

SUBMISSION TO THE REVIEW OF THE TRADE PRACTICES ACT

As self-funded retirees the TPA and ACCC impact on us in three different ways – as taxpayers, as consumers and as investors.

AS TAXPAYERS

The outcomes from the TPA/ACCC disappoint us as taxpayers on several fronts:

(a) The expenditure of tax dollars by the ACCC delivers a poor return because:

--Too high a percentage of budget allocation is spent on initiating legal actions which end up as out-of-court settlements with both sides bearing near to their own costs

--Though media exposure and strong rhetoric is used when the cases are initiated, the outcomes of the court actions are not. Much ferreting is required to obtain even a general statement of the outcome of the matter.

--There is no transparency in the reports by the ACCC to which the public have ready access (e.g. the accc.gov.au home page)

(b) The definitions adopted of ‘competition’, ‘market share’ seems to ignore imports and global over or under production that play an important part in determining pricing levels.

(c) Decisions by the ACCC seem to give no heed to the long term consequences and hence effectively orchestrate outcomes that should be the role of Governments – not instrumentalities.

Examples:

In May 2000, ACCC initiated legal action on Video Easy. It was the first price exploitation notice issued by the ACCC and claimed that Video Ezy had unlawfully sought to anticipate the GST in its prices.

In the TV interviews at the time Professor Fels stressed it was a GST price exploitation case against Video Ezy and its senior management and similar action would be taken against executives and companies who raised prices in anticipation of the introduction of the GST.

The case was settled a year later. The ACCC resume of the settlement includes the words:

‘The ACCC has agreed to discontinue its price exploitation claims. In settling the matter Video Ezy has maintained its position that its conduct did not amount to a contravention of the price exploitation provisions of the Act. The ACCC believes that it was reasonable for it to have pursued its concerns about the possibility of price exploitation.’

And:

“Video Ezy has accepted the possibility that its staff may have made the misrepresentations alleged and as such has apologized to its customers who may have been misled about its right to collect the GST prior to 1 July 2000.’

The resume also states that Video Ezy will contribute to ACCC’s costs in the matter but the value of the contribution is not stated in absolute terms or as a percentage of ACCC’s total costs. (internal and external).

Viewers of the ACCC’s home page are not told where the full text of the settlement is available.

We are not aware of any media exposure by Professor Fels on the settlement and certainly nothing of the intensive media campaign that characterized the initiation of the action.

The second example was the ACCC decision to prevent the merging of the refining capacity of two oil companies.

We believe we could establish beyond reasonable doubt that this decision will lead to there being no refining capability in Australia in a few years' time and will lead to old refinery sites left on a 'care and maintenance' basis.

Had the decision gone the other way Australia would have had some modern refining capability and several rehabilitated sites.

AS CONSUMERS

As consumers the shortcomings in the TPA and ACCC which affect us include:

- (a) Failure to use the media exposure for educational purposes.
- (b) Encouragement of poor service niche marketing (cherry picking) in the name of competition i.e. achieving the lowest common denominator through regulatory restrictions on the better service providers.
- (c) Unwillingness to undertake surveys on the cost components for consumers..

It is axiomatic that the ACCC would wish to reduce/eliminate cross-subsidies. Professor Fels has not in any of his many appearances, discussed cross-subsidies in Telstra services nor the nexus between increasing line/access charges and reducing local call charges. Nor has he ever discussed the ACCC findings on the relativity between mobile and fixed line operating/maintenance costs, economic life and location costs. Nor has he supplied any guidance on what the consumer should expect in the way of costs for fixed to mobile services.

The poor service delivered by companies specializing in cherry picking is widespread and the ACC has done nothing.

Four examples:

AAPT (now Telecom NZ) operated a call center where routine delays at the call center to telephone queries was 1.5 hours. This continued for about nine months. AAPT was picking international and parts of the STD cherries and heavily advertising those services. Professor Fels's only response was to note the situation at the time AAPT was about to open a new call center at, I think, Albury.

Optus will not supply/offer a cable service to our residence even though their cable passes our door. (Nor for that matter can Optus use the conduit carrying the Foxtel cable even though we trenched for the conduit and installed our own conduit in the more difficult part).

At weekends in the Kimberley area of WA the only phonecard that can be purchased is more expensive to use than Telstra's because of slow connect-time and related determinants.

At Westfield Shopping Centre, Hurstville within the security (patrolled) area, the public call boxes are owned by a 'cherry picker'. They will only operate with their own phonecard. Outside the secure area – at the railway station, at the taxis rank for example – there are none of their public telephones. Telstra provides this service and carries the cost of vandalism.

As consumers we are very aware of our costs that are increasing at a rate greater than the inflation rate. An example is a telephone call to any of the many businesses which list only a 13 number. The consequence is a call cost of 25 cents instead of 15 cents. The ACCC could regulate that any listing of a 13 telephone number in the Sydney telephone directory must also include a metropolitan number.

A similar example is the practice of tradesmen to advertise a fixed line and a mobile telephone number. The fixed line is usually not manned and during business hours is redirected to the mobile. The consumer is expecting a local call charge (about 15cents) and ends up with a fixed to mobile charge of perhaps dollars. The business saves the cost of a professional answering service and the consumer is heavily penalized. A simple direction would have re-directs a cost to the receiver.

As a point of possible interest the components of our last telephone account were:

Usage – 51%: Services and equipment – 49%

For the usage as a percentage:

Local (neighbourhood)	4.9%
Local	13.4%
Calls to 1300 numbers	10.8%
STD	58.7%
Calls to Mobiles	12.2%

AS INVESTORS

Basically all the deficiencies listed so far impact on us as investors. More generally it is the ACCC intent to create an uneven playing field that is the major disappointment.

A recent example was the ACCC decision that competition in the distribution of gas supplies is to be accessed on a State basis and not regionally. This ensures that the Esso-BHP monopoly of gas supply to Victoria continues.

WHAT WE THINK COULD/SHOULD BE DONE

(a) Arrange some sort of Review Board to oversee the initiation of legal action by the ACCC. This Board should have all members independent of the ACCC. Perhaps four members in toto representing the legal profession, human rights organization, business and consumers.

(b) Ensure adequate review of all claims made against an organisation before seeking Board agreement to proceed with legal action. We have only sought peer action against alleged misconduct/unprofessional conduct on two occasions – an independent company director and an architect. In both cases (assessed by ASIC and Institute of Architects) a three stage review process was used. The ACCC would do well to adopt the practices of the ASIC

(c) Broaden the definition of competition to include imports

(d) Attempt to become aware of long-term expectations of the various industrial groupings.
[Perhaps periodic lectures by industrials to all ACCC staff on scenarios for developments within their industry could be a starting point]

(e) Dictate that Professional Indemnity Insurance for all ACCC staff comes from the ACCC budget allocation rather than be an open-ended, un-quantified cost to the taxpayer.

(f) Explain to the consumer why it is that ‘competition’ leads most often to the same level of charge from all competitors. (We assume there is an explanation). For example Telstra, AAPT and Ozemail all charge \$25/month for unlimited time access to the internet.

Yours faithfully,

D.R. DAVY S.J. DAVY