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Inquiry into the Trade Practices Amendment (Guaranteed Lowest Prices - Blacktown Amendment) Bill 2009

Submission
by

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The Trade Practices Amendment (Guaranteed Lowest Prices - Blacktown Amendment) Bill 2009: Giving consumers the lowest possible retail prices everyday and everywhere in the same geographic area

This Submission will deal with and dismiss the various misconceptions, fallacies and erroneous statements made by big businesses vested interests and their legal advisers and defenders in relation to the *Trade Practices Amendment (Guaranteed Lowest Prices - Blacktown Amendment) Bill 2009* (to be referred to as the Blacktown Amendment).

With all due respect to the big business vested interest groups and their legal advisers and defenders, comments made against the Blacktown Amendment are ill-conceived and, at times, wrong, hysterical, alarmist and, sadly, self-interested to the detriment of consumers.

The Blacktown Amendment is "pro-consumer" in outlook and impact

From the outset, the Blacktown Amendment is concerned solely with promoting to the maximum extent possible the lowest possible retail prices to consumers everyday and everywhere in the same geographic area. Contrary to ill-informed commentary, the Blacktown Amendment is not a measure to "protect" small business.

Small businesses will always be price competitive with larger businesses for the simple reason that unless a small business offers consumers the lowest price that it can everyday and everywhere the small business trades, the small business will go out of business as consumers will not return to them. Small businesses need to be, and are, as price competitive as possible as their pricing is critical to attracting customers and building volume. Small business also need to be, and are, as price transparent as possible as small businesses need to let consumers know that they are price competitive with larger businesses.

Accordingly, any suggestion that the Blacktown Amendment is a protectionist measure aimed at "protecting" small business can be completely dismissed as such a suggestion represents a fundamental misunderstanding of the Blacktown Amendment, and more significantly, represents a fundamental misunderstanding of the very important price competitive role played by strong price competitive independents and small businesses. Suggestions that the Blacktown Amendment is "protectionist" are mischievous as they play on pre-conceived, false notions that small businesses are never price competitive. Sadly, such anti-small business suggestions are made by big business vested interests and their defenders and are intended to deflect attention from the central premise of the Blacktown Amendment, which is that consumers should enjoy the same low prices everyday and everywhere in retail outlets operated under the same trading name in the same geographic area.

Coles and Woolworths are not always the cheapest because of geographic price discrimination

Clearly, it should be remembered that independent retailers can and often are more price competitive than big businesses such as Coles and Woolworths. The local independent fruiterer, butcher, petrol retailer can and will be cheaper than Coles and Woolworths.

So, contrary to the many myths, fallacies and misconceptions perpetrated by big business vested interests and their defenders, small businesses are not always the most expensive on price. Similarly, big businesses such as Coles and Woolworths are not always the cheapest. In fact, Coles and Woolworths will only lower their prices in local market where they have to by the presence of a strong price competitive independent in that local market. Ironically, evidence of this discriminatory pricing practice to lower prices where there is strong local competition is offered in the Coles Submission where Coles acknowledges that it cuts its prices in particular locations to meet local competition in those particular locations.[1] This "local competition" is provided by strong price competitive independents.

Clearly, in the absence of a strong price competitive independent in the local market, Coles and Woolworths have no real incentive to cut their prices as to do so would only cut Coles' and Woolworths' profit margin. In a market in which there is only a Coles and Woolworths there is no point for the two chains to discount on price as any discounts are quickly matched in that location thereby neutralising price discounting as a strategy to deliver new, long-lasting customers.

Geographic price discrimination exists!

Contrary to the many myths, fallacies and misconceptions perpetrated by big business vested interests and their defenders, geographic price discrimination does exist and is, in fact, quite prevalent.

Indeed, a review of the petrol prices website www.motormouth.com.au reveals that the same oil company and Coles and Woolworths operated service stations sell petrol at different prices at different locations, not only across a geographic area, but also along and across the very same street. These price differences reflect local competition, with lower prices being found in price competitive local markets. A review of pricing data from www.motormouth.com.au reveals:

(i) no necessary link between lower retail petrol prices and a service station being closer to a terminal or refinery; and

(ii) no necessary link between lower retail prices and so-called "lower cost" suburbs having lower occupation costs.

