The Australian Consumers' Association
Response to the
Department of Communications Information Technology and the Arts
Issues Paper

Convergence Review

Introduction - Convergent Digital Technology

The discussion paper is quite correct in noting that many of the issues in broadcast and media regulation are attached to convenient technological markers. It is true that these markers are losing their utility to structure debate, formulate policy and help frame regulation. But that does not mean that the debates, policies and regulation issues have necessarily changed at all. But what we are losing are the convenient methods to resolve or even debate them, and the strain is showing.

The Issue Paper states that "In many ways, it is the management of the transition, rather than the management of convergence *per se,* which is the greatest challenge ..."[1] This is a view that seems to be shared by the Productivity Commission in its *Broadcasting Draft Report* Overview P. XLII which states "The need for the media-specific public interest test should be reviewed when the digital conversion process has been substantially completed."[2] It seems to us that it is a very moot point as to when digital conversion will be 'over', how we will know that it was over , and what technological dynamic may follow. It is unlikely to be more gentle than the passage to digital.

The issues therefore are not necessarily passing problems to be solved by a managed transition. Therefore, the assumption embodied in the Productivity Commission's statement that "The current technological revolution in broadcasting means that it is no longer necessary or fruitful to be bound by the issues of the past."[3] and the notion of transition (which implies proceeding to another steady state as opposed to substantially and probably permanently accelerated dynamics) need to be qualified.

Media Diversity

The Productivity Commission in its *Broadcasting Draft Report* in its own way covers much of the ground of the Convergence Review. It seemed to set great store on the capacity of new technology to delivers new services and channels to empower new and independent entrants. However wider technological options in the hands of incumbent players may offer wider possibilities for delivery, but no necessary increase in diversity. The forces of critical mass brand power and financial gravity will confront new players with significant constraints and imperatives for rationalisation. Content rather than delivery is likely to be the locus for these forces, and it is in content that the public interest in diversity of ownership resides.

Fundamental to the thesis of the Commission was the notion of "freeing up spectrum to allow entry into the industry of new players [to] increase the diversity of views and

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[1] Issues Paper P.3
[2] Productivity Commission Broadcasting Draft Report Overview P. XLII
[3] Op Cit P. XXVII

opinions in the 'market for ideas' as well as providing consumers with a much greater range of services than is available currently. Freeing up spectrum will promote competition and consumer benefits."[4]

In our view it may well be that freeing up spectrum moves the bottleneck of scarcity from spectrum to content, not necessarily changing the dynamics of concentration appreciably. The efficiencies and economies in content are likely to reside in a gather / create once, use many times in various channels and packages. This will create great pressure to concentrate ownership of the content source, which is likely to become a scarce resource , not just for broadcast, but in all information delivery systems (print, cable, satellite, LMDS, broadband etc).

There are many emerging opportunities for cross platform collaboration. Content lines can be blurred across media. However this simply increases the necessity of rules which control the concentration of media ownership and control into fewer and fewer hands. The potential for concentration of new media in the hands of old media players is enormous. As is evidently understood in the Discussion Paper, underlying technologies have virtually no relevance to ownership, except to offer additional, or at least different, opportunities for vertical and horizontal integration. In theory, technology lowers barriers to entry, in practice to date, the capital requirements to achieve critical mass for broad market acceptance remain as high as ever. This favours established players.

The view of the Issues Paper that " ... the bottleneck asset is not content. The bottleneck asset is the scarce management expertise which extracts the maximum return from investments in content production."[5] indicates a further level of possible concentration and control. This issue was alluded to in a recent article by Sharon Pink, who cites Jean Kilbourne from her book *Deadly Persuasion* as saying:

> Today Time-Warner, Sony, Viacom, Disney, Bertelsmann and News Corporation together control most publishing, music, television, film and theme-park entertainment throughout the developed world.[6]

Social Capital

The control of such companies does not extend to all content created in that world, just to content which is, or can be, successfully exploited on a commercial scale. This, of course, is the level and scale of activity at which ideas, concepts and values meet the general public. The control of such influence if fewer and fewer global hands is a legitimate cause for concern. Mass customisation may lead to greater customer satisfaction in ever finer niche markets, but it may not contribute to inclusive political processes and cultural bonding which most social scientists would see as the source of social capital and basis of civil society. Social capital is the often undervalued and hard to quantify notion that the sum of our society and culture is worth something, just as the sum of our physical assets can be valued.

