unfolding opportunities for collaborative work within Australia and internationally for further work. While one cannot expect that all of these objectives were met, all were addressed and discussed at length.

Research from France, Germany, Australia and the United Kingdom reflected a variety of approaches, and, not surprisingly, drew similar conclusions about how people perceive the telephone instrument and its services and to what uses they put "Bell's Wonderful Toy". The quality of the work varied widely and the conclusions drawn from responses obtained via diaries and interviews ranged from broad generalizations to carefully thought out conclusions based on keen observations and careful interpretation of the data. While there are frequent lapses in methodological rigor, the value of this symposium was not so much in the reported findings as in several important issues that were raised.

The familiar dichotomy between quantitative and qualitative research was raised and one can sense that there had been some heated discussion of this issue. It seems, to this reviewer, that this is a false dichotomy. Even the most dedicated quantitative researcher must admit that drawing conclusions about behaviour requires a healthy dose of speculation and 'qualititative' thinking. Data obtained via interviews and diaries are especially vulnerable to error; as Gerard Claisse and others have pointed out, changing the order of questions will often lead to different answers. And even the most dedicated of qualititative researchers must appreciate that quantitative approaches can sharpen and confirm their findings.

The very sensible comment was made that the rush to privatization of communications enterprises and to the marketplace when we have not yet determined how to meet the community service obligations of the media, may not be a sensible approach to policy making.

Finally, one of the most interesting discussions of the Symposium reported in the Monograph concerns the everpresent debate over the appropriate role of social research in policy making. There were those who believed that the competitive marketplace will solve all questions including how to meet the social obligations of the media (dream on, dreamers!). And there were the pessimists (realists?) calling for much more social research input to the policy process. The arguments on both sides were compelling.

This monograph is very much worth reading, not only for what it tells us about the present state of social research on the telephone (including an excellent bibliography) but also for the discussions of research methodology and policy making.

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Know-How Agreements and EEC Competition Law *by Guillermo Cabanellas and Jose Massaguer* (VCH Books and Max Planck Institute for Foreign and International Patent, Copyright and Compeitition Law, Munich, 1991), pp. 230, $96.50, ISBN 3-527-26005-6.

There is an underlying policy tension between the protection of intellectual property rights and the regulation of anti-competitive practices through competition law (also known as anti-trust or trade practices law).[1] Generally, intellectual property rights are based on an assumption that the grant of exclusive rights provides an incentive for innovation and investment in research and development. The creation of exclusive rights, however, restricts the access of competitors to new technologies, thus inhibiting technology transfer and hindering the competitive process. The problem of striking an appropriate balance between the protection of intellectual property rights and the encouragement of competition has led to differing emphases in diverse jurisdictions. Moreover, different rules have been adopted depending upon the nature of the intellectual property right sought to be reconciled with general competition law principles.

In this specialist text Cabanellas and Messaguer address the general issue through an analysis of the relationship, under EEC law, between restrictions imposed under know how agreements and the principles embodied in EEC competition law. A number of factors contribute to make this endeavour particularly complex. First, the area is marked by terminological confusion. The authors point out that know how has no commonly accepted meaning. In some legal systems, know how is used interchangeably with trade secrets. Sometimes it is used to refer to patented technical information as well as unpatented information. The authors suggest that know how may be generally defined as "technical knowledge which is not publicly available and which is necessary for the manufacture or marketing of a product, for the implementation of a process or for the rendering of services, giving the enterprise which holds it a competitive advantage, which it tries to maintain by avoiding the dissemination of such knowledge" (p.5). In the context of EEC competition law, however, the term has a particular meaning, being confined to unpatented technical information that is secret and substantial.

A further difficulty is the problem of characterising the legal protection afforded to know how. Unlike patent law, where the rules are reasonably ascertainable and derive from a unitary source, protection of know how is generally less well developed. Thus, under Anglo-Australian law, know how is treated as a branch of confidential information and there is debate as to whether protection is founded upon contract law, equitable principles of unconscionability or a separate equitable proprietary interest. Moreover, different systems of law extend protection to know how upon differing bases. Cabanellas and Messaguer contend that the 'bundle of rights' contributing to the protection of know how may be derived from a wide variety of sources, including criminal law, unfair competition law, contract law, unjust enrichment rules, a separate proprietary interest, tort law and labour law.

Despite its unsystematic structure, the protection afforded to know how is of immense economic significance. In the US, the economic importance of trade secrets protection has been given judicial recognition in the landmark *Kewanee Oil* case.[2] Moreover, the authors refer (pp. 13-14) to studies conducted between 1979 and 1986 in Europe, the US and the Japan which suggest that between 25 per cent and 50 per cent of transfer of technology agreements may be know how licence agreements. Know how protection is particularly important in areas

characterised by rapid technological change, such as biotechnology and software, where patent protection may be either too cumbersome or of questionable applicability.

