

**Melbourne Press Club
Graeme Samuel, Chairman, ACCC
Friday 18 July, 2003**

1. Introduction

Just the other evening, I was having dinner with my predecessor Allan Fels. I must say that he was looking absolutely refreshed – almost as if he had spent several weeks at a health clinic. And that was only three days after he had retired as Chairman of the ACCC. I asked him how he was feeling. He replied with an unusually light-hearted tone to his voice, that no-one could possibly imagine the weight that had been lifted from his shoulders. I quickly responded that I could – it had landed on mine with a sudden thud!

A tidal wave of issues have descended upon me in these first few weeks: the aftermath of the Royal Australasian College of Surgeons Determination; AGL; the issue of the power of the major supermarkets; as well as a number of mergers. Without even mentioning other issues such as regulation of telecommunications, energy issues and the constant stream of enforcement matters relating to both competition and consumer protection issues.

Today I have entitled my address: ‘A new chairman of the Australian Competition and Consumer Commission: A change in substance or a change in style?’

In doing so, I was prompted by a number of predictions, remarkable for their fearless and certain tone, made mostly by people who have never met me, indicating their views as to what my appointment means for the Commission.

So far, comment about my supposed approach can be grouped into one of four classes.

The first class is that I am a creature of big business and that I have lack an understanding of the difficulties encountered by small businesses.

The second would have you believe that I am a deal maker and thus less interested in seeing the law enforced vigorously.

The third is that I favour a very low profile, will shy away from dealing with the media and as a consequence the Commission’s conversation with the Australian public will be muzzled.

The final class of comment is that, as Chairman of the Commission, I will dominate Commission processes, deliberations and decisions and thus diminish the role and importance of my fellow Commissioners.

My key message today is that the Commission’s responsibilities are defined under the *Trade Practices Act* and that the Commission will continue to

discharge these responsibilities in a manner that is appropriately loud and robust.

This must be the case irrespective of who occupies the office of chairman.

In substance, I cannot and will not be any different from my predecessor, Allan Fels. He undertook his functions as Chairman of the Commission in a proper and outstanding fashion. He carried the Commission through the administration of the *Trade Practices Act* as he was bound to do. He recognised, as business is bound to recognise, that the framework within which the regulator must operate, is set by Parliament. If the regulator moves outside that framework, the courts will bring it to heel. If the regulator is not seen to be properly enforcing the Act, those affected by that failure, consumers, small and big business alike, will act with the assistance of the media and Parliament, in subjecting the regulator to constant and close scrutiny, to ensure that it is fulfilling its responsibilities without fear or favour.

Of course there will be a difference in style between Allan Fels and myself, because he is Allan Fels and I am Graeme Samuel.

I am often asked to describe my own style – I will have to leave it to others to proffer their own descriptions in due course. I would like to think of myself as being open, forthright, and above all completely uncompromising, as to my personal principles and responsibilities attached to public office.

I'm sure that there will be as many critics of my style as there have been of Allan's over the years. But that criticism goes with the job – as Allan often said, if you're not being criticised then you are probably not doing the job effectively.

Sometimes I think that that criticism is an attempt, perhaps somewhat naïve, by elements of business to put pressure on the ACCC and the way it fulfils its responsibilities. Perhaps it's a misconception that this sort of process of using public rhetoric and criticism, might influence the way the ACCC carries out its duties.

The important thing is to assess whether the criticism is well founded and merits a change in style or whether it comes from vested interests that do not understand the role of competition policy or the role of the regulator in pursuing vigorous but lawful competition on the part of big and small business for the benefit of consumers and the Australian economy.

The only sections of business who have anything to fear from the ACCC are those who don't believe in the fundamental principles of lawful, honest competition. And to those I have one message – watch out!

What Allan has demonstrated is the critical importance of publicly making consumers and business aware of their rights and responsibilities under the *Trade Practices Act*. You may rest assured, or, depending on your

perspective, be somewhat discomfited, to know that I will be following Allan's example in continuing to do just that.