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[4] Op Cit P.XXIX

[5] Department of Communications Information Technology and the Arts Issues Paper Convergence Review P.23

[6] Sharon Pink "Watchdogs needed for information industry" The Sydney Morning Herald Wed 22 Dec 1999, P.19

Francis Fukuyama in his book Trust : The Social Virtues and the Creation of Prosperity , maintains neoclassical economics is 80 percent correct, but ignores the role of social capital ("reciprocity, moral obligation, duty toward community, and trust") in facilitating the "stability and prosperity of post industrial societies."[7] High-trust societies like Japan, Germany, the USA and Australia develop the kind of flexible organizations that the global economy demands far more easily than do low-trust societies or "familistic" nations like China, France, Italy, and South Korea.

In the Australian context, the notion has been championed notably by Eva Cox, who said:

> Social capital can be described as the product of our relationships with each other, particularly those outside our immediate and intimate relationships. Putnam claims it is best developed in the broad based relationships we have outside family and close friends, or even passionately committed communities. High social capital can be translated as social trust, the trust we have in strangers and institutions, that we can transfer from the familiar to the unfamiliar.[8]

The present currency of the social capital idea is related to a small but significant study by Robert Putnam et al of civic cultures in modern Italy[9]. This study of political cultures and structures suggested that a dense level of civic engagement benefits economic growth, the functions of government and quality of life. The proposal is that social capital is intrinsic to the functions of the economy which presents an alternative to the dominant model of market predominance as distributor of resources.

Maintaining and preferably increasing social capital and the community structures which produce it in the face of convergence would seem to be a key challenge for Government. This is particularly so since the key lever left in their hands would seem to be increased consumer empowerment and education. An example drawn by the Issues Paper is that of user based filtering as a response to Internet content management. But this approach would seem to be even more effective as an intervention if it fortifies communities as well as empowering consumers as individuals. This is acknowledged in the Issues Paper, but one hurdle to the Government facilitating community processes is the tendency to starve community resources of funds if they take a politically inconvenient tack. This is often short sighted and wasteful at present, and if it is cornerstone of industry policy as envisaged by the Issues Paper, could become very destructive of consumer and national interests.

Regulation

The potentially all encompassing nature of digital media ownership will, in our opinion, present a significant challenge to market place only schemes to rein in concentration of media ownership in the future. The potential for market failure is

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[7] Francis Fukuyama Trust : The Social Virtues and the Creation of Prosperity Free Press 1995
[8] Eva Cox 'A Truly Civil Society', The 1995 Boyer Lectures, ABC Books 1995
[9] Robert Putnam et al Making Democracy Work, Princeton UP 1993

high as content comes to share common digital origins. Policy makers will have to engage the admittedly difficult task of ensuring that consumers have media diversity in fact as well as in appearance.

The Productivity Commission in its Broadcasting Report set out a set of threshold conditions before the cross media rules should be removed. Missing from this set is any test of their effectiveness, or a time frame for their successful operation. Telecommunications is supposedly governed in the Long Term Interests of End Users (LTIE), and one lesson of the experiment to date has been that the Long Term can take ages to arrive. It can be seen from the telecommunications regime that a framework set up to grow and encourage competition (also under the ACCC) can take a long time to deliver results to overcome the behaviour of incumbents and second string entrants (such as access obstruction, price shadowing, etc). Therefore, whatever competitive framework may be set up, it must be shown to be established and operating successfully before it can be used to justify removing cross media rules.

Current incumbents have vast opportunities to transfer their critical mass into new domains, often as much through regulatory and political manoeuvre as by adroit commercial or marketplace activities. A case in point is the current concern in the US about closed access broadband internet systems, detailed in a US Consumers Federation report, *Transforming The Information Superhighway Into A Private Toll Road.* There is concern about the capacity of large established players to control the high capacity 'on-ramps' to the Internet provided by broadband cable networks, and the possibility of this restricted access model finding its way into the DSL mode of delivery. The Report documents the accumulation of market power in the cable-based broadband industry by AT&T, and refutes the argument that future competition will not allow it to abuse the public. It says:

