Prices may fall further. The current weakness of the $A has limited the countries from which cheaper imports are available.

Nevertheless, the Commission estimates that as a result of the removal of the ban on parallel imports, average CD prices in Australia are as much as $8 less than they might otherwise have been given the depreciation of the $A and general inflation.

Competition flowing from the reforms has helped to prevent prices rising as much as they might have. Certainly prices have not increased in nominal terms in recent years after many years of regular annual price increases.

There had been claims by the opponents of parallel import reform that such action would destroy the domestic sound recording industry and that the major international sound recordings companies operating in Australia would reduce their investment in Australian artists. There is no evidence that this has happened. In any case the reforms were balanced by extra, targeted assistance to the industry.

There has been increased international debate about the effects of the bans on parallel imports in recent years. While it is acknowledged that there is market failure associated with the production of many goods incorporating intellectual property, copyright protection is the best way to deal with the problem. However, there is no justification for extending copyright controls into distribution, as the bans on parallel imports attempt to do.

It is likely that the debate about parallel imports will extend considerably beyond sound recordings. Many economists have formed the view that the import provisions are a sign that intellectual property laws may have been captured to operate unduly for the benefit of producer interests at the expense of consumer interests. Freer trade in goods incorporating intellectual property elements is desirable. Just as it is in the interests of Australian film and television producers here today to be able to freely export their product globally, it is in the interests of Australian consumers to be able to access intellectual property at competitive prices.

The Commission's continued view has been that parallel import restrictions are the worst way to protect local culture. The main beneficiaries are multinationals. Consumers pay highly for, at best, a small trickle down to Australian performers and writers.

If they need help, direct subsidies should be given. We have recommended various forms of this.

Also, producers see the debate from their side only. In fact, unnecessarily high prices are detrimental to culture because they restrict access to it.

Conclusion

Let me assure you that there is no inherent conflict between competition policy and legitimate cultural assistance. The application of competition policy to broadcasting will not destroy social and cultural objectives. For example, with children's programs for which assistance is appropriate, it is the task of competition policy to ensure that the most efficient regulatory instruments are used. It is essential to ensure that the regulatory regime is not captured by particular interest groups for their own personal benefit and that it is as efficient and non-distorting as possible.

I am sure that the Australian film and television production industry will expand and thrive in such an environment.

Competition and efficiency in health care delivery: the role of the ACCC

The following is a summary of the official opening address by Commissioner Sitesh Bhojani to the 12th Annual National Health Summit 2002, Sydney, on 25 March 2002.

Three objectives of health policy have been identified by Dr Richard Scotton, Health Economist, as equity, better health and efficiency.[1]

In examining the implications of the three objectives of health policy Dr Scotton starts with the 'central proposition' that the equity objective is, and always has been, the primary rationale for government funding of the health care system. Either the government stays in the 'cross-subsidisation business' in a very big way, or the access of the less healthy and the poor to health services will be 'seriously curtailed'.

[1] See *Managed competition: the policy context* by Dr Richard Scotton, Melbourne Institute Working Paper no. 15/99, June 1999, pp. 2–5, 8.

The increasing complexity of medical practice and health care organisation has diminished the capacity of government agencies to make efficient allocation decisions. As a result, among OECD countries, there has been a growing advocacy, and some implementation, of a greater use of market and quasi-market relationships and incentives, to introduce some self-regulating capacity within health care systems. Scotton notes that Australian problems are no more than the local manifestation of the effects of general growth in the real cost of state-of-the-art health care resulting from continuing advances in medical science and techniques. As a result, Scotton says, efficiency must now be accorded a higher priority in the health system than ever before: the overriding goal of health policy may now be re-expressed as universal access to medically effective health care at least cost.

Even Scotton, who characterises himself as a health economist of the extra-welfarist persuasion (rather than an economic rationalist) acknowledges that we should make greater use of market and quasi-market relationships and incentives in the health care system.

It is unproductive to pursue a mutually exclusive private or public model for perfect health care when practitioners practice in both, and pharmaceuticals and technology are supplied in both. The issue is not about 'free markets' but rather about the optimal regulation of markets.

