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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON ECONOMICS, FINANCE AND PUBLIC ADMINISTRATION

Reference: Review of the Australian Competition and Consumer Commission annual report 1999-2000

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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON ECONOMICS, FINANCE AND PUBLIC ADMINISTRATION

Friday, 30 March 2001

Members: Mr Hawker *(Chair)*, Mr Albanese, Ms Burke, Ms Gambaro, Mrs Hull, Mr Latham, Ms Plibersek, Mr Pyne, Mr Somlyay and Dr Southcott

Members in attendance: Ms Burke, Mr Hawker, Mrs Hull, Mr Pyne and Dr Southcott

Terms of reference for the inquiry:

Review of the Australian Competition and Consumer Commission annual report 1999-2000.

WITNESSES

Committee met at 9.05 a.m.

I declare open this public hearing of the House of Representatives Standing Committee on Economics, Finance and Public Administration and welcome everyone here today, particularly representatives of the ACCC, members of the public and also the media. This hearing comes at an appropriate time, with several issues of major importance for Australia currently under consideration by the ACCC. This is the third occasion the ACCC and Professor Fels have appeared before the committee to discuss competition policy and the operations of the ACCC.

Both of our previous hearings have been quite interesting events, with a range of topical matters in the area of competition policy under consideration. I expect that today's hearing will be just as interesting. The basis for the committee's investigation of the ACCC is the commission's annual report for 1999-2000. Under House of Representatives standing order 324B, annual reports of government departments and authorities stand referred to the relevant committee for any inquiry the committee may wish to make.

Matters which I expect we will address today include: the recent study of interchange fees by the ACCC and the Reserve Bank and developments on this matter this week; merger policy, particularly as it applies to the petroleum; airline and telecommunication sectors; petrol prices, as always; the impact of the introduction of the new tax system, especially the GST, on prices; and the application of competition policy to the agricultural sector and the professions. As we have a significant number of matters to discuss, I will proceed immediately to the calling of witnesses.

CASSIDY, Mr Brian David, Chief Executive Officer, Australian Competition and Consumer Commission

DIMASI, Mr Joe, Executive General Manager, Regulatory Affairs Division, Australian Competition and Consumer Commission

FELS, Professor Allan, Chairman, Australian Competition and Consumer Commission

GRANT, Mr John, Executive General Manager, Australian Competition and Consumer Commission

GRIMWADE, Mr Timothy Paul, Acting General Manager, Adjudication Branch, Australian Competition and Consumer Commission

LU, Ms Helen, General Manager, Corporate Management Branch, Australian Competition and Consumer Commission

PEARSON, Mr Mark John, General Manager, Mergers and Asset Sales, Australian Competition and Consumer Commission

SMITH, Mr David Frank, Executive General Manager, Australian Competition and Consumer Commission

CHAIR—I welcome representatives from the Australian Competition and Consumer Commission to today's public hearing. I remind you that the evidence that you give at this public hearing is considered to be part of the proceedings of the parliament. Therefore, any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. Professor Fels, would you like to make an opening statement, before we proceed to questions?

Prof. Fels—Thank you, Mr Chairman. I will speak for 10 minutes and try to very quickly run through the range of issues the commission deals with, to a degree not addressing the particular issues that you mentioned, that I can see are going to come up for questioning.

The role of the ACCC is to apply, without fear or favour, the Trade Practices Act and some other laws. We are not in general involved in advocacy of changes of the law. There are some exceptions to that but, by and large, we do not deal with whether statutes should be changed; we deal with the application of the Trade Practices Act.

I will run through current significant developments at the ACCC in summary fashion. First of all, as you know, our most traditional role is the application of the competition provisions of the Trade Practices Act. In that regard, section 45 prohibits anticompetitive agreements, including price fixing agreements. There has been a considerable number of international cartels lately, the most spectacular so far being the multinational companies that got together and agreed on the price of vitamins for animal feed. They have been fined $26 million on that account. That

was damaging to farmers and to people who, in the end, consume their food. There are further international cartels under investigation.

Second, there has been some increase in local cartel behaviour. We have had fines of $16 million imposed on the Queensland fire protection industry, and there are a number of other cases pending concerning local cartels. We are currently involved in a case concerning credit cards, but perhaps I will put that to one side until you ask questions.

The other matter under section 45 is that, following the 1995 reforms, the act applies more widely to public utilities, to the professions and agricultural marketing boards, and so on. With regard to the health sector, there has been a great deal more activity there. We are currently involved in a court case in Western Australia against the AMA and Mayne Nickless over price fixing. We have also advised the orthopaedic surgeons that the restrictions on entry into orthopaedic surgery are, in our view, anti-competitive and in breach of the law. They have cooperated with our inquiries and they are on the point of seeking authorisation for restricted entry.

With regard to section 46, the misuse of market power, this part of the act has become more active. I would like to emphasise to the committee that this is an area that is becoming more important and may attract your interest rather more.

For many reasons there were not many cases run by the commission under this part of the Trade Practices Act until two or three years ago. Just lately we have had two or three really important decisions from the courts which reinforce our view that section 46 is important.

As you know, there are three traditional legs to traditional competition law: one is cartels; another is mergers; and another is when big business misuses its market power against competitors, usually small ones. In the Boral case we have a verdict from the Full Federal Court; although it has just been announced that Boral will appeal that to the High Court.

In short, a small player entered the Melbourne concrete blocks market to compete against Boral, Pioneer and others. Boral, in response, dropped its prices way below variable costs. Even though it was making a loss, it sharply increased its capacity at the same time with the purpose of driving the new player out of the market. We took them to court. The Full Federal Court has upheld our view that, in terms of section 46, Boral had a substantial degree of market power, and it took advantage of it for the purpose of driving out a competitor. We think it is a very important case on predatory behaviour and shows a view that it is on the serious side of applying section 46.

There has been a High Court case concerning Melway, which is also important. In that case, the smaller distributor seeking relief against Melway ultimately lost the case, but what has escaped some notice is that the High Court adopted a more expansive view of section 46 than in the past. The hurdles that have to be got over have been lowered significantly by the High Court.

We also had a smaller case in rural South Australia, where we successfully took action against Rural Press Ltd for misuse of market power and anticompetitive behaviour in regard to a very small country newspaper. We won that case. We have before the court an important case

concerning Safeway in Melbourne over misuse of market power and one concerning record companies over compact discs.

On mergers, I have a couple of general points, and I note that you have indicated that you may have some questions on this. Our perception of the application of merger law is that there have been no great changes on our part in regard to our policies in applying the merger law. We have had, however, a changing world and we have to change our views of what is happening in the market. Just to give you a couple of cases, years ago when we looked at breweries, we used to say that in each state there was a monopoly. That was the correct way of looking at the market—defining it as a state market. Now, it has become a national market, so if any brewery questions come up we look at them on a national basis. Likewise, with banks—10 years ago, home loans were not competitive, now they are. That changes our view of that aspect of banking behaviour.

Regarding section 51, there is an important set of recommendations from the Ergas committee recommending some liberalisation in the treatment of some greater extension of the Trade Practices Act to intellectual property.

On consumer protection, we continue to have misleading and deceptive conduct cases. At present, we are doing a couple of fairly big ones in relation to the health sector, and what has happened there is that in the lead-up to 1 July last, we thought that some of the advertising got right out of hand, and we are consequently in court with Medibank Private over alleged misleading advertising in the lead-up. We are also in court with MBF over similar matters. There are a number of other areas where we have cases concerning alleged misleading conduct. They very particularly tend to arise in deregulating industries, incidentally.

On e-commerce, I mention in passing that we are spending time on this. We have a task force. It raises consumer protection issues and also some competition questions. It is generally good for consumers and competition, but certain matters have to be watched. Some consumer protection safeguards are not there. Also, on the competition side, it is generally good, but there are some anti-competitive behaviours associated with it.

On small business, the commission has a full-time small business related commissioner, Mr Martin. We have been a lot more active on small business matters in the last couple of years. There has been a lot more funding, and the unconscionable conduct laws, as you know, were strengthened. We are now starting to get some fruit from that. I have had to explain in the past that it takes a while to get cases through court. We have now had five judgments on unconscionable conduct in the last year or so, and the commission has won four of the cases, and the fifth that we lost, incidentally, we are appealing. One of the cases we won is also being appealed. We are taking a vigorous approach to applying the unconscionable conduct law, and we are heartened by the fact that the courts are not adopting a conservative or stick-in-the-mud attitude to the interpretation of the unconscionable conduct laws. There are also codes—the franchising code and so on—made possible by the legislation.

Turning to another major area—and I am a bit concerned about the time I am taking, so I will be quicker—on the GST, obviously some of the heat has come off. The law applies, however, until the middle of next year, and the commission continues its scrutiny. It continues to get calls on its hotline and it continues to investigate some cases.

The other major area of activity by the commission is regulation in relation to utilities in the telecommunications, gas, electricity and airports areas, in particular. We are deeply locked into activity in this area. To a degree, up until now, we had been making declarations of what things were covered by the access provisions and so on. But now things have moved on to the hard end of setting prices and naturally there is a huge campaign being run by the infrastructure industries whose only interest is in getting prices up as high as possible. But the commission considers that its decisions generally strike a good balance between setting prices that remove the historic monopoly elements from those prices and are therefore reasonable to consumers, and on the other hand, provide good incentives for investment in Australian infrastructure.

There is quite a lot more international activity going on in the competition area with worldwide mergers, cartels and so on. Under the Trade Practices Act, we can authorise various forms of anticompetitive behaviour and there is a right of appeal on our decisions to a tribunal. We have a number of important authorisations around, including one from dairy farmers, and there are yet other cases where people are seeking authorisation for anticompetitive conduct. Mr Chairman, that is a brief overview, as I said, to a slight degree avoiding questions you have indicated may be coming up to us.

CHAIR—Thank you very much, Professor Fels. You talked about the question of increasing cartels and particularly the question of international cartels. What role does the ACCC have in identifying that and, secondly, what powers would you have if you can identify international cartels operating to our detriment?

Prof. Fels—On the second point, if it affects the Australian market then in broad terms we have got jurisdiction—or only rarely if it affects the Australian market do we not have jurisdiction, would probably be a better way of covering it. If they have local operations, then we tackle the local operations. So in the vitamins case, the local operations were involved.

Skipping back to your first question and then possibly coming back to your second question, as far as detection is concerned, the United States, and to a lesser degree Europe, have been successful in uncovering far more international cartels than in the past. There are something like 25 current grand jury investigations into international cartels. In broad terms, we get the benefits of their investigations for a couple of reasons. One is that quite often the companies, having been sprung in the US, will come and own up to us and another more recent reason is that we have a very advanced treaty with the United States. The treaty has not really had that much effect right up to now, but it is starting to because it is a very new treaty under which we can swap confidential information on matters essentially other than mergers—there are a whole lot of restrictions in regard to mergers. But we can swap confidential information and, if they are dealing with an international cartel, they can pass on information to us and we to them and we can cooperate with one another. We have a pretty good working relationship with the European Union also. We are tending to hear about the international cartels affecting Australia.

CHAIR—Okay. You said there is further consideration; what others are under consideration?

Prof. Fels—The US has not nominated publicly a great number of other cartels that it is investigating, but they have announced to the world and to us that they have a large number under investigation, and we have reason to believe that we will hear about them in due course. There are a couple of others that have been made public. There was the well known one about

the art houses. It turned out, to our pleasant surprise, that in Australia the situation is rather different and they do not have a cartel arrangement, so far as we can see. There was the Archer Daniels Midland conspiracy; that is also public. That has not had any great results.

We are presently in court with respect to another cartel that we regard as a major one, involving transformers. We are taking action against a number of companies, both multinational and local, over alleged price fixing of transformers. Transformers are things that are supplied to electricity companies to convey electricity. They are big, expensive equipment, and we believe there has been an extensive price fixing cartel. Yesterday, we put a proposal to the court that one of the parties to it should be fined about $7 million to $8 million, but they are only the first in the queue. Of course, we have to see whether the judge will agree. It is a contested case over how much they should be fined.

CHAIR—You mentioned Boral and concrete. This problem has been around for quite a few years. I can recall a friend of mine who was run out of business. He had a small concrete operation, and this occurred over 10 years ago. There seems to be an ongoing problem. Why is it that we cannot maintain a fair market there? It seems that any time a small operator tries to get involved, they are run out of town.

Prof. Fels—The commission would tend to agree with you that there is a problem. However, on this occasion I can report to you a fairly positive outcome. There have been many reasons why this behaviour has been hard to deal with in the past. Sometimes the victims will not come forward. Sometimes they lack confidence that the regulator will act on their behalf and they feel they will be punished anyway. Sometimes they just go out of business—perhaps like the case that you referred to—and they are not really interested in pursuing it.

In this case, however, we had someone who was prepared to come forward and who gave us enough of a lead so that we could then use our compulsory interrogation powers on Boral to get the information. That case took a couple of years. We had to struggle to get the information and then to prove all the points that we wanted to prove. On the positive side, I believe the full Federal Court has shown a considerable degree of sympathy for the underlying notion that you have put forward.