> AT&T is telling regulators to ignore the market as it actually is, ignore the highly concentrated cable market that will result from its proposed deals, ignore past experience, and project how the market will operate when new competition emerges.
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> Unfortunately, the historical experience has proven otherwise and the likely path of future development is no more promising than past failures. Each time that the Congress has attempted to deal with cable TV —deregulation in 1984, re-regulation in 1992 and deregulation a second time in 1996— one of the central goals and claims of the legislation was to foster competition in the industry. In every case, the claims and promises proved wrong.[10]

Equally, access regimes and content control on Australia must not ignore the lessons of history in the development and deployment of technological innovations in our haste to embrace the promising digital future. It is important that while developing concern for the ownership and management of content, the opportunities for control of different infrastructures such as re-purposed cable networks do not offer new and unexpected choke points for extracting disproportionate economic value, value ultimately taken from consumers.

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[10] http://www.consumerfed.org/bbreport.pdf, PV

The convergent environment will alter the regulatory landscape. It is unlikely that the regulatory silos for the primarily converging industries (Information Technology, Broadcasting, and Telecommunications) will survive. Segmenting new silos based on various models will not be useful in our view. A single overarching regulatory structure offers less opportunity for issues to fall between agencies. An example of such a difficulty is the extensive examination of matters related to radio broadcast in the 2UE inquiry. At one point in the controversy there were seven inquiries on foot into the matter:

1. The Australian Broadcasting Authority
2. The Australian Bankers Association
3. The NSW Director of Public Prosecutions
4. The Australian Competition and Consumer Commission
5. The Commonwealth Bank
6. Radio 2UE internal inquiry
7. A Federal Parliamentary inquiry[11]

While the eventually Australian Broadcasting Authority was useful, and in most respects welcome, there are serious questions whether all the issues which the other inquiry agents wished to examine were followed up in detail, whether the Inquiry focus on broadcast codes and regulations was too narrow a silo for the case. In any event a broader more inclusive and better articulated regulatory scheme would have been useful. This will prove even more the case as the converged future blurs convenient markers for regulatory navigation.

Standards

Standards allow digital equipment to operate successfully, with cheap packaged software, easily shared content, and on networks, to reliably exchange information, talk to each other. Standards are therefore good for consumers. An important illustration of the impact of 'private' ownership of standards has been provided in the recent anti-trust case against Microsoft in the US. The judge has found that Microsoft is in a position of market dominance. It controls the de facto operating system standard for the vast majority of computers in the world. It's apparent that the Web is the future, a future built on a multiplicity of platforms besides the PC – mobile devices, set-top boxes, digital televisions, game consoles. And Microsoft wants to play on them all. There is serious pause for thought in the idea that any company might get a lock on that future the way that Microsoft has been able to lock up the desktop. Microsoft argues that their standardisation benefits consumers, bringing innovation and new products.

But artificialities in Microsoft's actual pricing behaviour are noted in the judgment. Prices are not set with reference to market signals but consistent with Microsoft constructing a market, structured to benefit the company rather than consumers. In addition consumers can feel obliged to buy the latest versions of Microsoft products, not because they need any of the features, but because they need them to communicate successfully. Thus consumers pay a toll to participate in the ongoing digital economy.

Standards owned by private companies or individuals are like monopolies. The peril of worldwide monopoly of essential communications infrastructure is a frightening

[11] The Weekend Australian 17 July 1999 P.5

one. Controlling a standard brings responsibilities. Standards should not be manipulated for the short term economic benefit of one group. While companies have a responsibility to their shareholders to maximise profits, they must also consider other groups of stakeholders. Consumers are important stakeholders in standards. As the reality of digital convergence collides with enormously cheaper bandwidth, the challenge is to manage change an inclusive way to the benefit of all, rather than to one or two global companies.

An interesting study in the manipulation of standards and technical definitions is afforded by the digital television debate in Australia. The issues paper notes "The growing economic importance of proprietary technical standards"[12] and suggests that "Australia is a standards-taker in international markets, not a standards-setter."[13] But for digital television, Australia has adopted a transmission standard virtually unique in the world. The consequences of going it alone against the trend of world technological development has been apparent in the price debate following that decision.

On a different tack, the Issues Paper refers to the emergence of different broadcast models in response to "viewer demand factors and the media business models which ultimately emerge"[14] and goes on to raise the following issue and question:

> Digital television spectrum can also be used for datacasting services which may bear little resemblance to traditional broadcasting, and the same goes for digital radio. This raises the question of whether broadcasting policy priorities should be imposed on these unrelated services.

