



Coles Myer Ltd.

John Fletcher
Chief Executive Officer

19 June 2002

Sir Daryl Dawson
Chairman, Trade Practices Act Review Committee
C/- Secretary Trade Practices Act Review
Department of Treasury
Langton Crescent
PARKES ACT 2600

By email: TPAreview@treasury.gov.au

Dear Sir Daryl

Trade Practices Act Review – Proposal to add an “effects test” to Section 46

We are aware that the Trade Practices Act Review is a broad business issue and as such are confident that organisations such as the Business Council of Australia will express in a sound academic and legally authoritative manner the general view of Australian business.

However, Coles Myer notes that there have been newspaper reports of calls by the Australian Competition and Consumer Commission (ACCC) and by a group called the National Association of Retail Grocers of Australia (NARGA) for an “effects test” to be added to Section 46 of the Trade Practices Act. Both parties recently advocated such a change to the Senate Legal and Constitutional Affairs Committee which was considering a reverse onus of proof for Section 46 and to give the ACCC the power of divestiture.

This letter formally registers our opposition and concern about the possibility of an “effects test”.

An “effects test” could have the negative consumer and business consequences of:

- Restraining normal competition, particularly competitive pricing for fear of the effect on a smaller competitor;
- Companies reviewing their entrance into a new market predominantly populated by smaller operators - especially in rural and regional areas where geographic boundaries are clearly defined; and
- Restricting innovation and expansion of product ranges.

If your Committee is considering this proposal and is seeking information about the practical implications, Coles Myer would be keen to appear before the Committee or to provide details.

To explain our interest and by way of background, in 1999 the Federal Government convened, at the request of the independent retailer lobby group, NARGA, a Joint Select Committee to report on the Retailing Sector. Coles Myer contributed submissions and appeared before the Committee.

The committee commented in the Executive Summary of its report that:

“Despite the growth of the major chains, consumers appear to be benefiting from the competitive forces of the current market structure. The evidence revealed that, since 1986, prices have fallen on average for baskets of food and individual foods at supermarkets. Although there are some exceptions, the Committee accepts that economies of scale and scope have driven prices down in major supermarkets across Australia.”¹

Many of the Committee's recommendations were adopted by the Government, including the creation of a Retail Grocery Code of Conduct, an Ombudsman scheme and changes to the Trade Practices Act, including giving the ACCC powers to bring representative actions and to seek damages on behalf of third parties under Part IV of the TPA.

As there was extensive discussion of the grocery industry during this Inquiry, together with the fact that the ACCC has recently completed and is about to release a review of supplier trading terms to supermarkets, we have assumed that it is not the intention of the Committee to revisit the grocery industry especially and therefore we have not provided a detailed submission. However, we remain available to provide information for the Committee and would appreciate being involved if your deliberations move into consideration of changes to Section 46 which would be of particular concern to our company.

The Coles Myer contact on this matter is General Manager, Government Affairs, Kerrina Watson, phone 03 9829 3610.

We wish you well in your deliberations.

Yours sincerely

John Fletcher

¹ Fair Market or Market Failure? A review of Australia's retailing sector, Report by the Joint Select Committee on the Retailing Sector, August 1999.