

The Rigging of the ACCC

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THE Australian Competition and Consumer Commission's (ACCC) prime role is to ensure that competition prevails within the rule of law. That's the best way of ensuring the consumer gets the best possible value for money. It is the retailer who is the agent that looks after the interests of the consumer. The retailer seeks out the best supply sources, gets the product or service to a place where it can be conveniently accessed and does so at the best possible price. The retailer does this because, in a competitive system, if she doesn't, the customer will find better value elsewhere and the retailer will go out of business.

The ACCC's formation, however, reflected another stream of thought: that the market had to be managed because it was a producers' mechanism and therefore inimical to the interests of consumers. The Commission's mandate reflected a lack of commitment to the view that competition, through the rigorous enforcement of trade practices law, would be good for consumers. It also saw prices surveillance as an end in itself rather than as a tool for observing the conditions of competition. This lack of faith reflected the lobbying by consumerist organizations that had become highly politicized and anti-business. It also opened the way for this consumerist lobby to have increased influence. The deputy head of the ACCC and its predecessor (the Trade Practices Commission) was Allan Asher, who cut his teeth in politics by taking over the rather somnolent Australian Consumers Association and providing political assistance to the ALP. Some have now elevated the deputy position into one 'traditionally' reserved for a consumerist war-

lord. The appointment of Louise Sylvan of the Australian Consumers Association, which is currently being mooted, would cement this idea. It would also confirm the Commission's lack of faith in competition as the key means of safeguarding the interests of consumers, and further inject politics into the administration of competition law.

There are few simple consumer-versus-producer issues that the Commission considers. Each involves some measure of trade-off between consumers. For example, in product liability issues, a too strict interpre-

corporate the cost of air pollution, or indeed if cars were taxed on the distance travelled—which is not to suggest that the level of tax is not already sufficient to compensate for externalities—the impact on consumers would be different than at present. Those who needed to travel further would pay more. The impact would be felt more by those on low incomes. There is a distribution of costs between consumers to consider. How could a consumer representative hope to represent the many sides to this issue? In a democratic society such as ours, it is Parliament that should decide issues of the distribution of costs and benefits between consumers, if indeed equity issues are to be considered. Having considered its laws, the Parliament should expect the law to be administered without fear or favour, without further lobbying, especially by a deputy-commissioner.

The flaw in the structure of the Commission is that it explicitly privileges a consumer lobby, and demonstrates that it does not trust its own laws designed to make the market work for competition. Worse, the appointment of an ACA representative will privilege a certain kind of consumer. In reality, the ACA represents a very small proportion of the consuming public¹—less than 400 people and fewer consumers than Woolworths services every minute of every day of the year.

There is, however, no single consumer voice. People's interests are as varied on consumer matters as they are on almost any other issue. It is competition among producers for the interest and patronage of consumers, competition that is made more accessible through the customer's 'retailer-agent', that allows consumers, through their pur-

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tation of liability may deny some consumers products they may desire, or at least raise the price or availability of the good or service. The question is one of assigning, as well as minimizing, risk. Invariably, the impact will vary between consumers, not just between consumers and producers. Take another example, if petrol were to be taxed so as to in-

chasing habits, to specify what they want and what producers supply. As long as their choices are backed by an ability to sue for damages—a right established in the English common law since the beginning of the twentieth century—the system will prove responsive.

The concept of sovereign consumer choice is foreign to the ACA. Their view is decidedly of the 'public interest' type. That is, they assume that it is in the public interest to have government regulate the production and distribution of almost every conceivable product or service. When they report on price and product comparisons in their magazine *Choice*, they inform the consumer, their readers. But they also misinform a far wider band of readers when they alert the media to issues far beyond their brief.

The politicization of the consumer voice only enhances the tendency among the weakest of politicians to populism. Populism means supporting public policy known to be wrong. For example, the ACA and a given Opposition—it would not matter of which political colour—always criticize banks over branch closures. Policy-makers know that with the switch to electronic banking—ATM, telephone and Internet—the need to physically attend a bank is diminishing. As a result of the shift in bank customer preferences and the desire to lower the cost of banking, the costs of physically serving a customer are rising comparatively. Not to close branches is to argue for costs to be shifted from one group of consumers (attendees) to another (remote users). The ACA backs one group of consumers against another. They do this in the name of equity or social justice. But this is a matter for political ideology and one presumably settled by the government of the day and expressed in law. Placing the ACA at the heart of the regulator is a second bite at the cherry—it undermines the democratic consensus and is a sign of a

government being populist. In doing so, it is disadvantaging some consumers at the expense of others. If a government wants to do this, it is accountable to the electorate, but it should not have its regulator indulging in that same populism. That only serves to compound the original defect.

Take an international example. Ms Sylvan, as President of Consumers International, is at the forefront of the fight for 'sustainable development', which is code for preventing sustained economic development and keeping the Third World from becoming like the First—healthy, wealthy and wise! In a speech to the preparatory conference to the UN World Summit on Sustainable Development, Ms Sylvan said,

We all know that unsustainable patterns of consumption are leading to serious social and environmental impacts. We also know that ever increasing and irresponsible consumption is putting a strain on the environment, by causing pollution, destroying the ecosystem and undermining lifestyles. There is no doubt that the effect of the development model that the 'North' follows, and the 'South' emulates, is potentially deadly. Poverty and deprivation are increasing at an alarming pace and disparity in income and consumption is a feature in all countries.

This statement is not only inaccurate; it is an appalling piece of neo-colonial arrogance. She continues, 'consumers [will have to] learn to manage their consumption patterns in a responsible and equitable manner.' In short, our consumer representative advocates lower consumption for the poor as well as us.

This is simply the old anti-development rhetoric that has plagued the development debate for decades, and Ms Sylvan lines up consumers on one side. Surely she is at least half wrong? These policies would put consumers and the environment at greater risk. We know that techno-

logical innovation and economic development enhance environmental quality.

So what is Ms Sylvan on about? She is anti-consumer, anti-science and anti-economic development. And, by the way, she is clearly vehemently opposed to the stance of the Coalition government at WSSD. In fact it was Australia's ambassador to the UN, John Dauth, who called the NGOs' bluff and told them what damage they were doing to the interests of Third World people with their anti-globalization rhetoric. Few other governments spoke up against the prevailing orthodoxy, not because they agree with it, but because they do not want to be seen to offend the NGO sector. In failing to defend rationality, they condemn a great many consumers to a poorer life. Appointing Ms Sylvan would be a similarly stupid act.

A good test of a politician is the one who makes the fewest concessions to ignorance. An ACA appointment would constitute failure. The Australian government should not condone the original problem in the establishment of the ACCC by appointing a consumer advocate, particularly one with the ideological credentials of Louise Sylvan.

NOTE

- 1 ACA claims to have 170,000 members, but this is seriously misleading. This figure represents the number of people who paid for ACA publications during the last year. They have no right to influence the policies or views of the organization and, as such, are not members but subscribers. The ACA, in fact, has around 400 members and even some of these are excluded from joining the governing board of the organization.

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