That question seems to have been answered in recent announcements by Government on datacast definition, and it seems to be "Yes, broadcasting policy priorities should be imposed". The very attempt to define datacasting seems to be a course bereft of logic. It is digital information broadcast to digital receivers, with the option of a user feedback return path. There is no technological basis for the distinctions that are drawn. It is solely to preserve the status of the current analogue broadcasters in the new digital world as the only purveyors of broadcast moving pictures.

Thus we have an unsustainable definition of datacast as the Web seen through a slow modem. This will come under commercial, technological and probably legal challenge. Meanwhile the world will march on to providing high quality video via high capacity Internet style connections using cable, enhanced telephone data services (DSL), and even mobile phone spectrum. But datacast, the service that could go into virtually all Australian lounge rooms, including those regional areas where cable has yet and may never get to, will not have been allowed to grow.

This is a further impediment to the development of the critical mass of electronic commerce and content development which the Issues Paper identifies as critical in the next century. Australia should keep all its options open in moving into the new economy, not close important avenues off to suit the commercial interests of entrenched players.

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[12] Issues Paper P.38
[13] Ibid
[14] Issues Paper P.44

Personal Information

The proposition by the Issues Paper that "The contribution of users to service definition is a powerful source of economic value in convergence service markets."[15] captures an important dynamic, which places the consumer and their personal information at the heart of the convergence equation. As Hagel and Rayport observed in the Harvard Business Review,

> Consumers have become aware that the ability of companies to collect information far outstrips their ability – or inclination to deliver meaningful in return.[16]

The key question is how does any of this value return to the consumer, or is it all appropriated by commercial players? There is a basic asymmetry of power between business gathering information and the capacity of consumers to establish terms and conditions which are balanced. But as Hagel and Rayport note "... most consumers have shown that they are willing to release personal information if they can profit by doing so"[17]

There is currently great emphasis in business on one-to-one focus that will be achieved in people's lounge rooms as the digital revolution proceeds. Consumer benefits are promised - focussed ads and content, you will see what you want to see. This is a benign view and fine as far as it goes, although the question is, is there sufficient value for consumers in the deal? This is discussed at some length in a study by US Consumers Federation, *A Consumer Perspective On Economic, Social And Public Policy Issues In The Transition To Digital Television,* released on October 29, 1999. It examines in detail the issue of personal consumer information in the digital economy. It says

> The public policy question that arises most directly from the transformation of TV involves the commercial model that will pay for it. The drive to fill more advertising space and sell more products over the digital communications network and the ability of that network to gather information in an interactive context raises concerns about the use of private information for marketing. On the interactive network, programmers and system operators can know what people watch and what they buy with remarkable detail. This information is extremely useful in targeting advertising and increasing sales. Since there is a strong need to sell more, it is hard to imagine that they will not exploit this information to the fullest.
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> The potential invasion of privacy will be massive. To what extent can society allow communications companies and media providers to gather information about consumer viewing habits, purchase patterns and life style and use or resell that information for targeted marketing?[18]

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[15] Issues Paper P.13
[16] John Hagel III and Jeffrey F. Rayport "The Coming Battle for Customer Information" Harvard Business Review January-February 1997 P.55
[17] Ibid
[18] http://www.consumerfed.org/digitaltv.pdf

It is imperative not to lose sight of the idea of privacy as a human right, an inalienable right to refuse to part with information about themselves and to expect people and organizations to whom it is entrusted to keep it safe and confidential. However it can be quite useful to view privacy as personal intellectual property (IP) rights, which can be tradeable and compensable.

The notion is well discussed in a paper from the Canadian Privacy Commission entitled *Privacy as a Fundamental Human Right vs. an Economic Right: An Attempt at Conciliation.* The protection of consumers interests in their personal information by recognising a element of ownership and economic recognition is summed up thus:

> It is argued that recognizing an individual's property rights for the commercial uses of his or her personal information would be another means by which the increasing erosion of privacy could be stemmed. A marketplace for personal data would enable people to choose to consent to the uses of their personal information, in exchange for some benefit they valued. Conversely, permission could be withheld if the benefit was not considered to be sufficient to merit the degree of disclosure requested. [19]

This idea was discussed by The Economist in May 1999. It noted that privacy laws such as the EU data protection directive "[20] are based a novel concept: that individuals have a property right in information about themselves." The Economist is not keen on this concept, saying that "broadly enforced, such a property right would be antithetical to an open society. It would pose a threat not only to commerce but also to a free press and to much political activity to save nothing of everyday conversation."[21] It is interesting to think that personal intellectual property protection could have such far reaching implications, when it is equally possible that draconian commercial copyright enforcement could have similarly catastrophic affects on commercial and personal freedom.