2. Big Business, small business, consumers and the law

In coming to this role I bring extensive experience in law, investment banking, business, and in the way businesses think and operate. These practical experiences give me a good insight into the way businesses focus on competitive pressures and the way they may engage in anticompetitive behaviour. After all, it is universally acknowledged that poachers make the best gamekeepers.

My work over the past six years as President of the National Competition Council involved reforming Australian businesses, government businesses, big and small business, with the objective of producing benefits for consumers. It was a valuable precursor for my new role as Chairman of the ACCC.

The purpose of competition policy is to promote competition in the interests of consumers, not to preserve competitors or to protect certain sectors of business from the rigours of competition.

Businesses that are able and motivated to take advantage of the competitive environment through innovation, improved efficiencies, keen pricing, quality service standards and other forms of vigorous competition will thrive. The corollary is that businesses that are unable or unwilling to respond to the challenge of competition will languish and may ultimately fail.

This is not to say that small business has no protection under competition policy. Competition policy is about encouraging vigorous, competitive behaviour which benefits consumers and the public at large. Small businesses that are subjected to unfair or unconscionable business behaviour that disadvantages consumers, are entitled to protection from that behaviour under our competition policy laws.

And the facilitation of collective bargaining by small business, the subject of recommendations in the Dawson Committee Report, is significant in helping to correct any mismatch in the relative bargaining strengths of big and small business operators.

It may be the case that to promote and nurture competition in a market, it is necessary to intervene to protect competitors or a class of competitors in that market from substantial damage or indeed elimination as a result of a course of behaviour by another competitor.

The difficult task for governments and competition policy regulators is to strike the balance – to distinguish between vigorous but lawful conduct that is likely to lead to significant benefits for consumers and unlawful anti-competitive behaviour, likely to disadvantage consumers. This is a task that needs to be undertaken independently, rigorously, transparently and objectively to ensure

that the primary focus is on the interests of consumers, that is to say the community at large, and not on insulating certain sectors of business from the normal competitive disciplines.

The voice of the consumer will be constantly heard urging that the focus remains on consumer benefits. Consumers represented by consumer groups, want to ensure that governments and regulators promote dynamic competition, even if this implies that it be aggressive and potentially damaging to some competitors within a market. This is the way for consumers to get the advantages of choice, quality and price to which they are entitled *and* to ensure that our economy is best able to adapt itself to maximise productivity and growth.

Thus, any suggestion that the Commission will, under my Chairmanship, favour big business to the detriment of small business totally misses the point. It is not the role of competition policy to favour one sector over another.

The Commission cannot and will not favour particular groups or players in the marketplace. It is not a champion for particular groups, and will not champion the interests of big business, small business or any other sector of the economy.

We shouldn't be using competition policy to tilt playing fields in favour of big or small business, one way or another, if that's going to have an anti-consumer impact. That's not in the public interest.

3. Enforcing the law, compliance and public comment

The very reach of the Act, both in terms of competition law and consumer protection, means that it touches upon everything we do.

The Commission has obligations under the *Trade Practices Act* to investigate allegations of unlawful behaviour, regardless of whether it's big business, small business or particular interest groups.

If a large business treats small business unfairly, in an unconscionable manner, then the Act will be brought to bear upon that business. If a business treats consumers unfairly and in a misleading and deceptive manner, the full force of the Act will be brought down upon that business. If a business colludes with another business, and as a result, the consumer suffers, then again, the full force of the Act must and will be brought down upon the offending businesses.

A strong enforcement team works within the Commission. This role will continue as energetically as ever. We have a staff of 450 people who will continue to work hard in pursuing those who choose to breach the *Trade Practices Act*.

As a public agency, the resources of the Commission are constrained. It's important therefore that we utilise these resources to achieve wide-reaching results in the areas of enforcement and compliance.

The approach of the Commission reflects this thinking. Enforcement strategies are either curative or preventative, and range in intensity from

contested hearings in the courts, through hearings by consent, formal section 87B undertakings, administrative settlement, informal resolution to education programs.

