

10 Bective Street  
Sandy Bay  
Tasmania  
7005

17 June, 2002

The Secretary  
Trade Practices Act Review  
Department of the Treasury  
Langton Crescent  
Parkes  
ACT 2600

Dear Sir/Madam

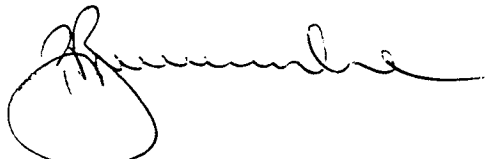
I wish to make a few comments in relation to the review. These follow.

1. The need exists for a robust legislative framework in trade practices to protect consumers. The activities of some corporations are such that, left unregulated, there would be serious actions taken by corporations which would be anti competitive resulting in transfer of consumer surpluses to large corporations and inefficient economic outcomes.
2. Having said that that, there does need to be some due process whereby corporations who feel hardly done by can appeal against perceived illegal behaviour by the regulator. On balance it would seem that the current arrangements are fair to all parties.
3. What is urgently needed is new provisions in the legislation which provide for divestment orders by the regulator. This has been a feature of corporations law in a number of countries – particularly the USA. There needs to be the power to split up major corporations if the position is reached that the power which is possessed is being exercised such that the local population is clearly suffering adversely as a result of monopolistic practices. Obviously such a power needs some significant hurdles before it is exercised but it needs to be part of the armoury to discourage rampant monopolistic behaviour.
4. It is asserted by some large corporations that they are competitively disadvantaged against some other countries – but the total framework needs to be considered. In reality, the framework in Australia is fairly competitive with the major trading nations.

5. Small businesses needs added protection against predatory pricing and other anti-competitive behaviour and unconscionable conduct. The fact is that the evidence necessary to obtain a successful prosecution under the current legislation together with the cost means that it is simply not possible for most small businesses to initiate an action.
6. A suggestion is the introduction of a Tribunal which could deal quickly and cheaply with smaller issues where consumers or small businesses wish to commence an action to seek some redress against perceived breaches. The current system discriminates against the smaller matters simply because of the costs and times involved to proceed with legal action.
7. It is also suggested that the regulator have the capacity to formally issue a "show cause" notice. This is a development of the arrangements where the regulator can write to corporations and seek information. The idea is that a corporation is formally advised that the regulator has suspicions about a certain kind of behaviour. The issue of such an order need not be prerequisite to the commencement of formal legal proceedings for apparent breaches of the legislation.
8. The interests of consumers demand that there are powers to, on occasions, reverse the onus of proof. There is clear evidence nearly every day of supermarkets using predatory pricing against the consumer. The false advertising of "specials", the refusal to stock certain lines other than "house brands" or to claim "unavailability" for a few weeks and many other techniques are causing consumers to be disadvantaged. There are also similar tactics being used against the rural sector in relation to the purchase of food stuffs as well as other small businesses. Unless there is a mechanism to expose some of these practices, the consumer and the small producer will continue to be seriously disadvantaged. Reversal of the onus such that the corporation has to prove that their actions are not illegal would assist in "balancing the scales."

It is hoped that these points are given serious consideration as part of the REVIEW.

Yours sincerely



Peter Brownscombe