There had been a view that section 46 of the act was a very restricted piece of legislation. Let us suppose, for example, that we conducted a case about someone doing predatory pricing, such as pricing well below their own costs. To win a case involving someone pricing below costs to drive a competitor out, there were a whole lot of theoretical hurdles that we had to overcome. For example, it was generally thought until recently that we had to prove that if, say, in this case Boral priced below cost, once it had eliminated the competitor, it could be demonstrated that they could recover all that money in excessively high prices at a later period—that they could recoup their losses.

This is quite a big hurdle to overcome. The Full Federal Court, however, in Mr Justice Finkelstein's decision, have said this is not the way to look at it. Parliament has passed a law that does not have these theoretical economic doctrines written into it and, if the purpose is to drive someone out of business and it is connected with the misuse of market power, then it is a breach of the law. They have particularly picked up the point that in that particular market it might not pay Boral to drive someone out of business. If you just focused on that one market,

they probably do not get the money back, but they have said there is a signal there to everyone else in Australian business—if they dare enter any market in concrete masonry to take on the big boys, then there is the signal: 'This is what we will do in other markets.' From that point of view, whether they get their money back in this particular market or not is not so important from the point of view of the firm with market power, because it is a very good investment to keep people out of the market in all other markets around Australia.

Ms BURKE—Looking at that issue of market power, seeing you have brought it up—I was going to wait until later, but I think I will do it now—the Victorian Automobile Chamber of Commerce and the Motor Trades Association of Australia have brought to the ACCC quite extensive complaints about abuse of market power by both the RACV and the NRMA. One particular individual has been brave enough to come forward—a Mr Gerry Raleigh—to give his complaints about the unconscionable nature of the industry. Individuals who have a car accident are given a limited range of choices of smash repairers they can go to and this is driving a whole lot of small panel beaters out of the industry. It has been going on for some considerable time. There is considerable frustration in the Motor Trades Association that action is not being taken by the ACCC. I would like some comments if I could.

Prof. Fels—The commission has not been ignoring this matter—and I should say that to begin with. We have spent a lot of time on this matter. Also the commission has made it clear to everyone that it is a very high litigation priority for us to act against unconscionable conduct. We have got every signal in the world from parliament that they want to us to vigorously enforce the unconscionable conduct laws. So it has not been a question of a lack of willpower on the part of the commission. The question is whether the behaviour is unlawful.

I should also just mention one other contextual point, and that is that there are a lot of pressures on the panel beating industry. Some of the market is to a degree going into decline—the demand for it is falling—and that is adding to the pressures on this situation. But we have been unable to conclude that the behaviour, after full investigation, qualifies as unlawful unconscionable. That has been the essence of it. Perhaps my colleague could explain that a bit more.

Mr Cassidy—There have been in essence two issues that we have recently looked at fairly closely in the motor vehicle repair industry. The first issue relates to the transition, if you like, from the old tax system to the new and the prices which insurance companies are prepared to pay to motor vehicle repairers for their repairs. The second issue is, in fact, the preferred repairer scheme of the NRMA.

On the first issue, the practice before the changeover from the old tax system to the new tax system was that insurance companies would pay motor vehicle repairers the cost of the replacement spare parts plus a margin of 17½ per cent. There has been much debate about what that margin of 17½ per cent was for. In some people's minds it was basically to cover wholesale sales tax, which was levied after the purchase of the original spare parts. In other people's minds, it was to cover wholesale sales tax plus a margin for repairers.

In moving from the old tax system to the new, some insurance companies took the view that, if the 17½ per cent was purely to cover wholesale sales tax, given that wholesale sales tax went and was replaced by a 10 per cent GST, the appropriate margin to pay motor vehicle repairers

instead of 17½ per cent became 10 per cent. Other insurance companies took the view that seeing as the 17½ per cent was to cover both wholesale sales tax and the margin for the repairers, then the appropriate amount to pay to them was the GST of 10 per cent, plus another three per cent or four per cent. The Motor Trades Association of Australia and their various state counterparts have argued strongly in favour of the second interpretation—that is to say that a motor vehicle repairer should be paid a margin of 10 per cent plus an add-on of another three per cent or four per cent.

Our problem in looking into that issue as an issue of unconscionable conduct was the diversity of views within the industry as to exactly what that figure was and what it should be now. While the Motor Trades Association had their particular view and we found there were quite diverse views amongst motor vehicle repairers. So in terms of actually getting an unconscionable conduct case together, we decided—and our legal advice confirmed—that we did not have sufficient evidence to be able to take a case on unconscionable conduct, simply because of the diverse views within the industry as to what the margin was and what it should be now. Indeed, amongst insurance companies there is a diverse approach. Some are paying 10 per cent, and some are paying 10 per cent plus another three per cent or four per cent.

We spent quite a long time on this. I might add that these things are not done overnight, as you would probably appreciate. We have explained that a couple of times to the Motor Trades Association that that has been our problem. I would have to say that they have not been terribly happy with that because they have their particular view. In a sense, what we have tried to explain to them is that our job, if we are going to take on an unconscionable conduct case or indeed any case under the Trade Practices Act, is that we have to be able to front up in court and convince the court that there has been a breach of the act. If we just fronted up with the MTAA or their affiliate saying one thing and the insurance companies saying something else, that would not constitute a case. We would not be in court for very long before the case was dismissed and we were ordered to pay the other party's costs. So that has been the basic problem there. We have not been able to get sufficient evidence, if you like, to be able to establish unconscionable conduct. The other issue is the preferred repairer scheme of the NRMA.

Ms BURKE—Have you looked at the RACV as well, considering the proposed merger of the two in the Victorian market?

Mr Cassidy—Let me deal with the preferred repairer scheme. We have had a close look at that as well. The way that works is that, while the NRMA nominates preferred repairers, it has a couple of different categories of repairer: the first category is the preferred repairer, the second category is partnering, and the third category is, basically, others.

The way that the NRMA works is that NRMA will more or less automatically accept a quote from a preferred repairer. Quotes from other repairers, depending on what category they fall into, are subject to various amounts of checking. But there is no actual requirement or obligation on NRMA members to actually go to a preferred repairer. If there were, that would be something we would look at very closely, because that would probably sail fairly close to the wind so far as the provisions of the act are concerned. As I say, there is no obligation on NRMA members to go to preferred repairers. It is really an issue of their being able to choose their own repairer and, depending on what repairer they choose, the quote may or may not be subject to a

degree of checking. There again, given that is the way the scheme works and unless we are able to find evidence to the contrary—particularly in terms of the mandatory nature of going to preferred repairers—we do not have sufficient evidence to be able to take either an unconscionable conduct or an abuse of market power under section 46 case.

Ms BURKE—So in the individual case of Gerry Raleigh which has been brought to the ACCC's attention in Victoria, where he believes he has solid evidence that the RACV is literally banning customers from using his service and has driven down the price, the bargaining power of small business, there was not sufficient evidence to take action?

Mr Cassidy—I am afraid I am not personally familiar with that case. I might mention, although it may seem a bit odd, that in addition to currently having, I think, 46 cases in the Federal Court, we have another 190-odd under investigation.

Ms BURKE—I do not expect you to know everything that is going on in your organisation.

Mr Cassidy—I am afraid I have not got the whole 190-odd in my mind. I do not know whether Mr Smith is familiar with that particular case.

Mr Smith—No. I do not have any detail beyond what Brian said, but certainly if it is being handled by our regional office in Victoria we will check what the position is.

Ms BURKE—Thank you.

Mr Cassidy—We will look into that specific one to see where it is at, but I am afraid neither of us has it in our head.

CHAIR—Could you send something back to the committee when you have got some more information.

Mr Cassidy—Sure.

Mrs HULL—Before asking my question, I would like to declare at the outset that my family business is a smash repairer. I am not involved in that, but certainly my son and family are and I was very much involved in the trade for a long time.

I would like to ask a question about NRMA. The consumer, the insured, is able to go to the repairer of their choice. But, if I were insured with the NRMA and were to ring the NRMA office to determine where I should go, they would immediately give me the preferred repairer. Is that giving me a choice? If as a preferred repairer I sign a confidentiality agreement, my repairs are basically not discussed with anybody, nor the cost of my repairs. To me there is some question as to why you need a confidentiality agreement. It seems you really should not be discussing your repairs with anybody, even the consumer, because in my understanding it is the NRMA's consideration that the repairs are only their business: even though the insured owns the vehicle, the repairs are the property of, so to speak, the insurance company. You may elect, say, for a preferred repairer or to use parts that perhaps the consumer may not be happy with, such as second-hand or Taiwanese parts. However, it is very difficult to discuss this relationship with

the consumer because you have a confidentiality agreement with the NRMA. It just seems to me that the process has to have some questions about it.

There is a partnering program in the second part of the program that you discuss which is far more transparent than the preferred repairer. There seems to me to be a sense that, even though you believe, as you have just quoted, that the consumer is able to go the repairer of their choice, there is a common perception and perhaps misconception—because of the NRMA's advertising, which clearly you should look at—that, if you are insured with the NRMA, you really should go to a preferred repairer, who is going to give you better repairs than anyone else. That is, because preferred repairers have got some five gold star thing, in the perception of the consumer they must be gold star or five star themselves. I guess that that is not the case, so to speak. It is a matter of negotiation with the NRMA to determine this confidential contract. So I do have questions about the perception that is out there in the marketplace.

Mr Cassidy—I do not want to give you the impression that we have closed the book on the preferred repairer arrangements. We are still looking at those arrangements fairly closely. As the chairman mentioned, the motor vehicle repair industry is generally under a fair deal of stress and strain at the moment. The Productivity Commission in its previous incarnation as the Industry Commission in its report on vehicle and marine insurance and repairs basically made the observation that, because of the extended warranty periods now being given on vehicles meaning vehicle manufacturers are doing more motor vehicle repairs in their own facilities than they used to and because of changing technology with vehicles in terms of paints, metals and metal compounds, all of which are making the industry rather more sophisticated, times are fairly tough for motor vehicle repairers. It is a difficult environment for people in the industry. We certainly have not shut the book on the preferred repairer issue. As you suggest, we will have a close look at their advertising and the way in which the preferred repairer is portrayed.

Mrs HULL—I make the comment on extended warranty that the NRMA offers lifetime warranty on repairs with a preferred repairer.

Mr Cassidy—I had in mind the vehicle manufacturer. Rather than a one- or two-year warranty, you are now getting five-year warranties on new vehicles. This automatically means that—rather than for the first or second year—for the first five years things that go wrong with a vehicle are increasingly being attended to by the original manufacturer rather than the motor vehicle repair sector.

Mrs HULL—You are right, but within the preferred repairer scheme you have a promoted extended lifetime warranty on repairs. The NRMA say, 'We give you a lifetime warranty on your repairs.' That would be questionable, because they would never pay. It would go back to the repairer. They would never pay for a warranty ever, because that I would imagine would be part of your contract. The NRMA would never pay for a warranty. It is something that needs to be clearly continually looked at.

Mr Cassidy—We certainly are. We would be interested in talking to you further about your own knowledge of the industry. It is certainly not one we have closed off on. We have reached a certain point, but we are still looking.

Dr SOUTHCOTT—I wanted to ask you about whether the ACCC had a look at the proposed takeover of Woodside by Shell. Could you outline to the committee the reasons for not intervening in that case?

Prof. Fels—In short, the question of whether it is a foreign or a local bidder for an Australian business does not arise under the provisions of section 50 of the Trade Practices Act. The only question for us to ask under section 50 is whether the acquisition or merger would have the likely effect of substantially lessening competition in the market, and by clear implication whether it is a foreign or a local bidder is irrelevant. We had the limited question to ask of whether there would be any adverse effect on competition in Australia and we concluded that there would not be. The question of whether there should be foreign ownership of course is for the Foreign Investment Review Board and the Treasurer.

Ms BURKE—Given that there is some concern that Australia is turning into a branch economy, is there some view by the ACCC about how it should look at mergers and the impact they may have on the actual viability of companies in Australia? One company last year paid the ultimate price when a merger was knocked back in the pay TV industry. The company is no longer in existence in Australia. Its operation could not continue. So are you looking at the ultimate impact of the merger policy insofar as actually limiting Australia's ability to continue to conduct businesses here?

Prof. Fels—Just on that well-known case: that company, it would seem pretty clear in retrospect, was closing down; it was just a choice of how they closed down—by takeover or by going under. I just mention again on that case that, in general, although that company, Australis, was with Foxtel making numerous submissions to us, it did not run the argument that it was going under; I say that in general terms. We had hundreds of meetings with them, and this argument was not presented. It might have got a little mention once but not in a significant way. We thought it was pretty interesting that the representatives presenting the case chose not to run that argument. It was only run by News Ltd after the merger had been disallowed, and their commercial interests in running that argument were very obvious—that is, they wanted Australis Media to go under when they could not take it over.

Speaking more generally, the commission regards the recent set of arguments about Australia becoming a branch office economy as being related really to other matters—that is, to tax policy, to the fact that in a globalising world often a business wants to get closer to its customers and there are other advantages in locating offshore. The main companies whose names are fed to the press by the Business Council have not had problems with us over mergers. For example, we did not stop AMP getting GIO; we did not stop NAB getting MLC—there is a four-pillars policy but that is not ours—Lend Lease, no problems; Brambles, no problems; Pioneer, slightly different, but they never applied for a merger with us in relation to CSR and Hanson took them over.