It has been suggested that I favour secret deals and a soft approach to enforcement?

My message to those who would make such a calculation, is that they do so at their own considerable risk. We cannot deal with serious misconduct under the *Trade Practices Act* by way of deals done in back rooms. We are a public agency, and as such, are accountable to the public.

But perhaps more importantly, public exposure of serious misconduct on the part of a business and the determination of the Commission in dealing with such misconduct is a crucial element of our fundamental objective to bring about compliance, on the part of business, with the requirements of the Act. It must be clearly understood that if matters of misconduct are to be dealt with by way of settlement with the Commission, there is a non-negotiable element to settlement, that is that it will be done in full view of public scrutiny and public exposure of the misconduct concerned.

No deals will be done behind closed doors.

Serious misconduct needs to be dealt with in a manner that achieves an appropriate change in behaviour and imposes penalties that send a message to corporate Australia, that such conduct will not be tolerated.

Let me also make it clear, that the ACCC will not be deterred from enforcing the Act simply because a big corporate player threatens to engage the Commission in drawn-out and expensive litigation proceedings. The ACCC has a role to enforce the Act. It will undertake that role against big and small businesses that breach the Act, particularly where those breaches impact on consumers and it will do so without fear or favour and irrespective of any intimidatory threats from business, designed to deter the Commission from properly fulfilling its responsibilities.

4. Publicity, the media and the Commission

One of the important roles of the Commission is to inform the public of the activities of the Commission itself.

This was the clear intent of Parliament, which in s. 28 of the Act, provided that the Commission make available to persons in trade, consumers and the public, information about the operation of the Act and matters concerning the rights and interests of consumers.

In providing such information, the Commission accounts for its actions to the Australian public. As is proper, the community has a right to be informed of, and to assess and judge the work and decisions of the Commission.

The Commission therefore welcomed the Dawson committee's acknowledgment of the important and legitimate role of the media in ensuring improved compliance with the *Trade Practices Act*. The committee said it was appropriate and cost-effective for the Commission to use the media to educate both consumers and business about their rights and obligations.

There is a clear public benefit generated by the broadcasting of Commission activities and initiatives. The Commission will continue to use the media, to use the public forum to keep consumers informed of their rights and businesses informed of their responsibilities, under the Act.

My own personal view is that we need to encourage media and commentators to focus on the institution rather than the individual at the helm. To that end, I am encouraging my fellow Commissioners to represent the Commission's view on issues directly the focus of their responsibilities. This does not mean that the Chairman will be, to quote one media headline, "avoiding the limelight". I regret to inform those of you that were discomfited by Allan Fels constant media presence, that you will have to get used to my perhaps lower-pitched and more gravelly tone of voice. For I recognise that the media is constantly interested in the views of the Chairman as the face of the Commission and that it is incumbent upon me to express the views of the Commission on the vast range of issues that fall for its deliberation.

I will continue to use the media as a forum for informing the public of their rights and responsibilities under the Act.

I believe the media can be used to bring about behavioural change on the part of business, by ensuring that they understand what their responsibilities are as well as to reinforce their obligation to behave in a proper, lawful manner in pursuing vigorous competition.

Of course, publicity attending an adverse judgment of say, pricing fixing or unconscionable conduct, can lower a firm's standing and reduce sales. This is of concern to the companies involved, and, sometimes, a matter of complaint, which I acknowledge.

A good reputation is highly prized by businesses. Those planning unlawful anti-competitive behaviour put at risk a valuable asset. That said, there is an important balance to be struck.

The Commission should not be cavalier in its treatment of individuals or corporations about whom we allege wrongdoing – not in public, and not in private.

I am very comfortable with the Dawson recommendations on the establishment by the Commission of a code of media conduct.

The Commission will continue to maintain a public discourse on a number of levels.

We will make comment to the media and issue press releases. Commissioners and staff will give speeches like this one. We will issue

discussion papers and technical papers. We will maintain over twenty public registers and a number of 'voluntary' public registers. We will continue to operate an internet site to provide the Australian community with detailed and comprehensive information about the operation of the Act.