How are the Commission and competition laws contributing to achieving an efficient health system

In essence the relevant laws are as follows:

- Provisions in Part IV of the Trade Practices Act and the mirror provisions enacted by each state and territory parliament in 1995 known as the Competition Code of the state or territory. The Commission is responsible for achieving compliance with and enforcing all of these provisions.
- Provisions of the Trade Practices Act dealing with unconscionable conduct, industry codes, consumer protection, liability of manufacturers and importers for defective goods, and even price exploitation in relation to a new tax system. It is also a reference to the mirror or similar provisions enacted by each state and territory parliament in the late 1980's and known as the Fair Trading Act of that state or territory.

Trade Practices Act and public interest

[Commissioner Bhojani discussed the following case studies to show how court decisions often refer to the effect on public interest.]

- Application by the Commission (under its former identity as the Trade Practices Commission (TPC)) to prevent Rank Commercial Ltd and Coles Myer Ltd and others from acquiring shares in the capital, or assets of, Foodland Associated Limited as constituting a breach of the merger provision (s. 50) of the Act
- Appeal by *ICI Australia Operations Pty Ltd v TPC* against the grant of injunctions in addition to the imposition of pecuniary penalties totalling $250 000 for four contraventions by ICI of the resale price maintenance provisions of the Act
- *ACCC v The IMB Group Ltd (in liquidation) & ors*
- *Truth About Motorways Pty Ltd v Macquarie Infrastructure Investment Management Limited*
- *ACCC v Goldy Motors Pty Ltd*
- *ACCC v Target Australia Pty Ltd*
- *ACCC v Pauls Ltd & ors*

Benefits to the community from enforcement of Trade Practices laws

Queensland fire protection industry

In 1994 the court awarded penalties totalling more than $11 million against TNT Australia Pty Ltd, Ansett Transport Industries Operations Pty Ltd and Mayne Nickless Limited and 17 company executives for price fixing in breach of the Trade Practices Act.

The participants in the cartel were fixing prices and arranging among themselves which company would win tenders to install fire protection equipment in Queensland buildings. The result was that the cost of various building projects in Queensland were artificially inflated. Such projects included the New Psychiatric Centre, Royal Brisbane Hospital and the Enoggera Army Base, 2nd Field Hospital as well as shopping centres, universities and other buildings.

Animal vitamin suppliers

Record penalties totalling $26 million were imposed against three animal vitamin suppliers for price fixing and market sharing conduct in Australia involving animal vitamins A and E and pre-mix containing these vitamins. The conduct was part of a global cartel.

Defining the health sector market for authorisation or mergers

Section 4E of the Act states that a market for goods or services includes other goods or services that are substitutable for, or otherwise competitive with, the first goods or services. The courts have established that both demand- and supply-side substitution must be taken into account in determining the relevant market. The landmark QCMA (Queensland Co-operative Milling Association Ltd) decision on market definition is often cited when explanations are sought for how markets are defined [details supplied in full transcript of Commissioner Bhojani's speech].

In establishing the market boundaries, the Commission seeks to include all those sources of closely substitutable products to which consumers would turn if the firm attempted to exercise market power. It looks at both the demand and supply side of the market and defines up to four different dimensions:

- geographic market—which may be local, state, national or international depending on where trade occurs
- product market—based on whether products are close substitutes for one another
- functional market—defines at what level the conduct in question occurs, for example, retail or wholesale
- temporal market—that is, over what period does the analysis apply?

Health markets and collective negotiations by private hospitals

Below is a diagrammatic representation of health markets identified by the Commission in its authorisation decisions for collective negotiations by private hospitals in Queensland and New South Wales.