The commission does not block mergers where there is import competition. We have allowed numerous mergers—Amcor, APPM, BHP, New Zealand Steel, Email, Southcorp et cetera. It is in that sector, where firms are exposed to import competition, that the argument for them needing to become big to take part in world markets and to survive is strongest and most relevant. The merger law is simply no obstacle to mergers there. The merger law focuses on mergers in areas where there is no import competition. We do not oppose that many mergers.

We oppose about five per cent and we resolve some of them. Where a merger would lead to a lessening of competition, authorisation can still be sought. Our law differs from the US and the EU, which do not permit authorisation, but if they can demonstrate a public benefit, then the merger can go ahead. There have been cases where global type arguments have been behind and been allowed in authorisation cases. So we think the law allows for this type of case.

There is no doubt, in our view, that the branch office economy issue as being promoted by the Business Council is disguising an agenda which seeks to soften merger law. This is one thing that all the members of the Business Council of Australia agree on. There are many divisions of opinion there, but if there is one thing that the top 100 businesses in this country agree on when they sit down, it is that there should be no restrictions on mergers.

The BCA has at all times opposed any strengthening of merger law. They opposed merger law in the first place. Their agenda is to emasculate merger law, even though that would be highly damaging to the Australian economy, because it would make it into a group of monopolies, which are highly inefficient and anti-competitive and would harm the capacity of our exporters and importers to compete internationally.

Ms BURKE—On that issue, and I am not sure that you can comment because I know it is under review at the moment, what is your attitude to the Franklins situation?

Prof Fels—I can say some things about it. We have had some discussions with Franklins and we have been doing some look around the market but, basically, we have not had much information from Franklins about what is going on. We have had a bit lately, but over the period from when it has been clear that there has been a problem, we have not heard very much about what is going on. I saw some comments in the paper this morning, from Woolworths in Hong Kong, I think it was, which we found pretty interesting. We would view with concern Woolworths or Coles getting very much at all of Franklins. If Franklins is going to sell, we would be seeing that other buyers would be likely to be available with other buyers not being likely to have anticompetitive effects. So we have quite high concerns about Woolworths or Coles getting Franklins in full or shared, and even in part.

CHAIR—Professor Fels, on this question of mergers and so on, in the airline industry, there does appear to be a worldwide move to very large mega airlines. In some quarters, there is concern expressed that, in Australia's situation where there are just two major relatively small airlines—although Ansett has since of course been taken over—we run the risk of losing out in all ways. How do you answer that sort of criticism that we are putting our existing airlines at risk?

Prof Fels—The main merger recently was Hazelton, the regional airline and, ultimately, Ansett got it. But we did have high concerns initially and I am sure that your comments are partly prompted by Qantas's remarks. We opposed Qantas's proposed acquisition initially, as we did with Ansett. Ansett came back eventually with proposals that met our concerns. Qantas said that we should not be concerned about this acquisition. It was a very small one in the scale of things, of negligible significance really. But when we opposed the actual merger, they then took the other line and said that this was stopping them from becoming a major force in world markets, their inability to acquire Hazelton.

To get the kind of big picture, the biggest thing that has happened in this area is that, rightly or wrongly, the commission has not opposed a major alliance between Qantas and BA. We authorised a major alliance several years ago and, as a result of that, they agree on prices, capacity sharing, routes, scheduling and a vast number of other matters on the kangaroo route.

The biggest single thing for Qantas has been getting into the oneworld alliance and more than that, having the closest possible integration short of merger that one could imagine with BA. We were concerned initially that that would be anticompetitive; it would certainly involve price fixing. So they had to get it authorised and they managed to persuade us that there was a sufficient public benefit for that to go ahead and enable Qantas to operate in world markets quite successfully.

CHAIR—Do you want to ask about the regional airline?

Mrs HULL—No, I do not; I want to ask a question about Hazelton and Ansett. You played a very prominent role in that whole process between Qantas and Hazelton, and Ansett and Hazelton. I was questioning the percentage of market share that either company would have had, whether it be Qantas and Hazelton, or Ansett and Hazelton. The market share was not as extensive as the multinational supermarket chains. We were significantly concerned that Hazelton needed an equity partner. It needed the equity to a great extent and it was still quite a viable business, and a building business. Yet, there was so much concentration put on their market share when their market share was, in fact, less than the market share that the current multinational supermarket chains have.

Prof. Fels—Just before I deal with the core of your question, on the supermarkets, we are not comfortable with their market shares, but the commission cannot break up existing monopolies. So it is only if they merge that we get a piece of the action. As you would recall, in 1986 the commission did not oppose Coles Myer nor Woolworths Safeway under the old dominance test.

On the airlines, it depends on how you look at things. We look at markets one by one and, for example, say we are looking in a region, we do not automatically assume that you can look at things on a national basis. To give you a simple example, supposing we were looking at a bank merger back of Bourke, then we would not say, 'The people there can go to the Bank of America and do their business.' It is who operates in the market there or who might enter it that set the competition. We looked at the impact on the regional markets and the Hazelton shares there were more significant. We were particularly concerned about slot allocation. My colleague, Mr Pearson, is the merger person.

Mr Pearson—The initial proposals that came in from both Qantas and Ansett were fairly similar in that they were basically looking at a complete takeover of Hazelton. They were not addressing what we considered was the major issue of competition, and that was access to slots in Sydney airport in peak periods, particularly in the Monday and Tuesday periods. We actually assessed that merger on the basis of the impact on a route by route, on a regional basis and particularly on the ability for new entrants or existing players to grow their market share and what sort of barriers there would be to that.

The major barrier to any existing entrant, or new entrant, was access to those slots. At the end of the day, Ansett's proposal that was brought forward addressed those concerns. They actually

gave up—I do not have the exact figures—around 4,000 slots. But the main issue was the slots on the Monday and Tuesday in peak hours. In initial proposals, neither Qantas nor Ansett offered to give back any slots at those times. Those slots not only would be given back to a new entrant but they would remain ring fenced for regional airlines. So there would be no concern with a new entrant or an existing entrant taking those slots and then moving them out of the regions onto the major routes like Sydney-Brisbane or Sydney-Melbourne.

CHAIR—On this whole question of regional airlines and access to regions, how do you handle what appears to be the growing dilemma of cherry picking? With the advent of Virgin and Impulse we are seeing a classic cherry picking case which is forcing the other airlines to meet the competition very much to the detriment of regional airlines, because passengers are now choosing to go, say, from Sydney to Cairns or whatever rather than travelling to the regions. So the regions are losing out because they cannot offer that sort of competitive pricing. You have additional competition benefiting consumers on the mainline routes but it is very much to the detriment of the regions.

Prof. Fels—First of all, some regions benefit from that quite a lot—I guess Cairns is a region and as much as anywhere else—but it may affect the distribution of travel. There is another point too. My perception of what happens when you get new entrants cutting prices is that you attract many more people to travel. When Compass entered the market and started offering those discounts, there was a huge expansion of the market. So, although undoubtedly there is truth in the point you are making that there would be some people who would divert their travel from one area to another and go where the cheaper fares are, I am sure there is a very big increase in the amount of travel, because Australian people are quite price sensitive as regards travel. If you can get to Cairns for half the normal price then instead of staying home you might go there. It is not just at the expense of travel to some regions; there is an overall boost in travel. But there may be some negative effects of the sort you have referred to.

CHAIR—I think that clearly there are. I guess the question is: is this in the public interest? We have airline access to regions that might not be quite as attractive as, say, Cairns. Therefore, from a national point of view we are, if you like, allowing a dominant sort of market move to exclude certain parts of Australia. I am just wondering how you balance that up? How do you actually ensure that those services are maintained to the less attractive areas?

Mr Cassidy—I take the point you have made. There are some positives in this for the regions as well in the sense that we are getting, as you say, a lot of competition on certain routes. If you think in terms of the hub and spokes on a wheel, that is a bit like the way regional airline services work. So, if you are coming from northern New South Wales, you may well find yourself getting off one plane at Newcastle, getting on another one and flying into Sydney because Newcastle is a hub, if you like, for the spokes in northern New South Wales. There is a lot of competition on the Sydney-Newcastle route. So in a sense what has happened in part is that the Sydney-Newcastle leg has become cheaper as a result of the competition and that is having a positive effect in terms of people travelling into various parts of northern New South Wales, just to use that as an example. As the chairman said, there are pluses and minuses in this. It is unfortunately often the case with any sort of change, including increased competition in a market, that you do not get universal benefits and you end up with winners and some losers.

Mrs HULL—Absolutely.

Mr Cassidy—Our role, insofar as we can under the act, is to try and ensure that as the result of the competitive process we have more winners than losers.

Mrs HULL—If you had a discounted fare of $30 to $60 from Sydney to Melbourne, Sydney to Brisbane, Sydney to Cairns, or wherever, I would like to see whether regional fares would come down to $30 or $60. I think that we need to look at the types of flights that are being offered in regional areas—for example, a $400 return fare for a one-hour flight from Wagga Wagga to Sydney or from Griffith to Sydney, and how many cheaper seats are available. You may get one or two cheaper seats on that flight that are probably $150 or $158 one way. I suggest that some of these cheaper flights are being funded by the ever-increasing cost to the consumer in regional areas, because you just do not get that type of offer out of a regional area, and every single regional flight is full—in and out.

Mr Cassidy—I understand what you are saying. I do not know yet that we have seen any evidence of that sort of cross-subsidisation. What is happening is that fares on the more populous routes are being cut, and cut fairly significantly. That relies on high volume, because the margin on each individual passenger is pretty minimal. Indeed, we would have to say that some of these fares probably look unsustainably low, and that is obviously part of the competitive process with new entrants. This is probably opening up a potentially much broader issue. You have raised the issue that increased competition is occurring and some people are getting the benefits of that; some people are not; and maybe some people are actually suffering a loss as a result of that. The next question is: what do you do about that? What is the answer? Do you stop or somehow try and encumber the increased competition where it is occurring?

CHAIR—I take your point: you are asking, 'Who is responsible?' But no-one can wash their hands of this because if you cannot get general support from the public about what competition is going on, you will see the backlash that we are already seeing in the regions. That is why it is beholden on the ACCC as much as us and others in the community to try and come to grips with this problem. Otherwise, you are going to get a society that is going to start to crumble or divide.

Mr Cassidy—We are certainly not wanting, in any sense, to wash our hands of it—do not get me wrong. At the end of the day, basically, we have to operate under the legislation which we are given. We do not have powers at large so, while we certainly can and do consider these sorts of issues when they are at stake, particularly when we are looking at authorisation matters and so forth and we are assessing public benefit, obviously the impact on regional Australia of particular proposals is very much in our minds. On the other hand, where a new airline decides to offer a very competitive fare on a particular route, unless there is something which is either anticompetitive about that—for example, it is predatory or an abuse of market power—or, alternatively, if there is some consumer protection issue about it in terms of the way in which it is being offered, unless there is some issue which actually raises a point under our legislation, at the end of the day there is a limit on just how much we can do.

Mrs HULL—I suggest that regional airlines are a fairly good cash cow for anyone. If we did a cost-benefit analysis of operating a Sydney-Melbourne or Sydney-Brisbane flight at $30 or $60 a seat, however many seats there are, and compared it with a full SAAB or a Dash 8, the position would become very evident.

Mr Cassidy—Maybe this reveals my particular biases, but I would have a bit of confidence that if they are cash cows, sooner or later the new entrants, who are actually operating on fairly fine margins at the moment, are going to start finding it attractive to be operating on some of those routes.

Mrs HULL—I hope you are right.

Ms BURKE—Still on mergers, but looking at banks in that regional sort of reference, originally when we saw the spate of small regional banks being swallowed up, the ACCC came down and said, 'So long as there is one regional left in each state, we are happy.' I would suggest to you that there is actually now only one regional bank left, being BankWest. If you read the papers you can see that there is some activity going on with respect to looking to acquire them—and also Bendigo, as my colleague has just pointed out. So there are probably two regional banks left. So the ACCC originally said in several of its decisions that that was the case so long as there was one regional left. Then when there was the merger of Westpac and the Bank of Melbourne, the stipulations were so long as they kept their brand name in Melbourne, so long as there was a regional presence, and so long as they kept their X number of points of representation open.

We have now seen that in respect of several of these mergers, particularly with Westpac's merger of both the Bank of Melbourne and Challenge, they have flouted many of the stipulations you put down in respect of those mergers. Where do you go to actually police and enforce the decisions you make when you grant the ability for these entities to merge? I would quite happily give you the indications in respect of the Bank of Melbourne that Westpac has not kept the points of representation as you requested them to do. Where do we go and what has happened to this notion of at least one regional presence in the banking industry being maintained?

Prof. Fels—I will just set out the full regional picture because Victoria and Tasmania are the exceptions. In WA we had BankWest; in South Australia you have St George, which took over the Bank of South Australia, and you also have the Bank of Adelaide. In New South Wales, you have St George and in Queensland you have Metway and the Bank of Queensland. In Tasmania, the Trust Bank has gone; it was not in a healthy financial position and someone had to take it over. Colonial took it over, but then Colonial got taken over.

