

**Butterworths Australian Competition Law
by Steinwall, R (Co-ordinator)**

Other Authors: Duns, J; McMahon, K; Nagarajan, V; Smith, R; Walker, J; and Hurley, A.

Butterworths, Australia.

ISBN: 0 409 31439 0

507 pages

Reviewed by Krishn Shah^[*]

The *Trade Practices Act* came into force in Australia in 1974, and regulates trade practices within the territory. The industries are regulated by competition and this book looks into the regulation from its early history to the recent implementation of penalties. This substantial piece of work has been put together by Ray Steinwall as the co-ordinator of a team of seven members in a committee comprising of John Duns, Kathryn McMahon, Vijaya Nagarajan, Rhonda Smith, Jill Walker and Anne Hurley. Most of the authors have written a chapter each in this book of ten chapters, and the exceptions are John Duns, who has authored three chapters, and Ray Steinwall who wrote both the introductory and the last chapters. All of the authors are well recognised in the area of competition law that are applied the states of Australia.

The first chapter is titled 'The Legislative Basis of the Act' and in this chapter Ray Steinwall examines the history of the Act governing Australian competition law. He acknowledges the impact of developments in competition law of the United States and Europe on Australian competition law. and also their importance in the development of competition law within Australia. The history of Australian competition law shows how it developed from common law in the form of restraint of trade to an Act, which celebrated its silver jubilee in 1999. This chapter is ideal for anyone who wishes to get a quick overview of the developments of Australian competition law, and the legislative history of the *Trade Practices Act* 1974.

In chapter 2, Rhonda Smith, the Associate Commissioner for the Australian Competition and Consumer Commission looks into the economic basis of the *Trade Practices Act* 1974. This chapter provides the economic reasons for the implementation of the 1974 Act. The author comments on the concentration of the Australian economy, which often results in there being only two or three major participants in many industries. The problems posed by these oligopolistic markets are examined from an economic perspective and the economics justification of the Act is provided.

The third chapter is titled 'Anti-competitive Agreements and Boycotts' and in this chapter Vijaya Nagarajan goes through the object of the Act as stipulated in section 2, which is to enhance the welfare of Australians by promoting competition. Nagarajan discusses the prohibition of collusive conduct by industries, price-fixing, exclusionary conduct, and other conduct which fall within the ambit of section 45 of the *Trade Practices Act*. The chapter also discusses the issue of boycotts, especially in relation to situations where one person refuses to deal with another. A brief but practical examination of the Industrial Relations Reform Act 1993 is also provided.

Chapter 4 is titled 'Misuse of Market Power' and in this chapter Kathryn McMahon examines the regulation of corporations in which they are prohibited from misusing the market power which can be

construed as being anti-competitive. A good discussion of section 46 of the *Trade Practices Act* is given focusing on the object of section 46 as outlined by Mason CJ and Wilson J in the case of *Queensland Wire Industries Pty Ltd. v Broken Hill Pty Co Ltd.* (1989) CLR 177 at 191. This chapter provides a detailed discussion of section 46 and looks into the misuse of contractual and intellectual rights as well as the misuse of economic power.

Chapter 5 is by John Duns and it focuses on exclusive dealing. In this chapter John Duns is concerned with the particular aspects of vertical dealings between firms, which is regulated by section 47 of the *Trade Practices Act*. The chapter does not discuss vertical price fixing as the author covers this in chapter 6. The vertical restraints discussed here are non-price related like solus agreements, minimum quantities conditions, customer restrictions, full-line forcing or third-line forcing. The author gives a clear picture of the background for section 47 and the operation of section 47.

John Duns in chapter 6 looks at the remainder of vertical dealings between firms, and particularly at price fixing under the title of 'Resale Price Maintenance'. This practice of resale price maintenance is conduct of a seller of goods and services to maintain the price below which the goods or services are not to be sold. The author engages in a lengthy discussion on the policy behind restricting such actions by corporations, and the possible losses to consumers if such actions were not regulated. Section 48 is examined in detail and it prohibits vertical price fixing per se since the creation of the Act in 1974. The *Reform Act* 1995 is also examined as it has opened up the possibility of resale price maintenance with the fulfillment of certain conditions. The chapter then dwells on the impact of authorisation of resale price maintenance on competition. However as pointed out by the author till the time of publication of the book there has been no authorisation of applications for resale price maintenance by businesses.

In chapter 7 Jill Walker examines mergers as part of Australia's competition law. Section 50 of the *Trade Practices Act* is examined and the Attorney-General's second reading speech at the time of the latest amendments is noted. The author draws special attention to the Attorney-General's point that mergers could negatively affect competition which in turn could lead to price rises or collusive behaviour by businesses. The rationale for regulation of mergers is then explored, and in particular the threshold test is considered. The argument that mergers loosen competition and could lead to the control of markets is also discussed. This chapter provides valuable insight as to how market forces operate and also about competition being 'trade offs' for business advancements and innovations.

Chapter 8 is a discussion by Anne Hurley on the access to services for the Australian community. The essential services being considered in the discussion are electricity, telecommunications, rails, major pipelines, ports and airports. This however, does not mean that other services are ignored, but they are just given a lesser emphasis. This chapter is concerned explicitly with access to markets, and apart from the background, the author also discusses the types of services, the disputes as regard access, the undertakings, the codes of access as well as enforcement and limitations. The author is to be commended for thoroughly researching numerous reports in compiling this chapter.

Chapter 9 is also authored by John Duns, who examines authorisations and notifications. This chapter is concerned with the prohibitions in Part IV of the Act, and the administrative procedures outlined in Parts VII and IX that provide for immunity, in certain cases, from the prohibitions of Part IV. The chapter looks at situations, which require authorisations and contrasts them with those that require mere notifications to be given to the Commission.

The final chapter looks at enforcement, and the penalties and remedies available to assist in such an important task. Ray Steinwall examines the role of the Commission as an enforcement agency. The powers and duties of the Commission are considered and it is noted that the Commission is even allowed to approach the court in accordance with sections 155 and section 76. The Commission's immense investigative powers are also examined. Steinwall gives an insight into the procedures that are required to be followed, and the repercussions of non-compliance with procedures. The roles of penalties, and the

various remedies available like damages, and injunctions are also examined in detail.

This book is an invaluable edition for a practitioner or law student and is a good introductory text for Australian competition law. As far as the South Pacific region is concerned competition law is not the highest of priorities on the Governments' agendas. In terms of relevance the book can be a great reference text to law students from the University of the South Pacific who wish to practice in Fiji, as Fiji's *Fair Trading Decree* 1992 is virtually identical to the *Trade Practices Act* 1974 of Australia and Fiji may often rely on Australian competition law cases in the implementation and application of the *Fair Trading Decree*.

[*]—Associate Law Lecturer, Business & Property Law, School of Social and Economic Development, University of the South Pacific, Suva, Fiji

© University of the South Pacific 1998-2006