Current issues in the health/medical sector

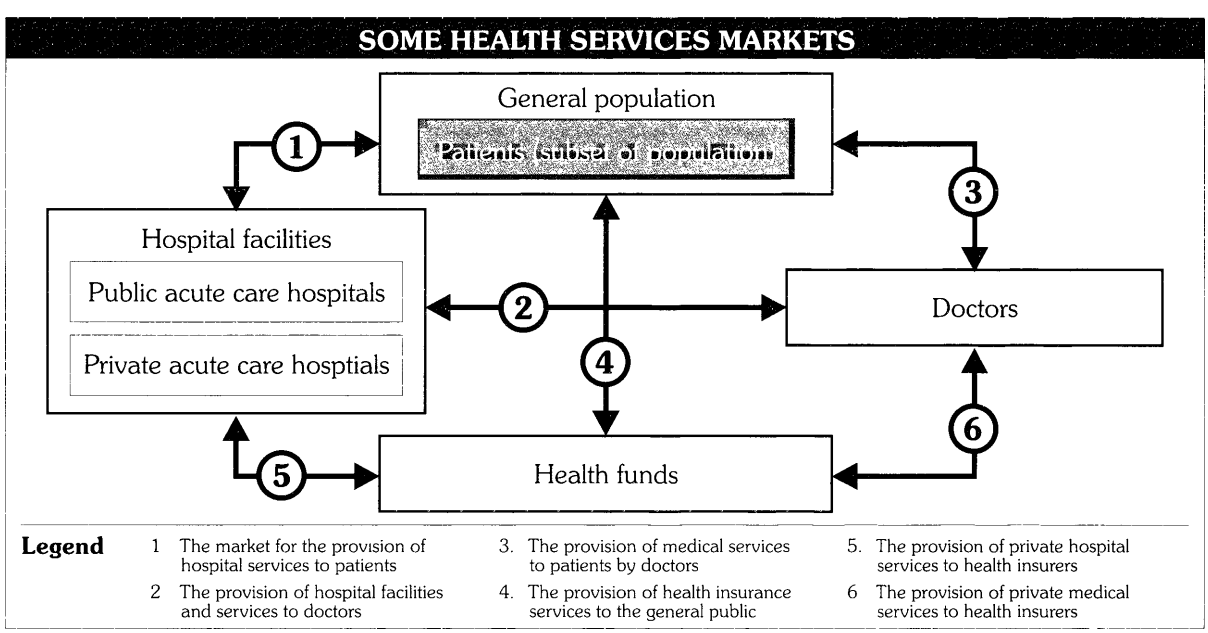
The Commission has been raising informed financial consent as an issue for some time. Its view is that medical practitioners have an ethical duty to inform their patients about the cost of the services they provide. Consumers also have a right to be told about such costs.

Informed consent does not only mean practitioners telling patients about the likely costs of medical treatment, but also them telling patients of any financial interest they have in recommending particular treatments or services.

The Commission is currently involved in some important competition and consumer protection cases in the health and medical sector:

Cassidy [CEO of ACCC] v Medibank Private

In October 2000 the Commission instituted proceedings against Medibank Private Limited in the Federal Court, Melbourne, alleging false, misleading and deceptive advertising of its health insurance products.



Cassidy [CEO of ACCC] v Medical Benefits Fund of Australia Ltd (MBF)

In February 2001 the Commission instituted proceedings against Medical Benefits Fund of Australia Limited in the Federal Court, alleging false, misleading and deceptive advertising of its health insurance products.

John Bevins Pty Ltd, the advertising agency involved in formulating MBF's campaign, has been joined in this action as it is alleged that the agency was knowingly concerned in the contraventions.

Cassidy [CEO of ACCC] v NRMA Health Pty Ltd and ors

The Commission has instituted proceedings against NRMA Health Pty Limited and Saatchi & Saatchi Australia Pty Ltd in the Federal Court, Sydney, alleging misleading and deceptive advertising of its health insurance products. [The proceedings against NRMA Health were settled by consent on 10 July 2002—to be reported in *ACCC Journal* 41. Proceedings against Saatchi & Saatchi continue.]

Cassidy (CEO of ACCC) v Western District Health Fund Ltd

The Commission has instituted proceedings against Western District Health Fund Limited in the Federal Court, Sydney, alleging misleading and deceptive advertising of its health insurance products.

ACCC v AMA (WA) Branch Inc. and Mayne Nickless & ors

In a landmark judgment of December 2001 the Federal Court has ordered the Australian Medical Association (WA branch) and two officers to pay pecuniary penalties and costs totalling $285 000 for price fixing and primary boycott breaches of the Trade Practices Act.

ACCC v Hughes

On 22 March 2002 Allsop J of the Federal Court, held that, David Zero Population Growth Hughes, trading as Crowded Planet, engaged in misleading or deceptive conduct and made false representations about the supply of oral contraceptives through his Crowded Planet Internet site, contrary to the Trade Practices Act.

Rural doctors inquiry

The Federal Government announced a review of the impact of Part IV of the Trade Practices Act on the recruitment and retention of medical practitioners in rural and regional Australia on 29 August 2001.

The Commission lodged its first submission containing background factual material to the review committee on 29 November 2001. Its second submission addresses issues raised in submissions made to the review committee and provides information requested by the committee.