Ms BURKE—Colonial has been bought by the Commonwealth Bank.

Prof. Fels—Whilst we were not thrilled about what happened in Tasmania, essentially the problem was that the Trust Bank was not looking viable on its own and we did not want an Australis there. With regard to Victoria, that is the one area where the general statement that we made, that we would start from a position of high concern if there was no major regional bank left, was one where in the end we decided that we could not object to Westpac's move on the Bank of Melbourne. The stipulations were basically for three years. To the best of my knowledge, the stipulations were honoured for the three years and we got reports, information and so on. How well the merger has worked in the market is another matter. It is not a very popular one in Victoria, that is for sure. Of all the merger decisions the commission has made over the years, that would be just about the most unpopular.

The commission had never quite said absolutely that never could it happen that there would be no regional, but it did say it would start from a position of very high concern. The merger was influenced by the almost paradoxical fact that Westpac was a very weak force in Victoria. The merger was presented to us as a kind of reverse takeover where Melbourne would call the shots. We are far from sure that is how it has turned out. It is true that you walk into the bank and it says 'Bank of Melbourne'. They have preserved some of the things of the Bank of Melbourne. The Bank of Melbourne, as I recall at the time, had quite a few weaknesses from being a small bank. It did not have a decent credit card—from memory, I do not think it had a credit card. It was suffering from size. Other regionals had generally been bigger, as in Queensland, St George and BankWest, and much more viable as banking forces. So you had two somewhat weak players who got together. As I have said, the stipulations to the best of my knowledge had been met for the three years.

Ms BURKE—Therefore can I take it that any proposal to someone to acquire, merge with or take over BankWest could not be on the cards, as WA would then definitely be left in the same situation as Victoria is now?

Prof. Fels—I think we have said that on BankWest we would have a very, very high concern. The problem with mergers is that we have to look at each case on its merits. There can be a whole range of reasons why you might not oppose a merger, including the one that you mentioned earlier. But, by and large, BankWest is an extremely important player there. At the time that we decided not to oppose Westpac's acquisition of Challenge, we made it clear that a central reason was the presence of BankWest as well as the other four. So I can only say that we do not put BankWest in the same category as the Bank of Melbourne. It is a much bigger, more substantial bank. From memory, its market share is of the order of 30 per cent plus. Melbourne was about 10 per cent.

Mr Cassidy—As the chairman mentioned, on Westpac and Bank of Melbourne we got certain undertakings from Westpac, which basically expired in October last year. We are reasonably confident and satisfied that Westpac observed those undertakings for the period when they were in place. There have been a few things that have happened since those undertakings expired, which is giving us a bit of reason to think a bit more about the use of particularly what we call behavioural undertakings in relation to mergers. However, one of the undertakings which Westpac gave us was to facilitate access to their electronic network to financial institutions that really did not have much of a presence in the Victorian market. We know from our monitoring of those undertakings that there are at least four financial institutions that under that undertaking gained access to Westpac's electronic network and are now able to offer electronic banking services throughout Victoria. So we are not thinking that all that came to naught, if I could put it that way. The undertakings were complied with by Westpac and there were some positive benefits out of that, in terms of the structure of the banking market in Victoria and what is on offer to retail customers in Victoria. However, there have been certain developments since the undertakings ran out and that is something we are thinking about in terms of our future approach.

Ms BURKE— At the outset, Professor Fels, you mentioned that you do not have responsibility for four pillars. I put it to you that nobody seems to want to have responsibility for four pillars. Hypothetically, if it were determined by government to agree with the Wallis inquiry that four pillars should be abandoned, how would you look at the concentration of the market then in so far as there are four players and London to a brick it would not be three

players left but two? Have you had considerations about that and how you would approach it if the inevitable did happen?

Prof. Fels—The short answer is that we have not got a view on how we would look at any such merger or set of mergers, but I can give you some indication of how we will approach it. The first question is: would it substantially lessen competition under section 50? We would be likely to look at three markets in particular. They would be small business; ordinary, consumer, over-the-counter transactions; and probably credit cards. We believe in all of those areas there are problems about competition, and we would be concerned that it might be further reduced if there were mergers, whether of four down to three or of four down to two. We would take into account also and try and assess whether, if it was four down to three, it would inevitably lead to a further round of mergers.

Suppose that we concluded that it would substantially lessen competition. Then there would still be two questions left. One is whether the banks could come up with undertakings that in some way would meet our concerns. But, broadly speaking, we only accept undertakings that would affect the competitive position. It has just been mentioned on the airline mergers that it was not a question of asking them to keep their prices down or something like that; it was a question of their being able to make slots available that would facilitate competition. So it would only be if the banks came up with undertakings that facilitated competition. In the US, with a lot of bank mergers, they can actually do that by selling off branches and things like that to competitors, but this does not look an easy solution in Australia.

The next question then would be to seek authorisation on grounds of public benefit, and they would have to argue then that the benefit to the public exceeded any detriment to competition. In that setting, incidentally, they could still offer some undertakings to enhance the claimed benefit.

As far as appeals are concerned, supposing that we concluded the merger was anti-competitive, the banks could go ahead with the merger and then we would have to go to the Federal Court and prove it was anti-competitive. There is a right of appeal to the Full Federal Court, and even to the High Court, which could take some time.

On authorisation, we would deal with the matter within 45 days. I would expect that, if there were such mergers, the bank would see us in advance and we would try and deal with these questions pretty quickly in the 45 days. Then, after that, anyone can appeal our decision to the tribunal. If we said no, the banks could appeal; if we said yes, then quite a wide range of people, broadly speaking, could appeal that to the tribunal. So something would depend on how the Australian Competition Tribunal would see it.

Apart from all of that, there would have to be a look at any mergers on prudential grounds and all that kind of thing. Take regional bank acquisitions, where the four pillars does not apply. The Treasurer still has a look, he gets a report on prudential and then, apart from that, he has to make some public interest assessment of it under the law. But there is no automatic bar, as you would know, on regional bank acquisitions.

Ms BURKE—Thank you.

CHAIR—We might take a short break here.

Proceedings suspended from 10.29 a.m. to 10.39 a.m.

CHAIR—Following up on the issue that has similar implications to what we were talking about before, Professor Fels, we might just move onto the question of petrol pricing. You monitor sites in the metropolitan areas daily and in the country areas I think it is twice a week. Could you say with confidence that, particularly since 1 July, the gap between city and country areas has not been widening?

Prof. Fels—Correct. In general terms the gap has not widened. There have been a couple of times when it has widened and there have been a couple of times when it has narrowed, but in broad terms it has not widened since 1 July. There is data on that. The extent of the actual gap between city and country prices can be slightly influenced by a couple of general factors. One of the main ones is whether world prices are going up or down. Typically, when you get a fairly large rise to a high level of world prices, the gap can narrow a little, paradoxically because the city prices go up quicker and the country prices go up slower. The reverse also applies. When there is a big fall in world prices, bringing petrol prices right down, they go down more quickly in the city than in the rural areas. Consequently, if you are studying the gap and you take a snapshot at one point of time, you may find a bit of a change in the magnitude of the gap which is not indicative of any long-term trend. It is simply reflecting the force that I have just mentioned. Mr Cassidy might be able to say a bit more on this.

Mr Cassidy—I do not know if there is a great deal more to add. There was a fair bit of press comment, particularly during January, that the city-country differential was blowing right out. As the chairman said, if you look at individual points in time that was, in a sense, true. What happened in January was that city prices fell mainly due to international price movements, so there was a widening of the gap. Since then the gap has come back again and currently, in an average sort of sense, the city-country price differential is pretty much spot on where it was back in June last year.

CHAIR—From that, can you say that the payments that are being made directly to retailers in regional areas to try to reduce the 1c, 2c and 3c payments are being absorbed by the fuel companies or are they being passed onto the consumers?

Mr Cassidy—Our view consistently—and we said this in our report that we put out in October last year—is that because of the number of factors which bear on that city-country differential, you cannot really use the differential to say anything about the fuel sales grant. To decide whether the fuel sales grant is actually being passed on or not, you actually need to go to the individual oil companies and the individual service stations and get pricing information directly from them. That is something we have been doing as part of our responsibility to monitor the fuel sales grant, because it was designated as being part of the new tax system. We have approached quite a number of individual retail outlets in country areas to get their prices and, basically from that exercise, so far we have not found any evidence to suggest that the individual retailers are not passing the grant on.

We are still undertaking that exercise of collecting data in terms of looking at the price which is charged to the retailers and then the price which they, in turn, are charging to their customers,

so again that is ongoing. As I have said, so far as the retailers are concerned, we have not found evidence to suggest that they are not passing on the grant.

CHAIR—Mr Cassidy, I accept your point that the retailers are passing it on, but the question really is wider than that: are consumers actually getting the benefit?

Mr Cassidy—My answer was carefully couched, because we do have, at the moment, an ongoing investigation which is looking at the other leg of it, and that is what certain oil companies have done in terms of their pricing of fuel to retailers in rural areas. Because that is an ongoing investigation, it is a bit difficult for us to give you a conclusive answer at the moment, but we are looking at whether some of the oil companies, at least in some areas, may have, in a sense, changed their pricing policies so far as the individual service stations are concerned.

CHAIR—To put it another way, are you getting a feeling that that may, in fact, be occurring and that they are changing their pricing policy? When will you be in a position to give some definitive answer to that?

Mr Cassidy—Obviously, we are investigating and we have our suspicions that that may have occurred in some cases. It is a fairly complex issue once you start looking at the relationship between the oil companies and service stations. What we would call the case theory is difficult because the oil companies—and I am not saying there is necessarily anything untoward in this—use a whole lot of concepts and notional prices and so forth in terms of deciding on their pricing to retailers and deciding on the discounts they offer retailers in certain circumstances. So the case theory is difficult, and then to actually go and get evidence one way or other is also a complex task which is not helped by the fact that a lot of petrol retailers, we have found, do not actually keep records. Because of the way the system works, they get a bill from the oil company at the end of the month, or at the end of a certain period. A number of them actually have arrangements where there is almost a direct debit arrangement between them and their oil company through their bank accounts. To go and say to them, 'What price were you actually charged for this petrol on these particular days?' is really a bit of a challenging task.

CHAIR—Can you expand on what your suspicions are?

Mr Cassidy—We have a concern that in some cases the oil companies may have adjusted their price to the retailer so that, in a sense, the fuel sales grant, rather than effectively being passed on to the consumer, has ended up in the hands of the oil companies, and the way in which that could have occurred is through the oil companies adjusting the margin which they allow the retailer in their price to him compared with the price he is charging in the market. So that is what we are looking into.

CHAIR—Given that, does it have the highest priority?

Mr Cassidy—We have put a lot of resources into this inquiry. As I say, it is a complex one. Looking at this has taken quite awhile and a lot of our resources.

Mrs HULL—You seem to have no repairers who keep records or who have a disparity in their thoughts. Now you have got service station operators who do not keep records. If you

would like to contact me, I will give you ones the names of some who keep excellent day-to-day records and who could you tell you a lot. If you have any problems with that, I can certainly put you in touch with people who do keep records.

Mr Cassidy—Don't get me wrong; I am not saying that there are not service stations out there that keep records. In terms of our investigation in particular, we are looking at particular areas and we have been hampered a bit by finding that a number of service stations do not keep the sort of information we are after.

Mrs HULL—The government has asked the ACCC to investigate volatility?

Mr Cassidy—Indeed, it has.

Mrs HULL—That is going to be another difficult little task for you to undertake, because volatility is volatile in itself. You will obviously be consulting with consumers and industry people as you normally do?

Mr Cassidy—Yes.

Mrs HULL—I went to an ACCC petrol price investigation conducted in my electorate. It was nominated to start at 9.30. The plane was late and they came in at about half past 11. They were booked on the 1.30 plane out and proceeded to take the 1.30 plane out.

Mr Cassidy—I do not know whether that is a question about petrol or a question about airlines you are wandering into there?

Mrs HULL—I was just about to phrase it. That is the way consultation for a pricing investigation in a regional area was undertaken: a presentation was given to the people who attended, which basically gave them every good reason in two short seconds as to why the ACCC cannot do anything about anything, and then they left on the very next plane. They were there for about an hour out of the scheduled four hours. It was a very disappointing experience for those people who had come specifically to be involved in this process. I wonder how you can assess volatility and how you can do this consultation if you are not geared up to conduct these investigations?

Prof. Fels—Generally planes run on time. Those people were doing quite a few consultations, so they probably had to decide whether or not to ditch the next one and hang around.

Mr Cassidy—It would not have been an investigation that you were present at. We do not have people at investigations. With the fuel sales grant we linked up with the tax office, which was doing a whole series of seminars, if you like, around Australia explaining the tax aspects of the fuel sales grant. I see you are shaking your head.

Mrs HULL—It was not that.

Mr Cassidy—Maybe it was not that. It certainly was not an investigation.

