments, has been the need for a degree of flexibility and dynamics within the administration of competitive behaviour rules that matches the flexibility and dynamics of an open communications market.

I have made the point before that people in business, who are actually developing and selling products, do not necessarily view markets in the same way as lawyers or public servants who draft legislation. If that was the case I doubt if we would have the sort of advances in technology and new applications of that technology that we have now. The primary philosophy behind my arguments in favour of general competition law serving as the main discipline with which to ensure that there is sustainable competition in this sector of the industry, has been that within the scheme of the *Trade Practices Act*, market participants are free to order their affairs as they see fit, while staying within the bounds of general and universally applied conduct rules.

It is hoped that as the Minister's policy principles are developed into a legislative framework (recognising that there is a need in a transitional sense for some industry specific intervention), a system of regulation is devised which matches the dynamics of this industry and which harmonises the role envisaged for the soon to be formed Australian Competition and

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Consumer Commission (ACCC) which will administer both the *Trade Practices Act* and the Prices Surveillance Authority.

While there are many important issues canvassed in the Minister's Statement on Policy Principles that will require careful and detailed consideration, I will make some general observations on what I believe are important factors to consider in the process of transforming policy principles into legislation.

The emphasis on industry self-regulation and the various codes of conduct for industry participants envisaged in the new environment, will need to be developed in a forum that is open to public scrutiny and which recognises that the detriment to competition which could flow from agreements between competitors to standardise behaviour, need to be clearly outweighed by public benefits. The *Trade Practices Act* has such a scheme through its established authorisation

provisions.

The ACCC will have a significant role in monitoring pricing behaviour in the Australian economy and in arbitrating access issues, both under the general provisions of Part IIIA of the *Trade Practices Act*, and the proposed communications specific access provisions. It seems that the ACCC is also to inherit the tariff filing and monitoring functions presently found in Part 9 of the *Telecommunications Act* currently administered by AUSTEL. The risk of inefficiencies resulting through the duplication of resources to carry out the two functions will need to be met by cooperation between AUSTEL and ACCC.

The Minister's proposals envisage a mandated cooperative approach by the two agencies in developing public education campaigns concerning the nature of a competitive telecommunications market, and information about the options for consumers in responding to new products and services. The Trade Practices Commission and AUSTEL have cooperated in the past on a number of issues. For example, last year both agencies (with the support of the current carriers) published a consumer information brochure directed at purchasers of mobile phones.

I am sure that over the coming months, as the task of clarifying the principles into legislation proceeds, there will be many more examples of cooperative efforts between the ACCC and AUSTEL ensuring that the industry's transition to the new environment will be a smooth one. □