The Commission has, of course, long-standing expertise in both the theory and administrative practice of competition law, which we will continue to articulate in public. Reasonably, the expertise we have should be shared with the Australian public.

Equally, however, we are not a policy agency nor do we make the law.

Just as it would be inappropriate for a high-ranking military officer, or a commissioner of police to argue publicly for a change to a particular policy of government, then so must the Commission be constrained when urging changes to competition policy. This means that, while we will be diligent in explaining the facts of policy matters or the consequences of existing policy to government and parliament, we will not necessarily be making our case in public.

In my former role with the National Competition Council we were dealing with Governments to bring about changes in policy and in legislation. We dealt privately with Governments because I don't believe it's appropriate for regulators or agencies of Governments to be lecturing Governments through the media or to be pushing cases for policy change through the media. Now I will pursue a similar philosophy – a similar policy – at the ACCC. We will work with Governments and with Parliament through appropriate Parliamentary Committees to establish and modify where appropriate the legislative framework in which we operate. But ultimately that framework has to be set by Parliament, and it is our role as regulator to provide independent, rigorous advice to Government and to Parliament as to the settings of that legislative framework – its effectiveness and its failings.

Ultimately, we must leave it to Parliament to determine whether those settings are adequate or whether and how they should be modified. And in that context, it is up to Parliament to determine whether it has regard to the advice that we have provided. It is not appropriate for the regulator to be taking a public position that demands that Parliament act in a particular way or is critical of Parliament if it fails to act in the way recommended by the regulator.

5. The role of the Chairman – to ensure proper process at the Commission

A few comments on how I see the role of chairman of the Commission.

It has been suggested that I will impose my view on the Commission and override the views of other Commissioners to the detriment of competition law as it is enforced in this country.

Nothing could be further from the truth.

Of course decisions are made not by the Chairman alone, but in consultation with the four very competent and objective people who form the Commission. Any notion that the Chairman operates in a singular and sole way, contradicts all notions of good governance. It's inconceivable to me that I would ignore, or be able to ignore, the expertise and knowledge of my fellow Commissioners or that of Commission staff. I may be the face of the Commission, but it's the Commission overall with all its expertise in economics, in law, in small business and consumer affairs that make the relevant decisions.

This corporate governance policy not only applies to decisions of the Commission, but also to the workings of its various committees. Just as I am bemused by references in the media to decisions of the ACCC having been made by the Chairman alone, so equally I am bemused by the suggestion that individual Commissioners are able and can make decisions on their own in relation to areas that are seen as being their direct responsibilities.

Labels have commonly become attached to individual Commissioners such as the "Merger Czar" or the "Enforcement Commissioner". Let me make it clear that while individual Commissioners lead co-ordination and overall management of certain areas of the Commission's activities, all decisions involve several if not all of the Commissioners at any time.

For example, in the Mergers area, a number of Commissioners are involved in the decision-making process by sitting on the weekly Mergers Panel, as they do with Enforcement issues, both areas in which I am taking an active role.

I have a high regard for the institution of the ACCC and to the commissioners that play an integral role in the construct of the Commission. All the Commission make the decisions and so set the direction of the ACCC. It is these decisions of the Commission which ultimately shape the application of the Act.

6. Conclusion

I am often asked how I will measure my success or failure. Will it be judged by the attitude of big or small business groups or consumer groups toward my performance? Will it be reflected by my ranking in the somewhat questionable media assessments of the power brokers in Australian political and community life? Will it be judged by newspaper editorials providing their own critical assessment of my performance?

Let me make it clear that in my view I should not and indeed cannot seek to satisfy all or indeed a majority of the many vested interest groups that are concerned with the policies and attitudes of the ACCC. If I were to react to those sorts of pressures, I would be the first to rank myself as a failure. I am absolutely certain that most objective observers would agree with that assessment.