Mrs HULL—No. They came to give a presentation on the investigation of petrol prices and this is what happened. Anyone who wanted to ask questions was basically not accommodated. You have to ask the right questions in order to get the right answers. The problem I see is that we keep having these investigations, and we will go through the same issues on volatility. It was the same with the problems of full tanks of heated petrol getting to service stations cold and being at a reduced capacity. They were being charged on the full tank, but they got a far reduced capacity.

Nothing ever happens. I am frustrated with that outcome and so is the consumer. Whenever we suggest the government ask the ACCC to conduct another inquiry, they say, 'Another 40 or 50 inquiries. What have we ever received?' Can you understand that people are concerned about the way in which inquiries are conducted and the questions that are asked in order to deliver the correct answers?

Prof. Fels—In general, the terms of reference of inquiries are set by parliament. If we are investigating price fixing, that is our business. But, of the so-called 40 or 50 inquiries that we have been mandated to do by parliament, I cannot remember any where we have been asked to do volatility or where it has been a central focus. Most of the inquiries have been about the maximum price that oil companies could charge to service stations. If you go back over all the inquiries that we and many others have done, including a royal commission in 1976, the Productivity Commission inquiry, inquiries by the ACCC, and the TPC, and there have been a lot of state inquiries, they have addressed various questions and volatility has come up from time to time.

In the last 25 years, I have heard hundreds of solutions to the problem of volatility in petrol prices. I could tell you right here and now half a dozen ways to stop volatility in petrol prices, but they all involve higher prices for consumers on average. So, if we could find some way of getting more stable prices without consumers paying more on average, that would be highly desirable. But most solutions involve reducing competition, getting rid of discounts, getting rid of independent competitors in the markets, and making for orderly marketing of petrol in a way that is harmful to consumers and helpful to some suppliers.

Mrs HULL—In respect of the volatility issue, across the board it perhaps may come up with a higher price, but less volatility. The problem is that general consumers and businesses out there are tendering for contracts in advance, having to look at unknown quantities of fuel. Some of my tenderers tendered for diesel contracts only 12 months ago at 62 cents a litre for four years or five years. They are now in a position of basically going into liquidation because they are double that. That is the problem you have in volatility.

Mr Cassidy—But, with respect, that is not volatility. Volatility is particularly about the within-week fluctuations that occur that are driving people mad, and we realise that. That problem is more about what has happened, in relation to fuel prices, internationally and therefore in Australia, and it is also about what has happened to our exchange rate.

Ms BURKE—Two quick questions—one of which you predicted: when are you going to make your report? In relation to my second question, just last week Minister Hockey gave you another issue to look at, which is ethanol in petrol and the instances now within New South Wales, in Sydney, and in Brisbane. Back when this erupted in Melbourne mid last year, we were

advised by the government and others—and I am not quite sure if the ACCC came out at the time or not—that it was a state issue. So I am quite fascinated to know why it is now being referred to you by the minister to look into. I know it is very recent, but what are your preliminary findings in looking into the ethanol situation, seeing as it has actually been around for a long time, but exposed for only about 12 months?

CHAIR—And toluene.

Ms BURKE—And toluene. The reference from Minister Hockey is to ethanol, but it probably relates to toluene as well. And, as I said, when are you going to report on petrol prices?

Mr Cassidy—Well, let me take your second question first. In terms of the investigation we are doing on the fuel sales grant, which I think is the report you are referring to, given that it is an investigation, we will not actually issue a formal report on that. But our investigation, we hope, would conclude fairly soon.

In terms of the ethanol issue, and indeed other additives to petrol, this is one of those areas where, if you like, it is partly a matter for the commission and it is also partly a matter for state authorities. State authorities have laws regarding so-called passing off, which is selling something which purports to be one thing and it is actually another. We, under the Trade Practices Act, have consumer protection provisions relating to misleading and deceptive conduct, which again goes to the issue of selling something and holding out that it is one thing when really it is something else. Obviously there is, if you like, a borderline issue here. If this is an individual state issue or an individual region issue, it would be something that would tend to be dealt with more by the relevant fair trading authority in the particular state. Where it takes on more of a national character, then typically it is something which we would deal with. The latest claims about ethanol and other additives do have a national character to them in the sense that the claim is being made in a number of different areas, so, as requested by the minister, we are looking into it.

So far, though it is early days, we have had some reasonably detailed discussions with the ethanol producers to establish who exactly they sell ethanol to as a way of starting to follow the trail. One of the complexities is that, with ethanol and other additives, it is generally accepted that you can add a certain amount of these things to petrol and still legitimately call it petrol, so there is a nice issue about at what point you have added, say, too much ethanol to the petrol for it not to be petrol any longer, for it to be petrol derivative or some other name. There are some variations in terms of what sort of limits you might have, although for ethanol a figure of somewhere around 10 per cent seems to be a reasonably commonly adopted standard. We certainly are looking into the ethanol issue as we have been requested. Our inquiry at the moment is focusing on just exactly what is happening to the ethanol that is being sold to various petrol producers and retailers. In particular, what we are now looking into is where the blending of ethanol occurs, whether it occurs in the refineries or whether it is occurring not in the refineries but actually out in the depots. But, yes, we are still following that one.

Ms BURKE—Are you going to do it Australia wide, or are you just looking at Sydney and Brisbane, as the request is?

Mr Cassidy—No, at this stage we are looking at it fairly much across the board, although if the trail in a sense leads us into certain states or into certain areas then clearly that is where we will focus our attention.

CHAIR—We might move on—I am conscious of the time here—and look at the question of debit and credit card schemes and the points that were raised in that joint study on interchange fees and conditions of entry.

Mr PYNE—Professor Fels, business often accuses the ACCC of having wide-ranging power and being prepared to use it in a way to intervene in the market, which business often does not enjoy. In the area of interchange fees on credit cards, it seems to be that the banks are a bit unhappy because this is a great example of where the ACCC is intervening in order to try and stop consumers being fleeced by banks who have been overcharging with interchange fees. Would you like to comment on the actions of the Reserve Bank and the ACCC with respect to interchange fees on credit cards, and then perhaps you might also comment on the separate action you have been taking with respect to the National Australia Bank.

Prof. Fels—Not only would I endorse your remarks but also I would point out that there is wide business support for what the commission is doing. There is a very high level of concern by numerous businesses, small and large in Australia, retailers and many others, about the high level of merchant service fees that they pay that consumers do not know about. They get passed on to consumers, including the consumers who do not pay by credit card. They have that cost passed on in general in retail prices.

To outline the framework, there have been three tracks. The first track is that the commission began investigating the legality of the interchange fee arrangement two to three years ago. It did a detailed investigation. It had to use its compulsory powers of interrogation to get some information from the banks. Last April, it advised the banks that the interchange fee arrangements were, in our opinion, price fixing in breach of section 45A of the Trade Practices Act and were unlawful. We said to them at that time that we had no ambitions to put an end to the credit card system or even to interchange; rather, if the banks wished to come forward and seek authorisation for the arrangements, we would consider that matter sympathetically.

We then entered into a process of negotiation, hoping that the banks would come to the party. By August, it was clear that this was not happening, so the commission took court action. It decided to take action in relation to the National Australia Bank. Of the banks, they had been least cooperative. A number of the other banks had been much more interested in cooperation on authorisation. In addition, the commission considered that it was not a particularly fruitful use of public resources to launch a case against numerous banks when the point could be made in relation to one bank. That case is proceeding in the Federal Court.

The second track, which we got onto for a time, was that there were parallel discussions between us and the banks about this question of whether they might seek authorisation, with some variation in attitudes between banks on this question. As part of that a study was done by the banks which was assisted by various experts of theirs, which explained how the system worked. It more or less justified the system. The Reserve Bank had some involvement with them in that study. The question was whether maybe the banks would seek authorisation. Basically, in that period from April to about the beginning of March, they had not come up with

anything. They might say they had but they had not really come up with anything very substantial. When it became clear towards the end that we were likely to refer it to the Reserve Bank, they came up with some things, but not very much. We then referred the matter to the Reserve Bank.

That brings me to the third track. When the Wallis inquiry into financial systems was held, we were one of those who thought that it was fairly clear that a lot of issues were going to come up in the future about payment systems and relationships between banks. Wallis came up with recommendations that there should be some legislation about this and that the Reserve Bank should have it. The parliament then passed this law under which the Reserve Bank can designate payment systems, including credit card systems.

If the Reserve Bank designates, as the second reading speech and various other things state, the ACCC would have some involvement in the process. But basically the payments systems board of the Reserve Bank has power, in general terms, first of all, to make arrangements about the setting of fees—putting it simply, they can essentially set interchange fees—and, secondly, to make rules about how systems operate. They could say that a system has to be opened up for new players to come in, and they have a better grip on multinational players like Visa than we had under what we were doing under the Trade Practices Act. So we have recently concluded that, given the rather slow progress with banks and the possibility of it being very protracted, and some limitations under the authorisation process, we recommend that the bank should seriously consider designating, and, if they designate, they would then be in a position to set interchange fees and also to open up the system.

We believe that the credit card system, as disclosed in the economic study that we did, has some serious problems. In particular, we are concerned at the very high level of interchange fee of about $600 million for a processing set of transactions, which we believe sets the floor for those very high fees to merchants, which ultimately consumers pay. We are concerned also at the lack of competition, because only deposit-taking institutions can join the club, and there is a very small number of people in that credit card club. I know that companies have their own credit cards—such as Qantas and a whole lot of others—but they can only get into the system if they are co-hosted by a bank. It really is controlled just by the major banks and a few other smaller ones. We believe that there are really pretty important questions, and they are brought out in that economic study that we have done with the RBA, with whom we are working in conjunction because we have a memorandum of understanding. The interchange fee for a credit card transaction is getting on to a dollar for every $100 that is paid. It is a nice little earner.

Mr PYNE—There are a couple of things arising out of that. First, you talked about what the Reserve Bank could do—the powers they have. Have you made any firm suggestions to the Reserve Bank about what you would like them to do in terms of transparency and accountability in terms of interchange fees? You also talked about your economic study. You would probably remember the comments that Visa made—is this the economic statement that you are referring to?—which were that it fails to establish that there are any genuine grounds for concern with the operation of the payment card industry in Australia. Would you like to comment on Visa's attack on the study and their suggestion that it lacks any economic foundation, with respect to the findings of your joint report with the RBA?

Prof Fels—The Reserve Bank has been as closely involved in our own dealings about that study I mentioned in relation to authorisation, as was appropriate and so on. We cannot involve them in everything we do, for obvious reasons, but during that process they were made aware of our views and, likewise, we of theirs. It turns out that in that economic study that you have referred to, the views of the two institutions are pretty much the same. They are: first, that the interchange fees are not transparent and that they should be made transparent; and, secondly, that they seem to be too high. The gap between them and costs is extremely high.

On card issuing there is a 39 per cent mark-up on costs, or 76c a transaction. The costs are about $1.93 a transaction. The revenue is about $2.69 a transaction, and there has been some suggestion that a margin of perhaps 30c a transaction rather than 76c a transaction might be in the right ballpark. With merchant acquiring, the bit that upsets the retailers, there is a 67 per cent mark-up on costs. Costs are about 43c a transaction and revenues are about 72c a transaction, so that is a pretty steep mark-up. The interchange fees are about a third of the revenue from credit card issuing.

We have tried to express our views. The chief view, however, that we have been promoting most recently is that we think the Reserve Bank should give the most serious consideration to using its powers because parliament recently conferred them. I do not think there is any controversy between the different parts of parliament about the need for and the desirability of these powers. The process of talking and negotiating with the banks has not gone that far. Even to the extent that there has been bank cooperation, Visa has been uncooperative. That brings me to your point about Visa. Visa has a worldwide agenda on this. It looks at this matter purely from the point of view of the effect on its worldwide interests, and the fate of the Australian consumer is irrelevant. It is protecting its interests around the world. Australia is moving a little bit ahead of some of the other players on this matter. That is the explanation for Visa. I believe they have hired a public relations firm lately, and possibly a former prominent member of parliament might be involved in it, so they have been trying simultaneously to say that they have been fully cooperating with this, that there is nothing that needs to be changed and that the system is wonderful, but we do not regard them as having been cooperative.

Mr Cassidy—It is interesting that the Visa study you refer to was given to both us and the Reserve Bank as a confidential study, but the confidential study seems to have found its way into a heck of a lot of people's hands.

Mr PYNE—That would not be the first time, Mr Cassidy, that a confidential study has fallen into a lot of people's hands.

Mr Cassidy—No, but it is nonetheless interesting.

Mr PYNE—Visa says that if the suggestions that you have made were adopted the regulation of interchange fees in Australia would place Australia at odds with global practice. In most countries the fees are lower for card not present transactions, yet in Australia they attract the highest fee. Your study found no logical basis for this. It suggests that Australia is in fact out of step with global practice as opposed to being put at odds with it if your suggestions are adopted. Would you agree with that, Professor Fels?

Prof. Fels—Yes. I think you are hitting the nail right on the head there. Unfortunately, it is the case that in slightly smaller countries we often get hit worse and harder on these sorts of issues.

Mr PYNE—It is also the case, isn't it, that the payment of a debit card interchange fee to acquirers is unique to Australia?

Prof. Fels—Yes, that is another unique feature.

