

7<sup>th</sup> September, 2002

(Total of eight pages faxed)

The Secretary,  
Trade Practices Act Review  
C/- Department of the Treasury  
Langton Crescent  
Parkes ACT 2600

Fax: 6263 3939

Dear Sir/Madam,

I wish to make a submission to the Trade Practices Act Review. My submission is based upon the decision of the ACCC in 1999, when it refused to listen to my case concerning predatory and unlawful behaviour by Microsoft and IBM, which directly affected my company. A brief background on Webster Publishing follows so that you can understand and appreciate my anger and disappointment on Professor Fels' decision.

Webster Publishing, an Australian company, is Australia's largest publisher of multimedia reference CD-ROMs and produces many different titles in this area. We develop both Australian and world titles and are one of the only 3% of small companies that actually export our products around the world. We are the only company in the world that produces an **Encyclopedia of Australia** and the only company in the Southern Hemisphere that produces a **World Encyclopedia** on CD-ROM.

In 1999 we were selling all these CD-ROM products through retail stores in Australia and for that financial year were hoping to achieve over \$5 million in sales. What happened, however, is that in January, 1999, IBM decided to sell its World Book Encyclopedia in Australia for zero dollars. The customer paid money in the retail shop for the product and then sent their invoice back to IBM where they received a full refund. This destroyed sales of our encyclopedias as we could not afford to sell ours for zero dollars. Microsoft also then followed suit in offering their Encarta product for zero dollars and this combined effect put my company out of business.

In June of 1999, I appealed to Mrs Bronwyn Bishop to help me try to have the ACCC understand the monopolistic and predatory behaviour of these two American companies. She felt there was some justification in my complaints and undertook to send my information to the ACCC for their response. In attachment number 1, you will find my letter to Mrs Bishop of 19<sup>th</sup> June, 1999, which outlines the situation in more detail.

Mrs Bishop wrote to the ACCC and in Attachment number 2 is Professor Allan Fels reply. His response was that he found no reason to act and no unlawful behaviour by IBM or Microsoft. This was so blatantly wrong that one wonders how the Professor can justify his actions.

What then brought this to a head was the recent comments by Professor Fels in which he was launching action against Qantas for doing to Virgin Blue what Microsoft and IBM did to me. Why do I say that? It's very obvious when you read a transcript of an interview between Barric Cassidy from Channel 2 and Professor Fels on 12<sup>th</sup> May, 2002. The following, all in italics, is an excerpt from that transcript:

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Upper Level 36-38 Wattle Road Brookvale N.S.W. AUSTRALIA 2100  
Email: [webpub@webstarpublishing.com](mailto:webpub@webstarpublishing.com) WEB Page: [www.WebsterWorld.com](http://www.WebsterWorld.com)  
AUSTRALIA Ph: (02) 9939 5505 Fax: (02) 9939 8355

## QUOTE

*BARRIE CASSIDY: Well, let's move on to a specific case, the complaint against Qantas.*

*Virgin Blue introduced cheap seats on the Brisbane-Adelaide leg and Qantas went one better, what's wrong with that?*

*ALLAN FELS: Well, they went too far in our allegation.*

*In this area of law, ever since the time of Rockefeller and his killing all the competitors in his industry the law has drawn a distinction between vigorous, legitimate, pro-competitive behaviour that represents normal competitive behaviour, and behaviour that goes too far, that's predatory and unlawful - for example, if a big business with a lot of market power temporarily runs at a big loss in order to kill off a small player so it will later have monopoly power, that's unlawful.*

*And everywhere in the world, competition laws make that distinction.*

*BARRIE CASSIDY: But even so, in this case the passenger - the consumer - is the winner and they would say "Look, we can take more of this".*

*ALLAN FELS: No, the passenger is only the short-term winner.*

*The behaviour would not have continued in our view.*

*It was just a temporary benefit in order to weaken competition.*

*That's the essence of our case.*

*BARRIE CASSIDY: An editorial during the week used a cricket analogy and said it is almost like asking Australia to beat South Africa in cricket, but not by too much.*

*We don't want to wreck the game altogether.*

*In a sense you're saying to companies, by all means get out there and win but not by too much.*

*ALLAN FELS: No, that is a completely mistaken analogy.*

*The Commission of all people, is a great believer in having strong, vigorous competition.*

*And we don't mind Australia trouncing South Africa by an innings and 500, but what happens, is that - supposing a business artificially subsidises itself out of the profits it is making in some other areas of the economy to run at a huge loss for a period, in order to eliminate a competitor to get monopoly power, that's against the law.*

## UNQUOTE

**For example, see the first underlined section above.** What Professor Fels is saying there is exactly what IBM and Microsoft did to me.