Success or failure will depend upon the Australian community at large being satisfied that the ACCC has continued the role set under the leadership of Allan Fels of fearlessly promoting honest, vigorous competitive behaviour by business, big and small, in the interests of the consumer. If the Commission is judged to have undertaken that task successfully, then I will regard my own

role as Chairman of the Commission as having been performed satisfactorily. Nothing less will suffice.

IAN HENDERSON: Graeme has agreed to take questions from the floor. We've got a lot of working journalists with us today, I'm sure they've got questions they want to ask. And we'd be delighted to hear from you. First up the back, Raph.

QUESTION:

Raphael Epstein from ABC Radio, Mr Samuel. Am I correct in interpreting your comments to say that you're basically going to be the same as Allan Fels, except when there are some investigations of companies you won't be quite as forward in coming to the media? Is that a correct interpretation of what you're saying?

GRAEME SAMUEL:

No, I think that's a typical journalistic paraphrase, Raphael [laughter]. So why don't you actually have a look at what's in the written paper that will be handed out soon after we finish and you'll see exactly what it is.

Look, Allan Fels did an outstanding job. For the most part, I think his critics were those who were attempting to try and persuade the Commission to divert from its task. And its task is an important one. It is to enforce the Act in the interests of consumers. And frankly also in the interests of all businesses that believe in a competitive environment.

Now, Allan himself has admitted particularly in more recent times that there were some elements of dealing with the media, and there's the well-known Caltex case, where he has been quite open in saying, "look, if we had our time over again, that would have been done differently".

But let's not confuse those one or two black spots on a large sheet of white paper with the outstanding job that Allan did as Chairman of the Commission over those eight years or 13 years in his previous roles. It was an outstanding job. I think it's perhaps exemplified by the fact that the ACCC is now at the forefront of both consumers and business minds in everyday transactions. It's an Act that applies to every transaction. The fact that Allan has brought it now to the attention of the Australian community at large is something for which we should forever be grateful.

QUESTION:

Graeme, why did it take so long for the states to come onboard --

IAN HENDERSON:

Could you identify yourself, so that we know where you're coming from?

QUESTION:

Certainly. Andrew Dodd from *The Australian*. Question is, why did it take so long for the requisite number of states to come on board for your appointment, do you think?

SAMUEL:

I suggest that you ask them, Andrew.

QUESTION, DODD:

Can I ask another?

SAMUEL:

I kept out of the process. I've made myself available for the role. I'm very fortunate in that as indicated in this morning's newspapers I think a majority of states and territories in the Commonwealth are now happy to appoint me to that role, and that's where I let it rest.

QUESTION, DODD:

Could I beg your indulgence with another question? Do you share your predecessor's concerns about some aspects of the Dawson Report as expressed today in the paper?

SAMUEL:

I think I made a very clear point of saying that policy debate, debate about the desirability of legislative changes, is the sort of debate that under my chairmanship, at least, the ACCC will be conducting privately with Government and through the appropriate forums of Parliamentary committees. And I'd prefer to leave it like that. I don't actually want to sort of cross over that line, having already just established today that that's the process we'll be adopting.

QUESTION:

Robert Mott, Corrs Chambers Westgarth. Graeme, the media has been fixated, I think, in comparing your style with your immediate predecessor. Can I ask you for a slightly disparate perspective, would you like to compare it with the successful predecessor Bob Baxt?

SAMUEL:

Oh, gosh. No, why don't I leave that for others to do just that. Look, I think that what we've seen over a period of time has been a very successful application of the Trade Practices Act. I think others will be able to make judge issues of style.

Let's remember, of course, that the issue of style is far, far less important, Robert, except to some in the media that want to focus on that area, than the issue of substance. And I think the important thing is that the substance will continue in exactly the same fashion that Allan Fels has chaired the Commission over the past eight years.

QUESTION:

Eric Johnston from Dow Jones news. Just wondering, what's your views on Qantas and Air New Zealand tying up?