Mr PYNE—So in fact the suggestion that Australia is getting out of step with global practice when in fact Australia has amongst the highest cost retail payment system in the world suggests that Visa is probably just trying to protect its own particular patch as you have already pointed out?

Prof. Fels—Yes, we agree with you. It is trying to protect its patch. Looking at this from the point of view of a multinational, it has been on a gravy train for years all around the world. More people are looking at it, but Australia is one of the higher losers from it and we have to get on and deal with it. Thanks to parliament there are powers to deal with it now.

Mr PYNE—Is it the case in Australia that only authorised deposit taking institutions can participate in international credit card schemes—which is obviously a severe restriction—and you have concerns about Bankcard's role in this and their membership procedure which you found to be not objective? Would you like to comment on Bankcard's role in credit card transactions, and transparency and objectivity in their membership practices?

Prof. Fels—Our concerns relate right across the board to credit cards. Visa and the MasterCard now make up a much higher proportion of cards. We have a concern that the membership is limited to deposit taking institutions, as you said. Although it is always hard to forecast exactly what would happen if that restriction on membership were lifted, it does seem that there would probably be some degree of interest from quite a wide range of other possible entrants. You never know whether there would be entrants immediately or whether it might take a year or two from other financial institutions, local and international, and quite possibly retailers, utilities and others. That would ginger up the market; it would get a lot more competition into that closed market. That would benefit consumers and I believe it would benefit business quite a lot. There is real scope for massively opening up competition in this area.

There is one point which has customarily run against that—that is, that you could not have anyone offering a credit card. If they were to get into the system, there would have to be some kind of prudential check on them, but it would not be the same level of checking as is required for a bank. There are different economic questions involved with banks. We would have thought that major business enterprises, whether financial institutions, retailers, utilities or others, could easily pass the required prudential levels for participation in a credit card system.

Mr PYNE—Now that the banks are faced with the prospect of changes to the payment system board through the Reserve Bank and real action from both you and the Reserve Bank do you hope that the banks will now come to the party and that the Reserve Bank will not need to resort to its powers to force the banks to change or do you believe that the banks will continue

to hold out in the face of both the action against the National Australia Bank and the threatened action by the Reserve Bank and the ACCC?

Prof. Fels—My own belief is that the action is more likely to stay with the Reserve Bank; they have a direct legislative power. Also, even if the banks fully cooperated with us, there are some limits on what they can do about opening up membership. For various reasons we have got some hold on the situation through the fact that we are conducting litigation against them for price fixing. The litigation does not really cover the closed membership of the system. The arrangements there are not too far off what could be called an unlawful collective boycott. But we have not conducted that point in the litigation and it may not quite hold up. So we can only get some hold on pricing.

Ms BURKE—Now that the NAB has joined every other card issuer to the action, does that change how the action is going to proceed and how the ACCC will react?

Prof. Fels—No. They have taken the action and when the matter next goes to court there may be some debate in court on the part of the banks between themselves as to if anyone is liable and whether they should be in. Some lawyers will earn some fees for participating in that debate in the court.

Mr Cassidy—Our action, incidentally, is still against the National Australia Bank. The National Australia Bank cannot draw other parties and, in a sense, make them respondents in our action. What the cross claims do is: if the National Australia Bank lost a case, you then start looking at restitution. The National Australia Bank would then be in a position to say to the other institutions, 'You've got to contribute towards the restitution cost.' Our action still remains against the National Australia Bank as the sole respondent.

Prof. Fels—The case at the moment is narrowly focused on the fact that the arrangements constitute price fixing, which is automatically outlawed under the Trade Practices Act. There is, of course, another question which is not in the case at the moment—that is, whether the arrangements in any case would substantially lessen competition. The National Bank has invoked the so-called joint venture defence, which is this: if you are running a joint venture, the automatic prohibition on price fixing does not exist, and it is only unlawful if it would substantially lessen competition. When the joint venture defence went through the parliament years ago, the parliament was quite concerned that this was quite a big let-out, and it has written the joint venture defence on price fixing in very narrow and specific terms. The commission will be strongly arguing to the court that the joint venture defence does not apply in this. Of course, we considered that right from the start, and we did not think so. We note that one or two banks were a bit surprised to learn that they were, in NAB's opinion, involved in a joint venture with them. But putting that to one side, in terms of the wording of the act, we do not consider that they have a strong defence there. That is a matter for the court to decide. If they did, the question would be whether the arrangements had the effect of substantially lessening competition as a whole.

Dr SOUTHCOTT—When was the ACCC alerted to the trade practices issues that were involved with the Sydney Olympic ticket sales?

Prof. Fels—With respect to credit cards, it was about 1999. We got a complaint about it. The whole system had not been terribly well understood by anyone. Some light was thrown on it in our own report on credit cards; that was the Prices Surveillance Authority report in 1992. That report made us heroes amongst the banks because we recommended that there should be some deregulation of the credit card market. It did go a little bit into this interchange thing, but the trade practices implications were not picked up. There was a really important case in the construction industry that we were running, and the verdict of the court made it much clearer that the interchange fee was probably unlawful. It is not an absolutely straightforward question but there was a very parallel case involving C&C Construction a few years ago, which made this issue a lot clearer.

Dr SOUTHCOTT—SOCOG notified the ACCC that they were proposing conduct that would constitute third line forcing and the ACCC did not allow that conduct. What sort of issues do you consider when someone notifies you of proposed third line forcing?

Prof. Fels—In SOCOG, it was highly complicated by the fact that there is an exemption from the Trade Practices Act in New South Wales and we only got a handle on it through the fact that some of the behaviour was occurring outside New South Wales. Third line forcing is a very difficult issue. With third line forcing, if someone notifies third line forcing—and that is the way it comes to us most often—then we consider the matter. The fact that they notify generally gives them a temporary exemption from the law; then, unless we conclude that it is against the public interest, the practice can continue. If it is an interesting bit of third line forcing, we have a look at it and make a verdict. That is about it. There is a public interest test on it. That is the key bit of it. We sometimes get complaints.

Dr SOUTHCOTT—And in this case?

Prof. Fels—In the SOCOG case, the number one complication was that it was exempt in New South Wales but there was still some application to the rest of Australia. We went through a couple of phases of that and initially we blocked their use of Visa on an exclusive basis. I am a bit hazy about the details, but I think it started out that basically the only way you could pay was on Visa. Then, under some pressure from us, they opened up a wider set of payment arrangements. You could pay by cash and cheque—they would not take other cards—and just before the end, there was not much that could be done about the thing without causing fairly big ramifications for the games.

Dr SOUTHCOTT—You mentioned the immunity that SOCOG had under New South Wales law. It was quite a big consumer issue and it was a fairly public ballot. Was the ACCC ever alerted to the trade practices issues earlier? I mean, the ballot took place in June, July 1999. When the results came about October 1999, that was when consumers first raised it and I think that was when the ACCC acted publicly. Were you ever aware earlier, when the ballot was public, of possible concerns?

Prof. Fels—I am just having to struggle to recall the details, but I believe that when the initial ballot was held, the arrangements were not of such high consumer concern. They were certainly drowned by the other bigger issues. But for some reason, it was not the first round of sales that really raised high level of concern. But when they went into their later phases of selling, the Visa restrictions were a good deal tighter and they had fewer outlets and fewer ways in which

you could buy tickets. I think they had their mail-out first and you could then fill in forms. There were various ways of paying. I mean, it would have been much better if, from the start, you could have used any card. But if you did not have a Visa card right back there with the first mail-out, there were some other methods of payment.

Dr SOUTHCOTT—Cheque, I think.

Mr Cassidy—Yes, I am a bit like the chairman; I am scratching around in my memory. But as I recall, as we got closer to the time of the Olympics, the other means of payment in a sense dropped out on the basis that SOCOG argued that there would be timing problems, particularly in terms of cheques in the mail, and so on and so forth, and it became more of an issue in relation to the subsequent ballots. And it was, if you like, as it tightened that we started getting more complaints from ticket purchasers about the arrangements.

In terms of the exemption itself, the states still have an ability to exempt certain very specified conduct—and they have got to be very precise about what the conduct is and who it is by—from Part IV of the Trade Practices Act, the competition provisions. They are required to notify us of any such exemptions. We, in turn, pass that notification on to Treasury and to the National Competition Council. The Commonwealth does have the power to override those exemptions, but clearly it is not a matter within our remit. It is a matter ultimately for government as to whether particular exemptions are allowed to stand or not.

Dr SOUTHCOTT—Perhaps if you take that on notice.

Prof. Fels—Yes. We will get back to you with the details.

Ms BURKE—Can I just quickly turn to bank fees and charges? Is there anybody who is actually responsible for monitoring bank fees and charges? What is the ACCC's view about actually needing a formal direction from the government to monitor bank fees and charges?

Prof. Fels—On need, we would certainly say that, at this stage, there would seem to be some differences between the political parties as to whether there should be a formal monitoring reference. We basically believe that that should be left to the political parties to debate. We will do whatever we are instructed to do under the law. On the first question, Mr Cassidy will give you a brief account of where things are.

Mr Cassidy—We monitor informally at the moment. The difference between formal and informal monitoring is that with formal monitoring, under the Prices Surveillance Act, we have powers to require the entities that we are monitoring to actually provide us with the information we are after; whereas with informal monitoring we rely on their voluntary cooperation in providing us with the information.

So we are informally monitoring bank fees and charges and, at least up until now, we have not had any particular problems in getting the information that we have been after from the banks. They have been coming to tell us of their proposed changes in their fees and charges. The three banks that reviewed their fees and charges last September, or thereabouts—the National, the Commonwealth and Westpac—all came and told us what they were proposing to do with their fees and charges; and, more recently, the ANZ came to tell us about their latest

proposed changes. But, of course, with monitoring, basically what we do is we monitor and we report.

Ms BURKE—Given fees and charges in some instances have risen by 400 per cent, what is the good of just monitoring?

Mr Cassidy—Monitoring is about providing information. Without further direction from government, it is not within our remit to then act on that information. It is a similar situation with the monitoring we are doing in the dairy industry at the moment, where, again, monitoring will lead to a report—which we will in fact be making publicly available in the next couple of weeks. The information will be there for all to see in terms of what has happened with prices in the dairy industry since deregulation but, as I say, it is then for others to decide what should happen as a result of that set of facts.

Ms BURKE—Thank you.

CHAIR—We might go on to dairy in a minute. Professor Fels, you made some comments about the medical profession. You suggested that it has created a monopoly for itself, and you feel there is a need for some changes. I think you also made some comments in your opening remarks about orthopaedic surgeons in seeking an authorisation. Would you like to expand on some of those comments?

Prof. Fels—First of all, the commission is quite active across-the-board in the health sector, particularly since 1995. For example, we initially opposed Mayne Nickless acquiring Hospital Care of Australia, HCA, but eventually we settled on that merger when they gave us various undertakings. We have been looking at mergers pretty actively in that area. We have also had quite a few consumer protection cases in the health sector, so we have not been particularly singling out the medical profession, but there have been some important cases.

Briefly, in 1995 we began a process of education to make the profession understand its obligations. There were a few boycotts of country hospitals by doctors, and we stepped in and warned them that this was likely to be unlawful. We also took court action against the anaesthetists in Sydney for price fixing and boycotting hospitals, and we got a court verdict in our favour. And, more recently, we had a case against the AMA and Mayne Nickless for price fixing in Perth.

We continue with significant education activities, particularly in the light of the need to try to make the Act work effectively, and we have issued a draft guide on the application of the law to GPs, because there is some misunderstanding of it at the moment. You have probably seen these repeated, mistaken statements by the Australian Medical Association that it is unlawful for doctors to have a roster in country towns. Although we have put out numerous statements, the fact is that the AMA keeps telling everyone that it is unlawful for doctors to get together and have rosters in country towns. This is a complete act of mis-education and misinformation.

Dr SOUTHCOTT—You are saying it is not unlawful?

Prof. Fels—It is not unlawful. Indeed, I can even explain the legal point for half a minute. The act prohibits so-called collective boycotts, when some competitors get together and

withdraw supply. If some people get together and make supply available on a weekend through a roster, that is not unlawful. The commission has said that repeatedly. These rosters have been around for a tremendously long time; the commission has never had a concern. It has never investigated one, never looked into them, never had a worry. It has often said there is no problem. The AMA is going around everywhere saying that they are unlawful, and that they ought to get an exemption from the Trade Practices Act. I am sure you all would know there has been a lot of pressure on and of course this is the agenda of the AMA: they want an end to bulk billing. That is what the AMA is trying to do, and it would be a lot easier to get rid of bulk billing if they could get the Trade Practices Act lifted. Then they could cooperate and agree to end bulk billing. That is what the campaign of the AMA is about. It is to get rid of bulk billing and to get fees up to patients and to governments.

CHAIR—That is a fairly strong statement, Professor Fels.

Prof. Fels—There have been repeated strong statements by the AMA, and this is their agenda.

Mrs HULL—Currently, Professor Fels, we have an indemnity insurance crisis in New South Wales.

Prof. Fels—Yes.

