

The competition notices

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Progress of Litigation

On April 28, 1999 the ACCC filed proceedings in the Federal Court based on the third and fourth competition notices. The two sets of proceedings brought by the ACCC are being dealt with concurrently by Justice Hill. On April 28, 1999 Justice Hill made directions for the discovery and inspection of documents by the parties and apparently this stage of the case is now well advanced. Further directions made on August 18, 1999 require witness statements to be filed and served by late November 1999. The next directions hearing is scheduled for a date in December 1999. The matter has been set down for trial in March 2000.

Internet Services

The only other competition notice issued to date by the ACCC, and

indeed the first such notice issued, was issued on May 28, 1998 against Telstra. The notice alleged that Telstra had engaged in anti-competitive conduct by charging its Internet service provider competitors for services provided to them while refusing to pay for similar services it received from the same competitors. This notice was first suspended, then withdrawn while Telstra engaged in negotiations with its relevant competitors. A new notice was issued and Telstra commenced proceedings seeking an injunction in relation to the notice. Ultimately the second notice was withdrawn after Telstra entered into a number of peering agreements with its Internet competitors.

New Guidelines

On August 5, 1999 the ACCC issued new competition notice guidelines to which the ACCC

must have regard when deciding whether to issue a competition notice in response to anti-competitive conduct in the telecommunications industry. The new Guidelines are very similar to the ACCC's previous Guidelines which were issued prior to July 1, 1997 and which they replace. The new Guidelines were issued following the recent passage of amendments to Part XIB of the *Trade Practices Act*. The new guidelines are accompanied by an Information Paper on anti-competitive conduct in the telecommunications markets which explains the role of the Guidelines in the process of issuing competition notices.

More information can be found on the ACCC website, <http://www.accc.gov.au/contact/fs-telecom.htm>

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From The Archives

Radio into the 90s: uncertain future

At what point, if any, do excellence and efficiency decline as competition increases? Would greater and greater competition only force some broadcasters out of the game? And would this be a good or bad thing? Could this lead to the entry of new players attempting to develop and serve niche markets currently not catered for?

This series of rhetorical questions, posed by Minister Ralph Willis, neatly encapsulates the key issues which preoccupied participants in the Communications Law Centre conference, *Radio Law and Policy: Into The 90s*, held in early August.

The conference took place soon after the release of the DTC discussion paper on broadcasting regulation and the auction in late July of six capital city FM licences (excluding Sydney

where licences will be offered later), a process which netted the government a total of \$105 million.

The implications of these developments for the radio industry as a whole provided a strong background motif for the conference. A significant contradiction is apparent between the claims of current big players in the industry that profits are shrinking and that many smaller players will be forced out of the game or into networking, and, on the other hand, their willingness to pay very high prices to enter the FM field. This was reflected in industry concern about the possibility, foreshadowed in the DTC review and reiterated by Willis, that the commercial viability criterion might be dropped from the licensing criteria in the *Broadcasting Act*.

The bids for FM licences were much higher than expected; industry observers had estimated a top price of \$20 million in Melbourne (it proved to be \$31.5

million), ranging down to \$5 million in Perth (in fact, \$16.8 million)...

...Later in the day, a stockmarket representative speaking from the floor said that the prices paid for FM licences had been excessive and investors, who were also nervous about the prospect of deregulation, would not invest equity capital in radio.

As a counter to the gloomy financial picture being painted by the radio industry, Tribunal member Sue Brooks produced some expanded versions of the Tribunal's consolidated figures on commercial radio financial results, which had been criticised by the industry as giving an unrealistically favourable view. For instance, FARB claims that more than 40 stations are for sale and many are operating at a loss. Brooks said that trends in profitability had developed over a long period and were probably a good indication of the future of the industry.

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