SAMUEL:

Why don't we wait until the determination -- I love these questions [laughter]. Why don't we wait until our final decision is handed down in howsoever many weeks it will be. I suspect within the next couple of months

it'll be handed down, but it'd be totally premature for me to offer any other view than as at the present time on the information currently to hand, I don't think our view would be any different from the draft determination that was provided by the Commission under Allan's chairmanship.

IAN HENDERSON:

Any further questions?

Yes, we have one down here.

QUESTION:

Wendy Pugh from Reuters. Just on another issue, Allan Fels had indicated he was against AGL taking a 35 per cent interest in the Loy Yang power station. I was wondering what your view was on that?

SAMUEL:

Yeah, look, I've already indicated in previous interviews over the past week that we're seeking more information from AGL and other parties in relation to that transaction. But there is nothing to hand at this point of time that would change from the views of the Commission in the week or so before I took office. And so at this point, no change.

IAN HENDERSON:

Well, Graeme, you seem to have stunned them all into silence [laughter]. Oh, no, we've got another, Raph back at the back.

QUESTION, EPSTEIN:

At the risk of asking you another question that you might not want to answer, because no-one else wants to ask a question [laughter] ...

SAMUEL:

Raphael, I'll always answer your questions.

QUESTION, EPSTEIN:

Does it make any difference to the regulator who owns Telstra?

SAMUEL:

Um, well, that's a question that I won't answer. I'm not ... other than say this. I think it's an issue that's very much a public decision. The regulator is concerned much more with the operations and activities of Telstra than –

QUESTION, EPSTEIN:

I guess I'm asking if you think that Telstra's behaviour might change at all if it was privatised, so therefore do you think your involvement in the industry might change at all if its ownership changed.

SAMUEL:

Yeah. Well, let me go on to say that Telstra at the moment is already significantly owned by your private shareholders. I think that we are dealing with Telstra as if it were an enterprise that has a public shareholding -- and that is public in terms of community shareholding, as well as that of the

government -- and the competition issues that are involved in that, the regulatory issues are exactly the same, whether it's half-owned by government or otherwise. I can't see that there's any difference.

The moment you introduce an external shareholder, Raphael, into any company, you then impose obligations under the Corporations Law to act in accordance with a certain way. And the competition regulator then has to deal with that company as if it were an entirely independent organisation.

QUESTION:

Clayton Ford from Bristol Myers Squibb Pharmaceuticals. What attributes might you be looking for in a potential Deputy, and what role would you see them playing?

SAMUEL:

The ... I think you'll be aware that Treasurer Costello indicated just a few weeks ago in connection with my 12 monthly appointment that as soon as the more permanent appointment -- I put in the words more permanent, he wanted to use the words "permanent appointment" and I felt that was a bit foreboding.

But as soon as the more permanent appointment could be put in place, he would be proceeding to nominate Louise Sylvan of the Australian Consumers Association as Deputy Chairman. That requires a process of nomination to the states and territories and to be dealt with by them. It requires the support of five states and territories.

My understanding is that as soon as my permanent appointment has been settled over the next few days or whatever, that that nomination will then proceed. But you should speak to the Treasurer about that, but I don't think he's indicated any change from the position he stated a few weeks ago.

And I should say to you, by the way, that I think Louise Sylvan would be an outstanding appointee to the Commission if she's appointed.

QUESTION:

Just wondering, as you're settling into the role do you have any particular sectors that have caught your interest that -- or is deserving of the interest of the ACCC?

SAMUEL:

Oh, yes, all of them [laughter]. Look, it's ... if you look at our activities, then part four and part five of the Act deal with the whole of Australian business without exception. Part four dealing with the issue of promoting strong competition in the marketplace, and part five dealing with consumer protection.

Of course there's a whole range of regulatory areas ranging from airports to telecommunications to gas, electricity. These are a range of areas that in many respects I was involved in in the National Competition Council. And so clearly the continuing evolving nature of competition in those markets, which are the significant, if you like, utility markets in this country, are of keen interest.

