

By Phillip Tagini
Graduate Assistant
School of Law,
University of the South Pacific

Title: 25 Years of Australian Competition Law

Author: Steinwall, R. (ed.)

Publisher: Butterworths, Australia

ISBN: 0 409 31658 X

pp: 266 + xiv

In October 1999 Australia celebrated 25 years of the commencement of the Trade Practices Act 1974. Prior to 1974 trade in Australia was permeated by a host of anti-competitive trade practices. The trade landscape was fraught with cartels and other monopolistic organisations that were heavily involved in price fixing and restrictive practices to market entry. The Trade Practices Act was a landmark piece of legislation because it changed the Australian trade landscape from one of restrictive practice to competition.

At the dawn of its silver jubilee this volume is published to trace both the positive and negative developments of the Trade Practices Act. The book is a collection of essays by experts who participate in Australian competition law in various capacities. This book contains authoritative accounts of the work of the Australian Competition and Consumer Commission- the body regulating competition law in Australia, and its predecessor, the Trade Practices Commission.

The first chapter very appropriately traces the development of Australian competition law. This chapter will be handy for anyone seeking a quick overview of the history of Australian competition law. Steinwall begins by discussing the development of monopolies in the 14th century and how the United Kingdom and the United States have attempted to deal with such powerful entities. Against this background, the article discusses the legislation, which the Australian Parliament has enacted to regulate and promote fair competition, beginning with the Australian Industries Preservation Act 1906 through to the Trade Practices Act 1974. The chapter clearly highlights the issues which prompted the enactment of the various pieces of legislation.

The second chapter provides a helpful reference or starting point for any practitioner or academic wishing to inquire about the operation of the Trade Practices Act. Following the overview in Chapter 1, in this chapter, Allan Fels, current chairman of the Australian Competition and Consumer Commission specifically focuses on the development of the Trade Practices Act 1974. He then briefly discusses the merger of the Trade Practices Commission and the Prices Surveillance Authority into the Australian Competition And Consumer Commission which today regulates the operation of the Trade Practices Act 1974. The remaining part of the chapter contains a succinct analysis of the protection afforded to

consumers and businesses under the Trade Practices Act. The sectors analysed include telecommunications, gas, and transport with other discussions on how small businesses can be protected and how mergers may be regulated.

The third chapter provides some insight into the Trade Practices Commission by its former Chairman, Robert Baxt. Baxt describes some of the activities the Commission was engaged in under his chairmanship. Particularly important among these are the increase of the penalty for violations from \$250,000 to \$10 million, interpretation of s 46 (abuse of market power) and educating the population about the operation of the Trade Practices Act. The former Chairman also highlighted some of the problems encountered during his term of office, which included the inappropriate placing of the Commission under the Attorney General's Department instead of a commerce department and the problem of conflicting interest of Commission members.

In chapter 4, Neville Norman, professor of Economics at Melbourne University goes into length to show that although economic notions have found their way into the Act, the specialized body of knowledge called industrial economics has very little influence over law and policy. The author contends that this body of knowledge is imperative for competition law and that economists have a role to play in that regard.

Chapter 5 provides a good discussion on s 46 of the Trade Practices Act, a section which prohibits the abuse of market power by powerful enterprises. David Round outlines the legislative history of s 46, the problems it alleviates as well as those that it leaves unanswered and the landmark decision in the Queensland Wire Industries case. This chapter provides some clear insights about the operation of s 46.

Chapter 6 is a discussion on the access regimes and the regulations that govern access to essential facilities such as electricity, gas and rail. It appropriately discusses the regulations governing access to the three industries but Thomas Parry, Chairman of the Independent Pricing and Regulatory Tribunal of New South Wales, also concedes to the fact that the regulations could be improved in the next 25 years.

Chapter 7 provides an American perspective on Australian competition law. Michael Jacobs highlights the small size of the Australian economy and the presence of oligopolies as two major problems to Australian competition law. He states that the small size of the economy means that companies find it difficult to achieve economies of scale or attract the same level of foreign investment as much larger ones located close to their major trading partners. Similarly, oligopolies often engage in unfair competition in the economy. The author also notes that while the Australian Competition and Consumer Commission's primary responsibility is competition enforcement, it is also assigned other responsibilities that would have been more appropriately undertaken by other departments. The author also notes the media's personalization of Committee decisions creates a public misconception that competition policy emanates from one person. He further mentions looking to the US or Europe for direction but cautions that Australia must be careful when borrowing from different countries because their cultures and histories are radically different.

Chapter 8 focuses on globalization and what it means for competition policy. In this chapter, Rhonda Smith, Associate Commissioner, Australian Competition and Consumer Commission, skillfully analyzes how the Trade Practices Act deals with overseas interests and then discusses how Australia could rationalize its policy to suit international competition brought about by globalization.

In Chapter 9, Warren Pengilly, Foundation Commissioner of the Australian Trade Practices Commission discusses how he would change the law if he had the chance to do so. In this regard, this chapter provides a useful criticism of the Trade Practices Act. Pengilly describes the law as inadequate. Among the author's criticisms is the dubious wording of the Trade Practices Act, the many different roles inappropriately assigned to the Australian Competition and Consumer Commission and the interpretation