The Trade Practices Act does not contribute to the shortage of rural doctors. Recent literature shows that the desperate shortages in rural health can be attributed to a multitude of reasons, such as lifestyle, remuneration, lack of services, family issues, education for children, indemnity insurance and leaving social networks. In various submissions made to the review committee these issues are expanded upon in great detail.

The AMA and other interest groups have called for an exemption from the Act because they believe the medical profession differs from other sectors in the community because doctors need to work collaboratively to ensure the community receives the quality of service it expects.

However the Commission considers that if rural and regional doctors need to engage in collaborative conduct which is also anti-competitive, then they may apply for 'authorisation'. This is what providers of any other good or service (e.g. pharmacists, dentists, physiotherapists, lawyers, accountants) who wish to act together do to avoid the risk of breaching the Act. Authorisation enables persons who wish to engage in anti-competitive conduct to seek immunity from the Trade Practices Act if they can demonstrate to the Commission that the conduct is likely to be in the wider public interest.

For example, the Commission is currently considering a national application for authorisation from the Royal Australian College of General Practitioners (RACGP) to allow general practitioners to agree on fees when they operate within specified practice structures. Interim immunity has been granted to doctors while the Commission considers the merits of the RACGP's application.

Similarly, the Commission is considering an application for authorisation from the Royal Australasian College of Surgeons for its processes for selecting, training and examining surgical trainees, accrediting surgical training posts and

assessing overseas-trained surgeons. Again, interim immunity has been granted.

Current authorisation issues before the Commission

The Commission denied a request from Health Purchasing Victoria for immediate immunity on a temporary basis for proposed arrangements relating to tendering for agency nursing services for hospitals serving public patients in Melbourne and Geelong.

The proposal is that the Victorian public health service providers collectively (through HPV) enter into a tender arrangement with successful nursing agencies for the acquisition of agency nurses. The aim of the arrangements is to reduce agency nursing costs.

The Commission's decision not to grant interim authorisation is not indicative of its views on the proposed arrangements. The Commission noted that it was yet to receive full details from HPV on the proposed arrangements.

Commission education and guidance a crucial part of achieving compliance

Of the 79 000 complaints and inquiries in the financial year ending 30 June 2000, the Commission pursued more than 4000 non-GST related complaints—of these more than 99 per cent were dealt with administratively. That is, without going to court. Apart from administrative resolution of complaints and some court cases, the Commission also regards very highly the role of education and guidance by the Commission in helping people to better understand the application and implications of the Act. For example, in anticipation of the Act being extended and state and territory competition codes becoming effective on 21 July 1996, the Commission undertook a major educational campaign focusing on the health sector. This was to highlight obligations and responsibilities under the Act for those now covered by it.

For example, the Commission wrote to each of the medical colleges with an offer of assistance. The aim was to help them with possible changes to their constitution, rules or by-laws to remove any anti-competitive restrictions. The response was mixed. The Commission's offer was taken up enthusiastically by some colleges, whereas others adopted a 'we are a voluntary private association and you do not have any role over our activities' approach to the offer. The Commission is not concerned whether or not its offer to assist was or is taken up (especially as it does not give legal advice—it simply highlights areas of potential concern from a competition law perspective) but it is concerned to ensure that the colleges are complying with the law. This could readily be achieved by the colleges obtaining private sector legal advice, as some colleges have already done.

In conclusion

It is inevitable that the questions for the future of Australia's health care system will continue to be not just how equitable it is but also how efficient.

Medical or other businesses in the health sector have a legitimate interest in businesses from other sectors of the Australian economy competing fairly. They can then reap the fruits of that competition by being supplied goods or services innovatively, with better quality service and at competitive prices—either for the purposes of their health care businesses or in their personal capacities as consumers.

As a corollary, other sectors of the Australian economy, including taxpayers, also have a legitimate interest in businesses from the health sector competing fairly. They will benefit from that competition by getting better quality health care services delivered innovatively at competitive prices—leading to a goal of an equitable, efficient and effective health care system.

The dollars and sense of bank consolidation, bank mergers and the Trade Practices Act

Following is an edited version of an address given by Commissioner Ross Jones to the Melbourne Business School Current Issues Conference 12 April 2002.

Over the past twenty years financial markets have experienced significant changes. Markets here and abroad have consolidated substantially as financial institutions face up to pressures from regulatory reform, globalisation and technological change.