An important part of the plans of commercial IP holders, and part of their antidote to the fear of copying, is an attachment to the personal details of their users. As Oliver Freeman, Vice President of the Australian Publishers Association was quoted as saying in the Sydney Morning Herald, "Far from being a threat to authors' copyright, the Internet opened up possible new revenue models … Anything which can take an electronic charge, like a chapter of text which has been created or captured digitally, can communicate vital information about the transactions of which it is part – where it is, who the user is, whether it is being copied and so on ."[22]

What he is foreshadowing are intrusive rights management systems which could monitor people's use of information, possibly on a world wide basis. In case you think this is futuristic, consider the case of the company, RealNetworks Inc., which recently acknowledged that information from its free RealJukebox software -- used by more than 12 million people[23] -- is sent over the Internet to its headquarters. The New York Times reported on November 1 1999 that RealNetworks Inc.'s

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[19] http://www.ipc.on.ca/web_site.eng/matters/sum_pap/papers/pr-right.pdf
[20] The Economist "The end of privacy" May 1st 1999 P11
[21] Ibid
[22] Kate Crawford Digital no threat to copyright SMH 4/6/99
[23] http://www.usatoday.com/life/cyber/tech/ctg550.htm

RealJukebox software monitors user listening habits and other activities and reports the information and the user identity to the company.[24]

Another interesting example reported on Wired News in August was that Amazon.com set up shopping communities which let anyone view books, movies and CDs ordered by Amazon.com customers at corporations, non-profit groups and government agencies.[25] So anybody can see who has bought what. The trouble was that Amazon did not ask groups for permission before using employees' and members' orders to create the corporate profiles that appear on its web site. So we are starting to see the use of the digital customer identifier to create value perhaps not referenced to the consumer of the goods.

Equally there are privacy enhancing possibilities in the use of technology. So governments should explicitly recognise that in designing mechanisms to enforce copyright they should encourage industry to pick methods which are least intrusive of personal copyright, personal privacy. Since it is technically feasible to protect privacy and copyright at the same time, we don't have to have a Hobson's choice between one and the other, both can be preserved.

It is worth noting the results of Forrester Research, published in September 1999 in a Report *The Privacy Best Practice,* that two-thirds of on-line consumers worry about Web privacy[26]. The Report suggests that privacy fears hold back Web shopping and even Internet communication with business using email or chat.

Thus in the context of the "Important unknowns [which] are the ways and extent to which users will be able to assert control of personal information through political or commercial means."[27] posed by the Issues Paper, it is important for Governments to empower consumers to not only have control of their information, but to ensure that they have the means to gather a share of the value created from their personal data.

Consumer Protection in E-Commerce

Privacy fears are not the only potential inhibitor of business to consumer electronic commerce. In 1999 Consumers International completed the first global e-commerce shopping exercise. Overall 150 products were purchased using sites from 17 different countries. There is room for some key highlights only here[28]. The findings are examined under the four stages of the shopping process, during which the consumer searches for the item, orders it, receives and then (in a worst case scenario) returns it for a refund.

Search / navigation. At the time of the study, choice was still severely limited in many product areas. Researchers found that it can be difficult to find sites to buy from. The global shopping mall is still a long way off!

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[24] http://www.zdnet.com/zdnn/stories/news/0,4586,2385034,00.html
[25] Wired News 25 August http://www.wired.com/news/business/story/21417.html
[26] Forrester Research The Privacy Best Practice September 1999
[27] Issues Paper P.25
[28] A more detailed article is available from the Australian Consumers' Association web site, http:/www.choice.com.au.

Selecting and ordering. Many problems were encountered with lack of information on key issues such as delivery charges, order progress, privacy policy, returns policy. 24% of sites purchased from were unclear about total price. This was mainly due to an absence of clear explanation about delivery charges, which for overseas orders can be very substantial. 73% of traders failed to give crucial contract terms like guarantees and warranties, or exchange and refund information. These terms were not necessarily included with the delivery of the product either.

