

**PROTECTING THE COMPETITIVE RIGHTS OF SMALL
BUSINESS IN RURAL AND REGIONAL AREAS**

**SUBMISSION TO THE
COMMITTEE OF INQUIRY INTO THE
TRADE PRACTICES
ACT 1974**



FARM MACHINERY DEALERS ASSOCIATION OF AUSTRALIA

“We don't want to go back to the old days when the Trade Practices Act was less transparent - a consort of a few lawyers, economists and big business involved in secret men's business.”

Senator Ron Boswell, Carnarvon, 22.5.02

Seven million Australians live, work and run businesses in rural and regional Australia.

The Farm Machinery Dealers Association of Australia (FMDAA) represents an industry with an annual turnover of \$8.5 billion per year. The number of farm machinery dealers has dropped from 2500 in 1984 to just over 600 in 2002. Despite this, farm machinery dealing is a crucial element of commercial activity in rural and regional Australia.

This submission proposes a focus on improvements to the Trade Practices Act that will safeguard the competitive rights of small and medium enterprises located throughout regional and rural Australia.

INTRODUCTION

Changes in the Australian economy over the last decade: privatization; deregulation; demutualisation; trade liberalization; globalisation; and technological change have yielded significant benefits to Australia but have also lead to us having some dangerously concentrated markets – retailing, telecommunications, airlines and the like.

The abuse of market power by big business was previously constrained by public ownership, mutuality or specific regulation, and the accompanying accountability, of significant parts of given sectors. Post privatisation and deregulation, safeguards for the less powerful players in the market, both up and down stream from big businesses, are only of the generic kind found in the Trade Practices Act and related legislation.

Highly concentrated markets and vertically integrated markets are bad news for consumers in the long run – competition is lessened by the dual action of smaller players being increasingly forced out and new entrants largely being excluded.

In many of these highly concentrated markets small businesses have been forced into becoming price takers by aggressive larger businesses. Small businesses are having their margins squeezed and costs shifted to them with every new regulatory and technological change which they are forced to absorb, while the duopolies further up the supply chain enjoy enhanced profits. The impact of such concentration is especially hard felt in rural and regional areas.

The intent of the Act, especially the protection of the competitive rights of those without great wealth and political and media clout, is not being delivered. The ACCC has signalled increasing difficulty in timely and cost-effective enforcement of the Act against the backdrop of rapid increases in the speed of market movements and the increasing sophistication of hard core cartel behaviour – no matter how rare.

SPECIFIC IMPACT ON FARM MACHINERY DEALING

It is clear that big businesses proposals to weaken the Act and the Australian Consumer and Competition Commission will have a long term impact on rural and regional Australia. An even weaker mergers law, as proposed by some larger members of the business community, on competition, would have a disastrous impact on jobs and communities in rural and regional areas.

Not only is there a reduction of competitive choice for the consumer, but those farm machinery dealers remaining in the market place are seeing margins cut and costs shifted to them by powerful suppliers. These suppliers in the vast majority are multi-national corporations who rarely bother to consult farm machinery dealers when, for example, they decide to rationalize product lines in Australian markets. Such decisions often have severe impacts on rural and regional dealers and consumers alike.

WHAT FMDAA SUPPORTS

In particular, this submission supports the Fair Trading Coalition's recommendations for a strengthening of the provisions dealing with:

- collective negotiation;
- misuse of market power; and
- creeping acquisitions.

Specifically, the FMDAA supports the recent submission made by a group of 17, now 19, small business groups pushing for a rebalanced Trade Practices Act, the Fair Trading Coalition, which represent newsagents, pharmacies, independent petrol stations, private hospitals, hotels and many other rural and regional service providers.

In addition, FMDAA believes that the Franchising Code of Conduct requires amending to ensure that farm machinery dealing is specifically covered by the Code. This would provide additional rights and protections to these dealers in dealings with their suppliers.

FMDAA is concerned that some suppliers may be seeking to restrict the right of franchisees to sell more than one brand of agricultural equipment. FMDAA supports the inalienable right of dealers to sell more than one brand of equipment.

THE IMPORTANCE OF COLLECTIVE BARGAINING

The ability of small business operators to collectively negotiate with suppliers or purchasers is severely constrained by the Trade Practices Act. Presently, any type of collective bargaining arrangement is likely to be in serious contravention of section 45 of the Trade Practices Act, as having the effect of substantially lessening competition.

At present in Australia any agreement or understanding relating to price is deemed to be anti-competitive. The law is thus uncompromising. Further, boycotts involving competitors are also per se anti-competitive.

However, given that many sectors of the economy are much more concentrated today than in the past there is increasing support for the view that small business should be able to collectively negotiate in certain circumstances.

There is also a view that those negotiations, in order to be fair, now need to involve the possibility of a business or group of businesses refusing to deal or supply as part of a protected conduct measure. Normally this would only be a short term measure in the way that workers withdrawing their labour would usually only do so today for a very short term.

The difficulty is of course that one individual small business operator has little or no bargaining power against the greater market power of supermarket chains, oil companies, insurance companies, telecommunications providers or farm machinery manufacturers and importers. In relation to collective bargaining for the provision of labour, no such constraints exist.

It is possible to have collective conduct and boycotts authorized by the ACCC but it is slow, difficult and expensive. The ACCC does not easily authorize collective conduct and rarely, collective boycotts. Even if the ACCC does grant authorisation this can be appealed by any interested party. Once an appeal has been 'lodged' the authorisation is suspended and the matter referred to the Australian Competition Tribunal (ACT) for a hearing – as happened recently when an authorisation granted by the ACCC to the Australian Dairy Farmers Federation was appealed to the ACT by National Foods Ltd.

Clearly the Review needs to consider significant reform in this area of the Act.

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