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

Dear Sir,

Supplementary Submission

My submission is listed as 033 and deals with the system of distributing newspapers and magazines deployed in Australia. As pointed out in my submission this anti-competitive and anachronistic distribution system is unique to Australia, has been the subject of two Tribunal decisions (in 1994 and 1998), and applications for authorizations going back to February 1975. From my research, it is clear that both the TPC and the ACCC submitted to Government pressure in authorizing and re-authorising the system, and in giving a third party authorization to collectively negotiate.

I have read the ACCC submission to the Inquiry panel and in particular chapter 9 which begins at page 245 and deals with authorization provisions and processes.

The ACCC assert …" that the authorization process effectively balances the need for a process that is flexible and responsive, broadly accessible, fair to all parties, efficient and timely, gives business certainty and has an appropriate framework for accountability. … interested parties are afforded procedural fairness and the Commission is seen to only grant immunity from the competition provisions of the Act in a transparent and publicly justifiable manner. … The Commission also considers that the role of the Tribunal enhances the legitimacy and integrity of the authorization process."

The ACCC uses seven case studies to … "highlight the importance and effectiveness of the authorization process in providing a mechanism to ensure that Australia's competition law regime is flexible and responsive, particularly to the transitional needs of industries and communities affected by regulating change" …

I respectfully submit that an eighth case study, that of the newspaper and magazine distribution system from 1975 to the current time, would show how ineffective the TPC and the ACCC have been in the above matters.

In this era of "small business" collective bargaining applications for authorizations, frequently by third parties, e.g. trade associations, the authorization provisions of the Act have to be administered fairly, independently, rigorously and transparently as there are obvious s46 and other legal implications. Great care has to taken to ensure rogue third parties do not receive authorisation.

I note that the ACCC intend to make a supplementary submission. Perhaps they could provide the Inquiry with my suggested eighth case study which I believe would contradict their assertions quoted above. Alternatively, I am only too happy to provide details from my research if that would be more convenient.

If the administration of the Act can, in the future, be conducted independently, consistently and transparently then I suggest that any 'trade-offs' between the interests of different groups be made explicit so that all interested parties understand the issues and the ACCC can make a case for adjustment/restructuring/compensation assistance where required. I think this would be far more valuable to small business than involving unauthorized, unrepresentative, unqualified third parties in the process.

Senator, the Hon Ron Boswell, says in his submission to the Inquiry that Australia needs an independent and fearless regulator (page 6) and I think that this is correct. The problem is that the Senator thinks we have such an administration and I am sure we do not.

The Senator states at page 21 (penultimate paragraph) … "Current examples are a newsagent's organization either nationally or in the state, have applied for a final authorization to negotiate supply agreements … Newsagents have been proceeding through an authorization process for the past two years, which has still not been issued."…

The Senator was involved in the politics of the newspaper distribution system many years ago and one would have thought that he would get his facts straight before he finalized his submission.

The facts are:

1. The 2nd Tribunal decision on the newspaper distribution system was handed down on 18 November 1998.

2. Shortly afterward the relevant Minister, the Hon Joe Hockey, requested the ACCC to broker new commercial arrangements between newsagents and publishers.

3. A lobby group known as the ANF (Australian Newsagents Federation) was selected by persons unknown (had to be either of Minister Hockey or the ACCC) as the newsagents negotiating representative.

4. This round of collective negotiations was not authorized and on 31 March 1999, the ACCC sent Minister Hockey a confidential report. Both Minister Hockey's office and the ACCC have refused to release any details of the contents of this report.

5. On 13 April 1999 the ANF filed a collective bargaining application and this was given interim authorization three days later on 16 April (although ACCC officers I spoke to at the time thought it received interim authorization on 13 April - it was sent by facsimile.) For reasons of its own ANF did not seek authorization to negotiate on price or territory containment, items that were fundamental to newsagents viability and on which they had been negotiating prior to 13 April.

6. The Commission issued a draft determination on 23 December 1999.

7. The Commission issued a determination on 16 March 2000.

8. The QNF (Queensland Newsagents Federation) breached the TPA with activity that occurred on or about 7 December 2000. The ACCC agreed to accept court enforceable undertakings.

9. On 21 September 2001 QNF lodged a very broadly - based application for collective bargaining.

10. As ANF had been unsuccessful in a negotiation with the market leader, News Limited, they decided to 'take over' the QNF application in December 2001.

11. The QNF's solicitors finally clarified the matter by lodging an application - no A 90804 - on 29 April 2002, on behalf of QNF and ANF, and the ACCC sent this out to interested parties on 31 May, 2002.

Yours truly,

P.R. Jesser