Fulfilment - delivery and dispatch. In an unacceptable number of cases goods were very late (46% didn't arrive by target, or didn't arrive at all (8%).

Returns and credits. In too many cases consumer weren't given information about terms and conditions, which might cover jurisdiction issue. Information about complaints procedures can also be missing. On top of that, the identity of company may be unclear, and contact other than by email difficult. All in all information about how to gain redress can be very difficult to obtain. 90% of sites did not mention which country's law applied to the transaction. Only 32% gave information on how to complain if there was a problem.

This dimension of consumer frustration with the online experience is reinforced by recent research reported by The Economist in an article entitled "Wish fulfilment" "PricewaterhouseCoopers, an accounting firm and consultancy, has devised a measure of quality, called BetterWeb, which analyses such things as orders, returns and complaints. None of the 300 e-merchants it has surveyed passes muster."

It is important to challenge, from the consumers perspective the assumptions that

- e-commerce is inevitable,
- broadly applicable (i.e. not a niche market like TV shopping),
- even desirable once the novelty wears off.

Indeed, there have been recent intimations of limits to the Internet as a shopping platform. Research by Greenfield Online showed a slight decline in Web purchases in the second quarter of 1999[29]. Business will have to work at e-commerce and get it right to 'enjoy' the commercial fruits of serving consumers on-line. Time and again even the most promising technologies fail in the marketplace, because they fail to persuade consumers of their value.

The International Dimension

As the debate over Internet content demonstrated, and is well recognised in the Convergence Review discussion paper, there are obviously no boundaries to the Internet, it doesn't observe convenient national frontiers. A large proportion of Australian Internet traffic (and probably shopping) is transacted overseas. Australian consumers have a stake in international consumer protection, so that the confidence they generally enjoy in relation to transacting in the domestic marketplace can be replicated online, internationally.

[29] The Sydney Morning Herald 4/8/99 p.25

Important consumers issues relating to consumer protection in international e-commerce transactions have not been solved, such as issues of what constitutes an effective online 'contract' - when has the deal been irrevocably sealed in a non-repudiable way? The 'Country of contract' problem remains an outstanding stumbling block - should the domestic law of the buyer or seller prevail. The consumer preference is for that of the buyer, business prefers the sellers'. A workable solution needs to be found in combining internationally agreed standards which dovetail with domestic safeguards for sellers and buyers. Establishing the applicable law and competent forum for disputes offer similar dilemmas. Agreed codes and standards about how sites operate in terms of disclosure and behaviour in relation to common consumer experiences such as detailed in the shopping survey are vital.

In summary consumer protection in the international environment is a legal maze. There are those who contrast relatively sluggish progress on consumer protection with the energetic progress made on commercial IP protection in forums like WIPO and WTO. There is urgent need for development of international agreements and processes to improve and harmonise consumer protection. Consumers International is working in forums such as the OECD to develop such guidelines. The Issue Paper notes that "commercial solutions to consumer confidence issues may either co-exist with a safety-net of Government intervention, or they may become a dominant means of consumer regulation in international markets if international regulatory coordination cannot ultimately be achieved."[30] However, it was the inadequacy of the attempt to base modern economic development and prosperity on the law of contract alone which has led to the development of the apparatus of consumer protection enjoyed in Australia and other such developed economies. It is important to realise and conceptualise the fact that this consumer protection framework is not a cost and an impediment, but a facilitator of the modern market place. As observed, for the even more complex, sophisticated and trust based e-economy envisaged, consumer protection will form an even more vital enabling role.

The international dimension to the regulatory challenge from converged services is undoubtedly one of the most difficult and frustrating. There are obviously no easy answers, as demonstrated by the Internet content control debate, privacy issues etc. However it is useful to note that for all the challenges they face, national sovereign governments continue to possess many powers and resources which can be deployed to the benefit of consumers, if the political will to do so is there. These include traditional regulatory powers over matters within their territory, which can apply with effect to the local operations of global companies to good effect. The passage of real goods and people remain well within their purview, and the world is far from fully virtual. They have the power of access to other governments and the ability to make with them mutually enforceable agreements, which if they can be reached (and the example above about intellectual property, and others relating to airspace regulation, law of the sea etc suggest they can if the will is there) represent substantial opportunities for consumer protection.

[30] Issues Paper P.40