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Sent: Monday, 10 June 2002 10:02
To: TPAreview@treasury.gov.au
Subject: INQUIRY INTO TRADE PRACTICES ACT

The Secretary
Inquiry into the Trade Practices Act

Dear Secretary,

I am a director of a small family run retail business. I making a submission to the inquiry on the powers and administration of the Trade Practices Act (TPA) by the Australian Competition and Consumer Commission (ACCC). I am recommending the following in my submission:

1. An Independent Board of Review or Board of Management of the ACCC and better accountability of ACCC decision making.
2. The ACCC consider broader economic factors in its decision making on competition.
3. A separate authority be established to deal with Mergers and Acquisitions.

Our family run business employs four fulltime employees and six part-time employees. So our business is a genuine small business. Our business has not been a beneficiary of activities undertaken by the ACCC. We have been in business for over ten years. There is no doubt the ACCC does many good things. However, the ACCC's attacks on big business irrespective of their merits has legitimised business bashing. Also the ACCC's quest for cheaper prices is somewhat irresponsible as the cost of living and the cost of running a business continues to rise.

1. An Independent Board of Review or Board of Management of the ACCC and better accountability of ACCC decision making.

The ACCC is the most influential monopoly in Australia. The Commission has broad discretionary powers. It can raid the offices of businesses, make allegations against business without being substantiated, take court action and make decisions on mergers or acquisitions without having to substantiate such decisions based on facts. The compliance costs for business in dealing with the ACCC is substantial. The chief executive of Woolworth's, Roger Corbett was recently quoted as stating the cost to his company of providing transcripts of communications to the ACCC was \$600,000. This is not to say such requests by the ACCC are not legitimate but there has to be transparency in how it arrives at decisions.

Good corporate governance requires an independently appointed board that oversees its managing director and staff. Such an independent board does not

exist for the ACCC. In a letter printed in the Age (10/6), the acting chairman of the ACCC Suresh Bhojani stated the ACCC has a board of commissioners. The chairman, Alan Fels chairs that board. Alan Fels is in essence the chief executive of the ACCC. The board cannot be regarded as independent when it is run by its chief executive. Good corporate governance requires an independent board. The ACCC cannot call for business to be transparent and adopt good corporate governance when the ACCC itself resists such benchmarks for its own operation.

An independent board could comprise of representatives from big business, small business and consumer groups. The Reserve Bank and the ABC have independent boards comprising of skilled individuals from various backgrounds. Neither organisation has been adversely effected by having independent boards.

The Productivity Commission recently called for greater transparency and accountability from the ACCC in its decision making. My understanding is the government and the Commission have ignored this recommendation. Such a recommendation is especially relevant for mergers and acquisitions. Recently the ACCC rejected the proposed API-Sigma merger. There may have been good reasons for this but the Commission did not quantify its decision. Companies have to spend a lot of money to meet ACCC concerns. They are entitled to have an ACCC decision substantiated on fact rather than speculative outcomes not supported by fact. Again the ACCC should subject itself to accountability it requires of business.

2. The ACCC consider broader economic factors in its decisionmaking on competition.

The ACCC constantly calls for cheaper prices and states competition will provide this. The Commission's push for cheaper prices creates unrealistic expectations irrespective of the consequences. The collapse of HIH, Onetel and Ansett all had a common theme- discounting. The consequences of these collapses include job losses, creditors losing money (some going to the wall) and government levies imposed on insurance and air travel paid for by taxpayers. Yet immediately after the Ansett collapse Alan Fels was out in the media expressing his concern about air fares not being as cheap as they were previously. Such comments are socially and economically irresponsible. Australia by international standards is a small country. We have been able to sustain only two airlines. Compass 1&2 collapsed and Impulse Airlines avoided collapse by being taken over by Qantas. Alan Fels know this yet continues to create expectations among consumers about prices being cheaper. The ACCC would have more credibility if it said cheaper prices can only occur if economically sustainable. The cost of living and running a business have risen. The Commission knows this but never says so in media interviews and media releases. This is also another example of the ACCC having to accountable in its actions.

3. A separate authority for Mergers and Acquisitions.

The ACCC is being required to take on too much and is stretched. A consequence of this is small business being squeezed out of proper consideration. More of the Commission's time is being taken up by mergers and acquisitions. The proposed Foxtel-Optus deal is a good example. There are numerous important issues to be dealt with. Irrespective of the merits of the deal the Commission is being subjected to an enormous lobbying campaign by proponents and opponents of the deal. None of the players involved are small businesses. Foxtel and Optus are large companies. So are its opponents- the free to air TV channels, Fairfax and other telecommunication companies. They all have the resources to engage lawyers expert in the field and lobbyists to meet and put pressure on the ACCC. The ACCC in turn becomes a corporate player. Small businesses are at a disadvantage as they do not have such resources to deal with and lobby the ACCC. The end result is the ACCC's resources are directed to regulating large businesses and protecting consumers. This leaves small business largely ignored.

The ACCC does a great job in areas such as dealing with collusion and unconscionable conduct. Many small businesses are located in shopping centres yet the activities of these landlords are not a high priority for the Commission. The Commission's growing work load on mergers and acquisitions has to effect its work in other areas of importance. A sensible solution would be to establish a separate mergers and acquisitions authority governed by the Trade Practices Act.

I am a supporter of having a national regulator but there has to be better accountability and transparency in action taken by the ACCC. The ACCC is in a privileged position. Anybody in such a position has an obligation to act responsibly. I believe in the areas of competition and pricing the Commission creates unrealistic expectations for consumers of cheaper prices in an environment of increasing costs. You almost have the feeling the ACCC believes people in business big or small should not make money and their status is inferior to consumers.

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