Mrs HULL—I come from the Riverina, where I have a particular problem that my doctors, because of the cost of insurance, are considering withdrawing or have withdrawn their practices out of hospitals. That is obstetricians, No. 1, orthopaedics, No. 2. You have talked about GPs in your discussion and your draft guide goes into GP practices of rostering and making services available, as you have so clearly pointed out—not withdrawing services. But how am I to get a group of specialist services together to have discussions on how we are going to provide services into public hospitals or private hospitals now, without fear of the ACCC coming in and saying to me, 'This is a group of specialists looking at withdrawing their services'? In fact, they have got very little choice at the moment. We are not able to collectively discuss the future of Riverina residents and the services that they will be offered in the future. I have great difficulty with this.

I will go on to say that I have difficulty in this opening up of the medical profession, because we are experiencing such great difficulty in attracting services. You might think that orthopaedics are being prevented from coming. I do not have any orthopaedics wanting to come into my region. I have them wanting to get out of business because they are all getting on in age. I do not have obstetricians wanting to come into my region. So, when you are talking about blocking the supply or blocking the training of orthopaedics or obstetricians, or any other service facility—psychiatry, anaesthetics or whatever—I do not have a line-up of them wanting to come into my electorate. I have a problem with all of these positions that are being currently taken—for example, in this particular document that you have on reform of the health care professions, coming from the NCC—and it worries me because I do not believe there is a public interest.

Prof. Fels—On this question which has been run more recently I could make a couple of general points and then get down to the specifics. The commission applies the law, and it has

very public criteria indeed for how it goes about applying the law. The No. 1 test is whether some harm is being done to consumers as a result of behaviour. As you know, its track record is generally taking on big business or major cartel activity that is harmful to consumers. In looking at the application of the law in these situations we always look at the practical side: is there some detriment to the public going on that would lead us to use our powers under the law. We would approach this matter from a public interest point of view.

On the question that you have raised about the insurance problems of obstetricians and others, could I make a general statement to begin with. Since 1974 the commission has had to deal with quite a few difficult problems. It is a very strong law. I believe parliament has been right in passing quite a strong law. It has also had some implications for business people large and small all over the country. Yet the act has been made to work fairly well and effectively by the fact that the commission and business people, big and small, get together and work out practical resolutions to problems. When we hear about a problem of this sort we try and work out practical solutions that will let people get on with their profession or work in a sensible way. That is how we would approach these questions of country people. That is why we have been doing draft guides and talking to people. I am myself talking to a group of about 400 doctors in Melbourne this afternoon about a number of these issues. We look to dialogue. Generally, on the professional side, most of the professional and lobby and interest groups try and work with us to come up with solutions to problems.

On the specific question, our reading of the law is that where a group of obstetricians get together and decide that some of them will withdraw services there is probably, for the reasons you have given, a public interest benefit from that. Therefore it would be possible for them to come forward and seek authorisation not just for the three or four in one town but right across New South Wales for that particular practice. There is plenty of flexibility in the Trade Practices Act to meet these concerns if people are concerned that we would actually be taking any action about it in the first place. We have not been saying we would be taking action: it has been whipped up as part of this campaign to get an exemption from the law. I do say that there is machinery in the act under which they can come to us. Maybe it would be an application that across the state they could have these agreements about withdrawal and so on, probably under certain terms and conditions. So there would be scope for an authorisation there.

Mrs HULL—Why couldn't the AMA represent those country doctors in that respect?

Prof. Fels—They could bring the application if they wanted to. I do not know whether it would be then for the obstetrician or the others, but someone could bring it forward, yes.

Mr Cassidy—Mr Chairman, could I raise a procedural issue. I do not know the standing orders very well, but I am seeing questions being passed from the public gallery to members of the committee. Is that the way this committee—

Mrs HULL—I have not asked any questions that have come from the gallery.

Mr Cassidy—Nonetheless, I raise it as a general issue.

CHAIR—You can raise that point. I do not know that there is any reason why it cannot be done, but it is not a very common practice, I accept that.

Mrs HULL—I have not asked any of those questions because I have my own problem. I do not need to have anybody else pass me any questions.

CHAIR—Mr Cassidy, I will expand on that. As you would understand, all members of this committee, when we have a public inquiry like this, do receive requests from various groups in the lead-up to the inquiry.

Mr Cassidy—Indeed, I have no problem with that. What I am raising is a concern about this interactive process while we are actually answering questions for the committee.

Mrs HULL—Yes. I have a group of orthopaedics and obstetricians that have a difficulty in determining how they are going to offer services in the future because of this indemnity crisis that we currently have or the cost thereof. You are saying that orthopaedics could come in and ask you for an authorisation across the state in order to have these discussions and then the obstetricians can come in and ask you for an authorisation. Does that allow them to all sit down in the room and collectively discuss this with the future service provision in any hospital?

Prof. Fels—It would be possible to grant that under the act. I would like to make it clear—and you will appreciate this—that we cannot pre-judge any case that comes to us, so I cannot give you guarantees or that kind of thing as to what the verdict would be. If there is a good public interest case for them agreeing on certain things, then they would have the chance to get an authorisation, because the test is where there is a public benefit. By the way, we can be appealed to a tribunal, too, on that kind of decision. My opening view is that there is scope for there to be something like a state wide application which would probably say that in individual towns, under certain circumstances, they could get together and have certain limited agreements. There would be a bit of work that would have to go into what would be authorised under this, because we have some interests in the fate of consumers here.

Mrs HULL—So do I.

Prof. Fels—I would not be seeing this as an open slather for them to get together and agree on everything and in all cases. In the scenario that you have painted there is a very real concern that, without some kind of agreement, there could be a withdrawal of services from a country town.

Mrs HULL—There will be.

Prof. Fels—That is the kind of case that would obviously have a pretty strong public benefit element to it. If it were a kind of case where the purpose was, say, to get together to jack up fees or something like that, then we would have a concern. So the authorisation would probably be fairly precise as to what it was about. We are very happy to work with doctors and talk about these problems. That is always our process—to try to talk them through and come up with practical sensible solutions.

Mrs HULL—I could go all day, but I have to let other committee members ask questions.

Dr SOUTHCOTT—Professor Fels, you made the statement that the AMA wants to get rid of bulk-billing. What evidence do you have of that?

Prof. Fels—Yesterday's papers, and I think today's, carried extensive reporting that the Australian Medical Association—I think I will use the term AMA, because I do not know that they have that much support from all the doctors—which has some membership from the medical profession has been repeatedly making negative remarks about bulk-billing. I believe in the paper this morning—maybe it was in the *Sydney Morning Herald*—there are further extremely negative comments about bulk-billing by the president of the AMA. I think I saw her on television last night also making highly negative comments about bulk-billing. The article states:

Doctors will stop bulk billing if the RVS is not implemented, and this will lead to larger gap payments for patients …

Mr Cassidy—I might add that we have complaints about some doctors in some country towns actually getting together and boycotting bulk-billing. They are live complaints that we are currently looking into.

Mrs HULL—I have one of those country towns.

Mr Cassidy—It is not a hypothetical we are talking about.

Dr SOUTHCOTT—When you look at the professions, looking at health, how do you define the market? There some features of this market whereby you have imperfect information, although I think consumer information is getting better. You do have quite a high level of government subsidy, whether you are looking just at a general practice visit or at a specialist consultation. You mentioned in your BRW article of 2 February that the patient's desire for excellence in treatment may justify some of the restrictions, and so would the doctor's right to an adequate return on his education investment. How do you balance those sorts of considerations with the specific market in health?

Prof. Fels—These are very difficult new questions. We have taken some views of market definition in this case before the Federal Court. When we took the anaesthetists to court, we thought there was a local market for anaesthetists in Sydney—it was not to be seen as a national market. In Perth we also saw it as just a Perth market, not a wider market than that. In the hospital mergers, we have had a fair bit of discussion. Just for the scholars here: there have been quite a few published decisions about market definition in hospitals, professionals. They are all very difficult questions, and they are evolving a bit.

About the general point: yes, health markets have a number of very different features, for the reasons you have mentioned: the role of insurance, the role of Medicare. In the professions, we would look at it from the patient's point of view on the whole. We would start with the patient's choices between doctors. So for a patient in Adelaide you would not take into account the fact that there are doctors in Melbourne. In a country town, for a GP you probably would not look wider than the country town. For a specialist, you might go a bit wider. It is a very hard question.

Dr SOUTHCOTT—In the cases that you have mentioned—the anaesthetists in Sydney, the hospitals in Sydney and also the old Wanneroo hospital, the Joondalup health campus—could action have been avoided by all those different groups negotiating individually? Was that the problem?

Prof. Fels—With the anaesthetists, that was pretty straightforward. They got together at one of their meetings and had a written agreement to put up prices, so that was just straightforward price fixing. And they should not have had an agreement about it; that is just not on. They also got together and told some hospitals, 'We will not be turning up at any operations there for a while unless we get this increase,' so that is a collective boycott, unlawful. They should not have done that collectively. Individually, they can. That is the point. They can do all these things; they can withdraw their services, individually. It is only having an agreement between them that raises issues under the Trade Practices Act. They can talk about certain things, as long as they do not reach agreements. Then they have to seek authorisation.

Dr SOUTHCOTT—You mentioned before that your education about the health profession began in 1995. Would you accept that there is concern amongst the profession about what they can do which constitutes reasonable management of a group practice without colluding or price setting? What would constitute a problem under the Trade Practices Act.

Prof. Fels—I would accept that there is concern about it. We have to do further work on education, dialogue and talking with them. In the case of the AMA in Western Australia we had a very extensive set of seminars with them. After that they got into doing what we allege were all the things that we had explained to them they could not do. That is why we went to court on them. It was not an education issue.

I have studied a bit how this works overseas, and it is emerging in the same way in Australia. The commission only ends up taking action where there is a serious problem for patients and consumers or maybe hospitals or insurers. The main cases that come up in practice are not ones that involve high level ethical concerns about the patient-doctor fiduciary relationship or ethical issues or that kind of thing. They do not involve arguably socially justifiable withdrawal of services in difficult situations with insurance in country towns. The cases are all about blatant misuse of market power by powerful groups to the harm of the public. That is where the law really is applied. That is how we go about it. You could not point to any minor cases where we have intervened. But there is an ongoing requirement for education. I accept that.

Dr SOUTHCOTT—I have two more questions. I thank my colleagues for their forbearance.

Mr PYNE—I will give up my questioning on the medical profession to you. I am quite happy because then it will all have been covered, so you can take this.

Dr SOUTHCOTT—I will just ask them; they are very quick. Can you tell us about overseas experience in trade practices law in the health profession? Secondly, why did you choose orthopaedic surgery? You mentioned the barriers to entry, they have sought an authorisation and their training is not very different from most of the other subspecialities of various specialities.

Prof. Fels—We thought this whole question should be looked at. The orthopaedics got honourable, or other, mention more than many other specialties, and we got rather more complaints about them. That was why they were chosen. They also did not meet the so-called AMWAC manpower targets, which was another indicator.

Mr Cassidy—We also had hard evidence, which we will not describe.

Prof. Fels—America had a lot of experience of this. We are learning a bit from them. The Americans are the ones we have learned a bit from.

Ms BURKE—The National Competition Policy is also looking into the professions. One they have stated is doctors. Do you work jointly with them when they are doing that? There is a perception in the community about managed health, the notion of doctors coming together and commercialisations. The AMA has been talking about GPs dying off because big companies are buying them up. One of the reasons they cite is the trade practices restriction—because they cannot talk as individuals. Have you had a look at the public perception and their concern about managed health?

Prof. Fels—The corporatisation of medical services in itself does not raise trade practices issues. My impression is that many factors are driving that and that the Trade Practices Act is a very minor one indeed. We are not picking up that it is causing that many problems in reality. It may be a small factor.

We would only get involved in corporatisation if it was anticompetitive or, for example, one corporation took over all doctors in Melbourne, or something like that. If it was very concentrated, you would be worried about the vertical links between things, but only in a competition framework. I could not promise you too much there, if I could put it that way. There could be some consumer protection issues.

Ms BURKE—What about the notion that, as a commercial entity, you are allowed to refer to only one pathologist and you are allowed to refer to only one specialist because of the commercial links that it has as a corporate entity?

Prof. Fels—I would make one highly general point about that: although a lot of that is not really going to qualify under trade practices, it is one reason why we are a little wary in these guides that we put out. We are trying to be liberal-minded about cases where individuals are doing things, but there is a law so that it can work differently if it was, say, a big corporation with hundreds of doctors working for it. Certain practices would then start to be of concern. We are feeling our way a little bit. We are not wanting to write guides that would give exemptions that could be problems in the future.

Mr PYNE—I feel that we have covered the medical profession quite adequately, and I did not mean to suggest that I was unhappy about you continuing your questions. I have a speech to give at 12.15 p.m. and before I leave I would like to ask a question about something other than the health profession.

Mr Cassidy—Not wanting to be unhelpful, but when we were invited to appear there was a mention of the hearing finishing at midday or so, and bearing in mind earlier comments about planes it was probably a bit risky. Some of my colleagues who have travelled from interstate to be here have plane bookings. When do you think we might finish?

CHAIR—The committee does have more questions obviously. We could reconvene, but could you give us some indication as to how tight your deadlines are?