I think Allan Fels mentioned that there were four or five markets that he thought merited attention. This is in his farewell speech, and I wouldn't differ

from him at all. I think those areas were telecommunications, energy -- I'll get it wrong, but I think it was airports and one other. And I'd have no different view.

QUESTION:

Roger Corbett on his last -- sorry, Roger Corbett on Allan Fels' last day described the ACCC's action against the liquor outlets as vexatious. Obviously that's not something you're concerned -- you would share, that view. But could you explain why that action isn't vexatious?

SAMUEL: No, I won't, for this reason. That I think I indicated in my paper that where the ACCC has commenced action against a party, then it is entirely inappropriate, in my view, for the regulator to be making additional comments that in a sense taint the nature of the legal proceedings. And so that's a matter where we've instituted legal proceedings, that'll go through the appropriate processes of the court.

At a point of time in those processes I think you'll discover why we believe that there's a real concern under the Trade Practices Act in respect of the issues that are under examination. But that's the appropriate and proper way to deal with it.

QUESTION:

Ray Duncan, Duncan International. Graeme, might football find you knocking on the door to try and make some of the less successful current AFL teams more competitive? [Laughter] In your former life?

SAMUEL:

There's got to be one in every audience, doesn't there? [Laughter] Actually I used to say that I thought that it was always a Carlton supporter that asked that question. But the nature -- this is my only football comment today - - but the nature of the AFL competition -- I assume when you're talking football you're talking AFL, not rugby or one of those other codes that we sometimes have to focus on in this state.

But the nature of the AFL competition is that what the AFL is providing is a very exciting entertainment spectacle for a very large audience, some six or seven million people each year, leaving aside the television audience.

The way that you actually provide that exciting spectacle is to make it unpredictable. To make it something that can be sometimes quite volatile in terms of the result. And importantly ensures that every participant in the competition has got a pretty good chance of being up there on that last Saturday in September. And so the whole design of the way the AFL competition is put together is to bring about that particular result.

I was once asked, back in the early 1980s when I first joined the Commission, had always a view about free markets and the freedom of markets and how they ought to operate in a free and unfettered fashion, I was asked: "Is the AFL a socialist organisation? Shouldn't it just let the clubs compete against each other without any form of regulation?"

I said, "if you did just that, then ultimately the result will be that the weaker clubs will fail and the stronger clubs will grow stronger and then ultimately the strongest club may actually end up monopolising the

competition". My view was that even John Elliott wouldn't enjoy seeing Carlton play with itself [laughter and applause].

QUESTION:

Ben Potter, from the *Australian Financial Review*. Graeme, I wanted to ask if -- I'll put it in hypothetical terms -- if a hypothetically dominant company in a...

SAMUEL:

Hypothetically.

QUESTION:

...highly regulated and crucial hypothetical industry were to lobby the Government to keep new international entrants out of its market, would it be helping or hindering its chances of pulling off a merger in the region? [Laughter]

SAMUEL:

I thought I already answered that question, Ben, by saying that our draft determination was there and there was nothing further that we had to add to that at this point of time. So I think I'll let the answer rest at that.

QUESTION:

Michael Smith, Press Club Committee. Graeme, Ian has briefly described the extraordinary diversity of the community leadership positions you've held over the years, and this has -- sometimes, in recent years, this has led to questions unfair or fair about potential or real conflict of interest. Now that you've been confirmed, do you feel you have to shed any more hats, and can you describe the other positions that might in any way relate to competition and consumer policy?

SAMUEL:

Well, I have to tell you, there's none left, Mike, they've all been shed. The only role I now hold in public life outside the ACCC is that I've got an honorary role as a chairman of the Melbourne Olympic Park Trust which runs the Melbourne Tennis Centre. But frankly everything else is gone, and I have to say to you that I've actually taken some fairly extreme steps to separate myself from all my private business interests.

And I'm just hoping that when the five year period is up that there's something left. [Laughter] But I have to leave that to others to now determine. And I'm just hoping and praying that they do the right thing for the sake of my family and children. But I should also mention this. That's my own position. Everything else has gone.