The importance of know how agreements is, however, belied by the lack of systematic attention given to this area of law. A great advantage of this book is that it concentrates on a detailed exposition of one aspect of EEC know how law; namely, the rules governing the exemption of agreements involving the transmission of know how from EEC competition law. Another advantage is the adoption of a comparative approach. While the diversity of rules of the different jurisdictions within the EEC necessitate some degree of comparative analysis, comparisons with the highly developed system of competition law in the United States stimulates thinking about underlying principles.

The book commences with a general description of know how law and of the relationship between know how and competition law. The centre-piece of the book, however, is an analysis of the block exemption from Article 85(1) of the EEC Treaty effected by EEC Commission Regulation 556/89. Article 85(1) of the EEC Treaty prohibits agreements which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the Common Market. Under Article 85(3) of the Treaty, however, exemptions are available for agreements which contribute to improving the production or distribution of goods, or promoting technical or economic progress. As well as individual exemptions, however, Council Regulation 19/65 authorises the Commission to make a Regulation exempting classes of agreement from Article 85(1). The Commission has exercised its authority under Regulation 19/65 to create a block exemption for know-how licensing agreements under Regulation 556/89. The Regulation took effect on April 1 1989 and will apply until December 31 1999.

Regulation 556/89 adopts a detailed approach to specifying the kinds of agreement that fall within the exemption. The Regulation includes a black list of agreements that fall outside the exemption. Indeed, a central difficulty with the operation of Regulation 556/89 is the problem of determining which agreements fall within the block exemption, the authors noting that: "The definition of the different transactions to which Regulation 556/89 applies is noticeably complex; in fact, it verges on the chaotic" (p. 111).

Cabanellas and Messaguer argue that, while Regulation 556/89 may improve legal certainty for parties to know-how transactions, the adoption of detailed rules means that the EEC approach is less flexible than the US approach. The authors point out that many agreements which *prima facie* breach Article 85(1) of the Treaty would be legal under the rule of reason approach applied under US anti-trust law. Moreover, not all of the blacklisted agreements under Regulation 556/89 are anti-competitive in all circumstances. Indeed, the authors contend that the detailed rules under the block exemption infringe the contractual freedom of parties to know how agreements, involving the Commission unnecessarily in the regulation of contracts.

While the authors' conclusions are confined to European Community law, there are clear implications for other jurisdictions. The relationship between know how agreements and competition law has, for instance, received only superficial attention under Australian law to date. Indeed, the few cases to

consider the status of know how under the Trade Practices Act have failed to develop a consistent approach. Consequently, while much of the detailed exposition in the text is relevant mainly to those with a specific interest in EEC law, the discussion of underlying principles, the comparison between EEC and US laws and the general conclusions of the authors should stimulate thinking in other parts of the world. The text does, however, assume some familiarity with EEC law and is therefore more likely to appeal to the specialist. Even for those with a legal background in intellectual property and competition law, the inclusion of the full text of Article 85 of the Treaty and of Regulation 556/89 would have added to the value of the analysis and avoided the necessity of referring to other sources. This is, nonetheless, a minor quibble. The text is volume 12 in a series of IIC studies devoted to the analysis of particular aspects of industrial property and copyright law. It is a valuable addition to the series; more so because it deals with a complex and uncertain area of the law.

NOTES

1. For a discussion of the general issue on the relationship between intellectual property rights and competition law in Australia see: Trade Practices Commission, Background Paper, "Application of the Trade Practices Act to Intellectual Property" (July 1991); Margaret Ryan, "Copyright and Competition Policy — Conflict or Peaceful Co-existence", (1991)2(4) *Intellectual Property Journal* 206. The American material on the topic is voluminous and includes the following: Note, "Clarifying the Copyright Misuse Defence: the Role of Antitrust Standards and First Amendment Values" (1991) 104 *Harvard Law Review* 1289; L. Kaplow, "The Patent-Antitrust Intersection: A Reappraisal" (1984) 97 *Harvard Law Review* 1813; and Note, "Standard Antitrust Analysis and the Doctrine of Patent Misuse: A Unification Under the Rule of Reason" (1984) 46 *University of Pittsburgh Law Review* 209.
2. *Kewanee Oil Company v Bicron Corporation* (1974) 416 U.S. 470.

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Inventing Accuracy: A Historical Sociology of Nuclear Missile Guidance *by Donald MacKenzie* (MIT Press, Cambridge MA., 1990) pp. xiii + 464, $US29.95, ISBN 0-262-13258-3.

How about this for an opening statement in a book?

> Look out the window of the room in which you are now sitting. Focus on a tree or a building about a hundred yards or metres away. Imagine a circle with your room at its center and that object on its edge.
>
> That circle defines the accuracy of the most modern U.S. strategic missiles. Fired from a silo or submarine on the other side of the earth, then arching up through space, an MX or Trident II missile is designed to deposit its nuclear warheads within little more than that circle. *All this is to be achieved without human intervention beyond the order to fire* (p.1. Italics added).

Does that capture your imagination and draw you into what is a fascinating, illuminating and, at times a pretty scary, narrative?