



1 July 2002

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

By email: TPAreview@treasury.gov.au

Dear Secretary

**The Greater Union Organisation Pty Limited
Submission to the Trade Practices Act Review**

The Greater Union Organisation Pty Limited ("Greater Union") welcomes this opportunity to provide information to assist the review Committee in framing its recommendations.

Greater Union wishes to comment directly on four issues relating to the *Trade Practices Act 1974* (the "Act") and its administration by the Australian Competition & Consumer Commission (ACCC):

1. Competitor collaboration: public benefits should be considered upfront and not only subsequently in the Authorisation process.
2. The misuse of market power prohibition is effective and should not be changed.
3. Court-enforceable (s.87B) undertakings should be erased from the public record after a defined period.
4. Third-line Forcing: the *per se* offence should be abolished.

Greater Union has direct experience of these issues, which have the potential to unnecessarily and negatively impact the public interests of the cinema-going public, competition in its market place and regulatory compliance costs for its industry.

The Greater Union Organisation

Greater Union and Birch Carroll & Coyle, a wholly owned subsidiary, combine to be the largest film exhibitor in Australia, operating 453 screens from 60 locations.

Greater Union has evolved from a traditional base of film exhibition into a modern and consumer focused entertainment business. Service excellence is the aim, ensuring customers have an enjoyable, memorable cinema experience. Greater Union focuses on what tomorrow's customers want and provides it for them as soon as possible.

The public interest

1. *Competitor collaboration*

Section 45 of the Act should not prohibit competitor collaboration where the purpose, effect or likely effect is a net public benefit. Where the benefits accrue mostly to the consuming public, a competitor collaboration should not be prohibited.

In Greater Union's experience, a proposed competitor collaboration may be opposed by the ACCC under s.45, despite the fact that doing so prevents significant net benefit accruing to the cinema-going public.

Measuring the likely impact on competition, based on the assumption of a link between market structure and competitive conduct, provides an incomplete assessment of the impact of the proposed competitor collaboration. That picture is completed by adding any public benefit likely to arise from the proposal.

Competition in the market place

2. *Misuse of market power*

The misuse of market power prohibition is effective and should not be changed.

Greater Union is aware that the ACCC has stated it would like s.46 be amended to include an 'effects test'. The ACCC has also supported a proposal to reverse the onus of proof, so that a corporation with market power would need to prove it had not breached the provision.

Greater Union operates in a highly competitive market. As the law stands, Greater Union can be certain it is acting legally when its purpose is a competitive one. The ability to act with the certainty is essential to success in any competitive environment. If Greater Union was required always to correctly predict the reactions of its competitors to such conduct – ie. the effect of its conduct – competition would be less aggressive and the market place less competitive. With less discounting and fewer promotions, consumers would be the losers.

Unnecessary regulatory compliance costs

3. Court-enforceable undertakings

Court-enforceable (s.87B) undertakings should be erased from the public record after a defined period.

Greater Union is subject to a section of 87B undertaking, offered to the ACCC in order to alleviate concerns regarding a proposal to enter into a joint operation with a competitor. The provisions of this undertaking require Greater Union to act accordingly for an extended period. However, on completion of these obligations the undertaking may be accessible indefinitely by interested parties via the ACCC website.

This undertaking was not given in response to an alleged breach of the Act. Even where undertakings are given to remedy a breach, undertakings should, by law, be removed from the public record within two years of the completion of the obligations under the undertaking.

4. Third line forcing

The *per se* offence of third line forcing should be abolished.

Film franchises are increasingly a vehicle for the promotion of other consumer goods. Special offer promotions that require the purchase of a movie ticket to participate or discount movie admissions offered on purchase of another product are both common examples that may require Greater Union and/or other participating companies to incur the cost of notifying the ACCC of the proposed conduct. Both these examples result in a net benefit to the consumer: a discount promotion means the consumer obtains two products for a price cheaper than purchasing both products separately. This additional and unnecessary cost of regulatory compliance.

Greater Union would welcome the opportunity to discuss its experience with the Committee in person.

Yours sincerely

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