**Now note the second underlined section regarding the continuing of the behaviour.** What happened with IBM and Microsoft is that they stopped the behaviour once I was out of the way. Exactly what Professor Fels is saying is wrong.

**The third underlined section outlines exactly what IBM and Microsoft did.**

So what is the real reason that Professor Fels didn't act against this predatory behaviour against my company? There are several possibilities:

1. He did not want to take on IBM and Microsoft.
2. He decided that because the actions of IBM and Microsoft only affected my company (because no other company in Australia had the entrepreneurial spirit to take on IBM and Microsoft), Professor Fels didn't want to support one small Australian company against major US companies. If the law is broken, is this a valid excuse?

What was the result of all this? To save myself from going out of business, I had to sell my assets to another company for at least \$2 million less than what they were worth. This company itself went out of business in December 2000, still owing me money. So, all in all, I have lost millions out of Professor Fels lack of action. I was running a small Australian company and was taking on and beating out these large American companies until they resorted to dirty tactics and the ACCC did nothing.

When the company I sold my assets to went into voluntary administration, I used my last remaining money to buy back some of my assets and try to start again. My new company started in April, 2001 and we have worked hard to build the business back up to a reasonable level. However, we are still not financially recovered and are finding the situation very difficult due to lack of initial working capital. I have had to extend my borrowing power which means high risk and potentially low profit.

The brief product history of Webster Publishing (please see Attachment number 3) shows we are a company that is unique in Australia in terms of the products we develop. We compete head-on with overseas companies in high tech areas, as well as exporting product, and it is appalling that we get treated in this fashion by the federal government or its agencies. Can you imagine how the US government would act if a company many thousands of times bigger than Microsoft or IBM went to America and forced these other companies out of business with selling product for zero dollars?

My final comment is this. Professor Fels refused to act when Microsoft and IBM used their monopoly power to put me out of business. This has cost me many millions of dollars, which was to be my self-funded retirement income, and I believe that the ACCC or the federal government owes me this money.

I look forward to your response.

Yours faithfully,



**Tony Webster  
General Manager**

19<sup>th</sup> June, 1999

## Attachment Number 1

**The Hon. Bronwyn Bishop, MP  
Member for Mackellar  
Minister for Aged Care  
21 Pacific Parade,  
Dee Why 2099**

**Dear Mrs Bishop,**

Thank you for sparing the time last week to talk to Jonathan King and myself concerning the problem we are having in selling our CD-ROM Encyclopedias in Australia.

The following briefly summarises the situation:

1. Webster Publishing is Australia's largest developer of multimedia reference software, having developed a wide range of titles including: **World Encyclopedia; Encyclopedia of Australia; History of Australia; History of Australian Film; Federation of A Nation** (a history of Federation); **History of Australian Sport**; plus many others on Australian animals and Australian lifestyle.
2. We are the only Australian Company to produce the above titles, and the only company in the Southern Hemisphere to produce a **World Encyclopedia** on CD-ROM. We believe that we were the first company in the world to produce a two-sided **World Encyclopedia** on DVD-ROM, the next technology beyond CD-ROM.
3. We sell these products mainly through the retail market of Harvey Norman, Grace Brothers, Officeworks, David Jones, Dymocks, etc. Many of our CD-ROMs are now used in schools around Australia as central learning tools due to their educational value.
4. Our only real competitors are giant foreign multinationals such as Microsoft Encarta, IBM World Book and Encyclopedia Britannica.
5. Over the last three years that we have developed these titles, we have been able to compete very successfully with our overseas competitors by offering more features, more Australian content, and a better price.
6. The attached summary of one Harvey Norman store's monthly sales is typical of how well we have competed in this marketplace.
7. The main competitive problem we now face concerns the policies of our two major competitors, IBM and Microsoft. In January of this year, IBM introduced the idea of selling their \$89.95 standard Encyclopedia for \$0 by introducing a cash-back scheme, whereby the customer pays cash for the product, and then sends his/her receipt back to IBM to receive a full refund.
8. This scheme had the effect of selling over one year's worth of Encyclopedias in one month (almost 20,000), which is more than any one of us would sell for the whole year in Australia. This had the effect within the retail market to virtually kill Encyclopedia sales for at least 3-4 months. Just when we thought things might start to improve, it happened again as outlined in paragraph 9 below (and this time it's both IBM **AND** Microsoft).
9. In this current month of June, both IBM and Microsoft have continued this cash-back offer where both companies are offering \$0 World Encyclopedia products. The attached PC World Press Release outlines this arrangement and also notes that, in addition, Microsoft is offering a \$100 discount on their Year