Prof. Fels—I myself would like to finish at about 12.30 p.m. because I have to give a big speech in Melbourne this afternoon.

CHAIR—Then 12.30 is fine.

Mr PYNE—I apologise because I will have to leave at about 12.15 p.m. The one question I would like to ask is on a more positive note, because I agree with my colleagues about the medical profession changes; I think we need to be very careful in that direction. You made some comments this week about the restrictions on the importation of DVDs, and this is an area that you and I have had a lot of correspondence on in the last eight years. We have a new bill, of course—the Copyright Amendment (Parallel Importation) Bill 2001—which does not, from my reading, appear to cover DVDs. I am interested to hear if you think it does and how it would work. Or are there other ways that we can act to stop the restriction of the importation of DVDs on this zone system or this regional system that they have implemented internationally?

Prof. Fels—The DVD question is very interesting because, so far as we can tell, and it seems to have been confirmed by industry sources—and you may have seen that article about it that appeared recently in the *Australian*—this is a private agreement between major world companies to carve up the world market in a way that is particularly harmful to Australia. Most of the time Mr Pyne has shared my concerns about the statutory restrictions on parallel imports, but this takes it a further step. These companies have just got together, without any statutory backing, and had an agreement that the DVDs coming to Australia will be those designated for South America and the Pacific. We are put in a different box from North America or Europe. The whole purpose of these multinationals is to carve up world markets and to take higher profits and reduce supply in places that are more vulnerable.

If you are a long way from anywhere you are particularly vulnerable to these things. If they try and exploit Canadians, Canadians can cross the border and get cheap things from the US. We cannot from anywhere. This agreement has been offshore. It is a jurisdiction question. We are at the moment investigating to determine as best we can whether there was an unlawful agreement between businesses to reduce competition. If that is the case we then have to consider what practical action we can take and whether this can only be solved by international cooperation or whether there is something that we can do at the Australian end.

You have raised the statutory import restrictions. I note that in a way there is a connection with the DVDs. The Ergas report recently out on this subject more or less said, 'Well, this is fine. We have done a little on books, we have done CDs, we have done the packaging and labelling.' But if you do it piecemeal people use their protection in other areas. They put, say, videos on CDs, and then you cannot import the CDs because of the copyright protection on the videos and so on. So they have said we ought to lift the restrictions generally. There is a very strong case for that. In the meantime, the commission from long ago has favoured lifting the restrictions on books and computer software, and therefore supports the proposed lifting of the restrictions.

Mr PYNE—Thank you very much. Some of the offenders are our old friends from the compact disc debate, without wanting to name names.

CHAIR—Professor Fels, another area that I thought we would like to follow up on is the monitoring of GST compliance. You indicated in December that you were generally satisfied with the way business was handling the introduction of the GST. I was wondering whether you would like to talk about experiences since then, and are you still satisfied?

Prof. Fels—In broad terms—as you know we published that shopping guide—most of the prices came in at or below the range set out in the shopping guide. So we broadly concur that there has been substantial compliance on the pricing side. There have been some cases where price came in above and we have investigated the reasons for that. We still have some investigations going. Maybe my colleagues could say a little more.

Mr Grant—I am not sure there is much more I can add. We are currently undertaking, approximately every two months, a monitoring of approximately 640,000 prices across about 1,000 items in almost 10,000 sites in 115 towns and cities, and our monitoring continues to show that, as the chairman said, the price increases are consistent and often below our expectations. I might add, though, that our expectations relate only to the new tax system changes, not to other reasons.

Mr Cassidy—One thing I suppose that is starting to happen, given the length of time since the new tax system was introduced, is that there are now obviously a whole lot of other factors which are bearing on prices. Some people were saying, 'This has gone up by X per cent since 1 July and your little booklet said it would only go up by Y; therefore does it mean you are wrong?' The little booklet was always only about the effect of the new tax system, and, when you look at what has happened to prices since 1 July, you are of course not only picking up the new tax system but other factors as well, and the further away we get from 1 July the more those other factors are going to become increasingly important. So those straight comparisons, if you like, need to be done fairly carefully because they are sort of apples and oranges and becoming more like apples and watermelons as time goes on.

Ms BURKE—One of the reasons we have been allowed to go to 12.30 is so I cannot do the press release. It says, 'Opposition denied opportunity to question on GST'—so I am going to do it.

Do you have any regrets about how you went with the introduction of the GST, and the heavy-handedness that caused a lot of fear amongst small businesses? They are now saying that they have absorbed a hell of a lot of the price impact of the GST, that we will not really see some of the flow-through of that until next year, and that it has had, in some respects, some negative impact on many small businesses who are going under because they have had to absorb such a lot of the GST load.

Prof. Fels—What I have always said about the GST is that we were, above all, interested in getting some information into the marketplace that would create the right expectations of the price effects of GST. In other words, we got quite concerned that a number of businesses were getting out into the marketplace saying that prices were going to get up by amounts that were a great deal more than you could possibly believe they should go up. There was a self-interested inflating of expectations. So the number one thing we were trying to do was to get information out to the market—to some extent to businesses, but especially to consumers—so that they would know that such and such a good might go up by three per cent, not 10 per cent, or might

fall by five per cent, not go up. If they did that, we believed that, with some vigilance by consumers and some watching by us, more reasonable prices would occur. So we believe that we dampened the expectations in an appropriate manner, because our forecasts of the price effects were about as straightforward as was possible. The mathematics was not that difficult in working out what happens when WST comes off and GST goes on. It is not that hard to figure out.

The other thing is that what is not often mentioned by some of these businesses is that, in a sense, the fairly high degree of publicity actually made some of them more aware of what they could do positively to put up prices. In other words, there are some businesses—including some very small businesses I know, or friends of mine or whatever—who did not care much about the GST. Even on 1 July they were saying, 'Well, I don't have to pay for quite some time. So I will not do anything about my prices until I have to,' and so on. In a way, one of the positive effects of the commission's role was to raise awareness of what they could do under the guidelines, as much as making them concerned not to go over the guidelines.

Mr Cassidy—We also put a lot of effort into trying to educate small business, particularly, on what sorts of price changes they should be making. That was partly to avoid their increasing their prices by more than they should, but it was also, in a sense, to avoid the other thing happening: that they might not increase their prices by legitimate amounts. Mr Grant can go on in some detail, but we had education kits, ready reckoners and a whole lot of material on our web site which was readily accessible—we had thousands and thousands of hits on that material on our web site. So we really put quite a lot of effort into trying to educate small business, in particular. To be honest, we did not worry all that much about educating big business, because we took the view that they could look after themselves. But we put a lot of effort into trying to educate and help small business work out just what sorts of price changes they ought to be making.

Ms BURKE—Let me just look at two examples, then. What has happened with Video Ezy? There was a lot of hoo-ha beforehand, and Minister Hockey accused me wrongly of being 'asleep at the wheel' with this one, so I am interested.

Prof. Fels—Video Ezy is in court. The case is just chugging along. The hearing has not begun. I do not think the hearing kicks off for a few more months.

Mr Cassidy—That is right. We have had some directions hearings, but the substantive hearing is still some way off. We are still talking to Video Ezy, but clearly I cannot elaborate on that, given that it is now before the court.

Ms BURKE—That is fine. The other one is Westpac. Westpac put up its fees by the full 10 per cent, even though there was some absorption, and nothing has been done about it, to the best of my knowledge. At what stage is that?

Mr Cassidy—I do not agree about the 'nothing', but maybe I will let Mr Grant elaborate.

Mr Grant—Westpac also entered into a public compliance commitment with us, and we had a detailed examination of the impact of the new tax system changes on their costs as well as how they intended to respond to that. Because banks are input tax and consequently are not able

to recover their GST amounts, it did have an impact. Westpac essentially increased quite a large number of their fees by, as you said, the full 10 per cent, but others by not as much. Ultimately, while we are never happy about these fee increases, we did not feel that it was likely to be in breach of the law.

CHAIR—I understand that there have been some difficulties with the distribution of films where some of the major distributors have been making it fairly difficult for country outlets. I wonder whether you could explain to us what is happening and what you are doing about it.

Prof. Fels—Many members of parliament approach us with complaints from small film exhibitors: they have got a little cinema house and they have difficulty getting new release films and getting them at reasonable prices, particularly in rural areas. A couple of years ago, we spoke to the whole industry and we pushed for a voluntary code to sort out these problems and have a dispute-settling mechanism where there were disputes. That seemed to work for a while and the number of complaints fell away, but they have picked up lately. In addition, a couple of decisions by the arbitrator/mediator have not been complied with by distributors, so we are now concerned about this code. Parliament recently passed laws saying that there can be compulsory codes in the form of a voluntary code that they all agree on, but, once it is agreed on, it will be enforceable under the Trade Practices Act, so we can enforce it; otherwise, the minister can just draw up a code about the whole thing, and that is that—that is the law.

We think the cinema code is starting to show serious signs of falling apart and we are going to draw this to the attention of the government and recommend that they consider whether they should exercise their options to, in some way, make the code compulsory.

CHAIR—I want to touch on the situation with the Dairy Farmers Federation. There was quite a dramatic decline in the price of milk.

Prof. Fels—Yes.

CHAIR—I understand that they have approached you with the idea of actually being able to have a collective bargaining position because of the dramatic decline in fresh milk, mainly in Queensland. What public benefit do you expect to see before granting such a request?

Prof. Fels—We have granted similar sorts of requests from chicken growers and from wine and grape growers, and regarding premium milk in Queensland. That authorisation went through; we found some benefits. There have been maybe one or two other farm-based applications for authorisations. We have indicated in general terms to the dairy farmers that we think there may well be public benefits, and we practically invited them to seek authorisation. It has had some improved effects on their bargaining. It prevents the exploitation of individuals, and there are some economic benefits from their doing some degree of collective bargaining. We told them that last September or October, and it was reported fairly publicly. The application arrived only recently, and there are some details that are not very clear.

Mrs HULL—Can I just follow on in dairy. It is another hobbyhorse, as is the medical profession at the moment. Simply, supermarket milk is cheaper. The consumer benefit is cheaper only in supermarket milk—that is, the Woolworths brand, Coles brand or whatever. Other milk has not dropped. In fact, in some areas, it is more expensive. When looking at the

public interest and benefit to the consumer, unless you buy supermarket milk, there is no public interest and no consumer benefit. If you want to continue buying Murrumbidgee dairy product in my electorate, there is no difference in the price. In fact, it may have increased. So I have this major problem with public interest and the benefit of dairy deregulation. Also, there is a discrepancy of about 11c that seems to be lost in the price received by the producer as against what ends up on the retail shelf.

Prof. Fels—We are going to do a very detailed report in the week after next, I would hope, which will go into this in quite a lot of detail. We will try to give you data on all of the points you have raised. I could do slight qualifications to what you said. It is true that there are a few areas where it has gone up 11c, like UHT and I think in the ACT and the NT. With others, it is true that it has come down more at supermarkets than other outlets, although the other outlets seem to be reducing a bit but not as much. There are quite a few profound issues behind what you have raised here. Often country milk prices can be lower than in the city, which is an interesting reversal. There are some instances of that. We are going to try to put out all the data on pricing. We have done some pretty extensive checking of it, and you will get a fair idea of the pricing in due course.

CHAIR—We will certainly look forward to that.

Dr SOUTHCOTT—I have a wider question on competition policy. One of the political problems is that it seems that sometimes the losers from competition policy are quite easily identified, whereas the broader benefit is not so evident. Has the ACCC done any work to see what sort of national economic benefit competition policy is delivering?

Prof. Fels—There is not a systematic study by us, but I will make one point: as far as applying the Trade Practices Act part of competition policy is concerned, we believe that that helps losers quite a lot. In country towns, as far as we can apply the act, we break up cartels, mergers and misuse of market power by suppliers to people in rural and regional Australia, whether they be farmers or people living in cities or in the bush. We believe they get a fair number of benefits from vigorous application of the Trade Practices Act. If you break up a cartel and the prices come down, they should get a benefit. If you stop an anticompetitive merger, it helps them. Also, selling to monopolies is no joke either, and that is another reason why you apply the merger law.

Ms BURKE—I have some more questions which you are not going to have time to answer now, but I would like to ask whether it is all right to table these questions. The first question relates to your involvement in HIH in respect of consumer protection, and the other relates to the Productivity Commission's report which was handed down yesterday saying that the Prices Surveillance Act should be repealed and that we should now go to a light-handed approach to price monitoring. As we are not going to have time today, I will supply those in writing and get some written responses if that is okay.

CHAIR—The Deputy Chair has beaten me to it. I was going to say that I am sure you would be happy to take some more questions on notice.

Prof. Fels—Yes.

CHAIR—Thank you, Professor Fels, Mr Cassidy, Mr Dimasi, Mr Grant, Mr Grimwade, Ms Lu and Mr Pearson, for coming before the committee today. I think we have covered a wide range of issues and we certainly appreciate your taking those questions and answering them in a frank manner.

Resolved (on motion by **Mrs Hull**):

That this committee authorises publication, including publication on the parliamentary database of the proof transcript of the evidence given before it at public hearing this day.

Committee adjourned at 12.30 p.m.