And that has to happen for two reasons. One, conflict of interest and to avoid conflicts, but also, because the sheer demands of this job -- it's a 28/8 day -- it's 28 hours a day, eight days a week. And you couldn't undertake other tasks as well. But more importantly, I think it's appropriate to mention that we have corporate governance processes very firmly locked in within the Commission.

And there will always be either real conflicts of interest or perceived conflicts of interest involving one or other of the Commissioners in a range of areas for a whole range of reasons. And a very clear process is established which is fundamentally, in two words, declare and withdraw. The conflict is declared, it's laid out there in very clear terms in a series of statements that are provided to myself and to the Treasurer in case of -- in my own case.

And where a conflict arises, then the relevant Commissioner simply withdraws from the proceedings and doesn't partake in those proceedings in any way. That's the way that corporate Australia would do it. I'd have to say to you, I think that the public service requirements are even tougher.

QUESTION:

Graeme, congratulations on your appointment. I suppose one of your issues --

IAN HENDERSON:

Could you just identify...

QUESTION:

Sorry, Peter Watson, a guest of Deakin University, also here as a very interested resident of the eastern suburbs of Melbourne. One of the issues I think that the ACCC has to be very concerned about is not being too Melbourne-centric or Sydney-centric, and I think that's maybe one of the issues that has dogged it in the past.

But my -- the point of me wanting to talk is, the issue of the Mitcham ... Frankston Freeway, it's been subject to a large debate. It was not a toll road, it is now a toll road, or will be a toll road. It has got the complex issue now of having two companies bidding on it, which are the same parent company. There's a whole range of issues associated with fairness for patrons or travellers along that toll road. It's very early days in your appointment, I understand, but do you have a view on that particular toll road?

SAMUEL:

Look, I must say to you, it's something that probably doesn't come within our purview at the moment. It's a matter that is being dealt with by the State Government, and it'd be inappropriate for me to comment upon the process or otherwise. That's something that will be dealt with by the Government with its appropriate probity processes and the like.

Let me address your first issue, and that is the Melbourne / Sydney-centric nature of the Commission. I'm actually surprised you say that, because I thought that some might suggest that we were Canberra-centric, in that that's where the bulk of our staff operate.

We have 450 staff around this country. About 260 of them operate out of Canberra, about 150 out of Melbourne, about another 60 or so out of Sydney, and then there are regional offices spread right throughout the country from as north as Townsville to as south as Hobart.

And each of those regional offices has a Regional Director, who has total authority in dealing with issues that are raised within that particular jurisdiction complaints. And then there is a coordination process that occurs through the Commission itself. And I'd be surprised -- I'm actually surprised

that you comment that there's a Sydney or Melbourne centricity about the Commission. If you'd said Canberra, then I could perhaps understand it. But I'd hope that all of our Regional Directors would be well outstanding, and I think it's perceived that they're actually doing a very thorough job in each of their areas of jurisdiction.

QUESTION, WATSON:

It's probably in reference particularly to the profile of Allan Fels, but nevertheless, look, I appreciate the answer to the question. Thank you.

IAN HENDERSON:

I think we're done, Graeme. Thank you very much again for your time. I think we'd all here like to wish you very good luck in an arduous new post. We've heard your first bark. We await your first bite. And yes, you are going to have to keep on putting up with those corny, canine analogies. I know, because I'll be writing some of them. [Laughter]

And on that vein, we'd like to present you with this handsome collar. It was the most butch one we could find. We figured it was probably ... if it wasn't quite right for you, you could turn those nasty spikes inside out and offer it to Stephen Conroy.

SAMUEL:

Well, I suspect that if I keep eating at the rate I'm eating at the moment, which is very sparsely, and working at the rate I'm working, this might actually go around the waist in due course [Laughter].

IAN HENDERSON:

And on a more serious note, a handsome pen so that you -- when your first edicts -- signed off by all the other Commissioners of course [laughter] -- come out, you've got something decent to do it with. Graeme, thank you very much for your time today. [Applause]