2000 Encyclopedia due out later this year. The enclosed Harvey Norman Catalogue shows the IBM offer on the front page. (These offers, by the way, are not confined to Harvey Norman and are available in all retail outlets.)

As a further blow to our chances of selling our Encyclopedias into the educational market, Microsoft is also offering 10,000 copies of its 1999 Encyclopedia free to all Australian schools (see attached email). As an Australian educational publisher, we believe in giving schools an Australian rather than an American point of view (as well as many more Australian accents).

10. With the schemes as outlined in 7, 8, and 9 above, our chances of selling our **World Encyclopedia** or **Australian Encyclopedia** into retail or schools at any time throughout 1999 has been very difficult, and has led to our worst sales figures for the last four years.
11. We are very happy to compete with IBM and Microsoft on our merits where each is selling at a normal retail price. In fact, we generally sell for less money than our competitors and our product is often reviewed and written up as the best Encyclopedia. (I have attached copies of various reviews of our Encyclopedias, some of which were done in England where we gain good export sales. These reviews reflect the quality of our products.) I have also enclosed a recent review of last week from the Australian on our new Federation of a Nation CD-ROM, which claims it is a must for every Australian school. Who will develop Australian-oriented CD-ROMs, such as Federation, if companies like us are put out of business? Certainly not IBM or Microsoft.
12. As noted above, the marketing tactics of IBM and Microsoft have severely affected our sales and if continued would have disastrous effects on our Encyclopedias over the next 12 months. I can't see that they should be allowed to do it in the first place and particularly as it severely effects the competitive nature of the marketplace. This year it might be just Encyclopedias, but in 2000 it could be ten other US companies giving away 20 different products.
13. Against the background of local industry protection, I wonder why large domineering American computer companies are allowed to force Australian software companies out of business? Australia has a tremendous Balance of Payments problem in the IT industry with America. The actions of IBM and Microsoft only make it worse, and I believe that it is an issue that the government must urgently address, before the "Clever Country" becomes the "Client Country" in IT.

I would appreciate if you could bring this serious problem to the attention of the ACCC and thank you for your interest.

Yours faithfully,

**Tony Webster**  
**Webster Publishing**

Attachment Number 2



Australian Competition & Consumer Commission

Our Ref: MR98/126  
Contact Officer: Kay Ramadan

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Australia  
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The Hon Bronwyn Bishop, MP  
Member for Mackellar  
Minister for Aged Care  
21 Pacific Parade  
DEE WHY NSW 2355

Dear Ms Bishop,

I refer to your letter of 25 June 1999 in which you enclosed a submission from Webster Publishing in respect of IBM and Microsoft.

By way of background, Mr Tony Webster of Webster Publishing brought the issues outlined in the submission you sent me, to the attention of Commission staff in our Melbourne office on 7 June 1999. On this date, Mr Webster spoke to both Mr Tony Mineely, the Deputy Regional Director and Ms Kay Ramadan.

During these discussions Mr Webster advised IBM and Microsoft were engaged in a promotion whereby they were supplying their World Book and Encarta encyclopedia software for free. Under the terms of the promotion, consumers could purchase the software, send the receipt back and receive a full refund of the purchase price. Mr Webster advised that while he could compete with IBM and Microsoft on the basis of the quality of his product, he could not compete with this offer of free software and it would drive him out of the market. Mr Webster suggested that IBM and Microsoft had colluded to offer the promotion together to get rid of him. Mr Webster was of the view that the conduct of IBM and Microsoft was anti-competitive. He also suggested that there should be some protection for Australian companies facing competition from overseas companies.

Mr Webster was advised that the IBM and Microsoft promotion for free encyclopedia software was unlikely to breach the provisions of the *Trade Practices Act 1974* ("the Act"). Section 46 of the Act prohibits corporations with a substantial degree of power in a market from taking advantage of that power for a proscribed purpose. To establish a breach of section 46, it is necessary to show significant market power, use of it and purpose. Mr Webster was advised that the issue of market power was questionable given there are a number of encyclopedia producers, and that the issue of purpose rather than effect needed to be addressed.

On the basis of the information available, staff advised Mr Webster that the promotional offer appeared to be a competitive strategy designed to generate brand loyalty and ongoing future sales of both the encyclopedias and other software

EXECUTIVE OFFICE



products. The fact that electronic encyclopedias are the ideal medium for such offers was discussed with Mr Webster. Given the relative cheapness of electronic encyclopedias compared to hard copy versions, updates are a probable purchase; in fact, electronic encyclopedias are marketed as a short-term purchase. In essence, because the mass of material and information provided in an encyclopedia does not need to be revised on an annual basis, the cost of production can be amortised over a number of years and update editions. Hence, the strategy to grow future demand is a sound business decision.

Mr Webster was also advised that while he was of the view that IBM and Microsoft had colluded on the promotion, there was no explicit evidence of collusion and it was possible that one company was responding to the promotional activity of the other. Indeed, the material provided by Mr Webster indicates that Microsoft followed IBM's lead of a cashback deal on its World Book, by offering a cashback deal on Encarta and a discount on the new version to be released later this year. Further, given there are other encyclopedia producers in the market of some significance, such as Britannica, it is difficult to show the conduct of IBM and Microsoft was targeted at Webster Publishing.

Staff advised Mr Webster that while they appreciated the effect the promotion may have on his business, it was important to distinguish the difference between purpose and effect. Without evidence to establish the conduct of IBM and Microsoft was specifically engaged in for one of three proscribed purposes, it was unlikely to breach the Act. The three purposes proscribed under the Act are, to eliminate or substantially damage a competitor; to prevent the entry of a person into that or any other market; or to deter or prevent a person from engaging in competitive conduct in that or any other market.

I have reviewed Mr Webster's submission dated 19 June 1999 and unfortunately, the information contained therein is insufficient to conclude that the conduct of IBM and Microsoft is likely to breach the provisions of the Act. In my view, the information provided by Mr Webster does not suggest that the conduct of IBM and Microsoft is anti-competitive.

Finally, while Mr Webster may be of the view that the Australian IT industry should receive some protection from American computer companies, the restrictive trade practices provisions of the Act are concerned with the level of rivalrous behaviour in the market as a whole.

Under the circumstances, the Commission is not able to pursue this matter.

Yours sincerely,



Professor Allan Fels  
Chairman  
2 July, 1999

## Webster Publishing Brief Overview

Webster Publishing is Australia's oldest developer of eLearning/Computer Based Training material, as well the largest publisher of reference material on CD-ROM. Our [www.WebsterWorld.com](http://www.WebsterWorld.com) product provides the best combination of eLearning with massive Australian content, combined with high quality world content, to offer the best Internet site for the Australian home, school and library markets.

We have developed significant expertise in content and technical skills to provide an online site that is the easiest to use of all online training and encyclopedic sites.

Our eLearning site – [www.Websterselearning.com](http://www.Websterselearning.com) is also ideally suited for training users in industry and government.

Two important points can be made about our organisation. As an Australian company, we are unique for two major reasons:

- We are the only Australian company that competes with the overseas encyclopedia competitors of Encyclopedia Britannica, World Book, Grolier and Microsoft Encarta with our locally developed CD-ROMs, and our online educational subscription site.
- We are also the only Australian company that has the expertise to develop interactive online eLearning products for teaching people how to use PCs and PC software. We have been involved in developing and researching training methodology for over 14 years. All major competitors are overseas-based.

*Our skills developed over the years have resulted in some world firsts and some other significant achievements. These include:*

- The only company in the Southern Hemisphere to develop a World Encyclopedia on CD-ROM.
- The first company in the world to develop, in 1997, a World Encyclopedia on double-sided DVD-ROM.
- Selling over one million World Encyclopedias in the USA over the last three years.
- Winning a contract with the School of Education at the University of NSW for a three year R&D Grant on the best way to design and develop online software training tutorials.
- Winning a contract with the Selangor Human Resource Development Centre College in KL, Malaysia, to develop PC Skills testing and teaching software for them to sell in Asia.
- Becoming number 2 supplier of World Encyclopedias into the very competitive US retail market in the month of May, 2002. In doing this we beat out World Book, Encyclopedia Britannica and Groliers, being headed only by Microsoft Encarta.