[1] See Coles Submission, at p 4.

Further compelling evidence of the existence of the geographic price discrimination is found in Appendix D of the ACCC's Inquiry into grocery prices. That Appendix, entitled "Empirical analysis of Woolworths and Coles local store pricing," reveals that:

(i) Coles and Woolworths prices are lower in a locations where is an independent retailer;
(ii) Woolworths is moving to a "uniform pricing" strategy. Woolworths' movement towards a uniform pricing strategy is significant as it provides further grocery sector acceptance of the merits of a "single pricing" strategy from a consumer and efficiency perspective. Of course, ALDI already applies a "national pricing policy."

Importantly, while the Blacktown Amendment applies a single pricing strategy only in the same geographic area, the notion of a "single pricing strategy" is a perfectly acceptable pricing strategy as demonstrated by its acceptance by ALDI nationally and by a growing acceptance by Woolworths.

The merits of a single, lowest price strategy from an economic and consumer perspective

As the drafter of the Blacktown Amendment it is deeply troubling that big business vested interest groups and their legal advisers and defenders have failed to see, or even acknowledge, the economic arguments and merits in favour of a company adopting a single lowest price strategy.

With all due respect, these big business vested interest groups and their legal advisers and defenders would gain valuable insights into the power and merits of a single lowest price strategy if they were to take the time to ask consumers if (i) they are annoyed by the fact that prices for the same product vary considerably within retail outlets operated by the same retailer across the same geographic area; and (ii) whether consumers feel ripped off if they later discover that the same product was sold at a lower price in an adjoining suburb. There is no better example of the annoyance and a feeling of being ripped off than a motorist buying petrol at one price from a particular company operated service station and then driving down the street to find that the price is lower at another service station operated by the same petrol retailer.

In the absence of full transparency and strong price competitor independent in all suburbs across the same geographic area, the price at which consumers buy a product becomes a random exercise "stacked" against consumers. Consumers cannot, without full price transparency, know which are the lowest priced products and the lowest priced individual supermarkets in their geographic area. In contrast, retailers, especially large supermarket chains such as Coles and Woolworths, know the level of intensity of local competition across their network and can price their products to reflect the intensity of competition in the local market surrounding their individual outlets. That's how consumers end up with higher prices in those locations where the intensity of competition is low because it's dominated by large supermarket chains and end up with better prices in those locations where there is a strong price competitor independent in the local market.

A single lowest price strategy everyday and everywhere in the same geographic area is the most economic and competitive pricing strategy that a company can adopt. A single lowest price strategy in these circumstances means that the company will be maximising its customer base and turnover as it will be attracting customers with the most competitive price that the company can offer consumers everyday and everywhere in the same geographic area. Anything other a single lowest price strategy means that consumers will, on different days and in different places in the same geographic area, be paying higher prices than they would otherwise be paying if the company had a single lowest prices strategy in place.

A single lowest price strategy everyday and everywhere in all retail outlets operated under the same trading name in the same geographic area is economically efficient as it minimises the errors and costs associated with a company having a different price for same product in the same geographic area. Different prices for the same product in different outlets means that time and effort is being spent by the retailer's staff in different outlets to calculate different prices and adjust retail shop signs to reflect the different prices for the product in different outlets.

Price differences can and do lead to the "pricing errors" by staff. A retailer would need to carefully monitor staff having the authority to adjust prices on a discretionary basis in each outlet. These monitoring costs are further costs incurred where the same product is priced differently in different outlets operated by the same retailer. In this way, charging different prices for the same product in different outlets operated by the same retailer leads to inefficiencies and increased costs involved in making and monitoring those pricing decisions so as to minimise errors.

Importantly, a single lowest price strategy would reduce a retailer's cost structure in a number of ways. A single lowest price strategy would reduce the marketing costs currently associated with having different prices for the same product in the same geographic area. Having to advertise different prices for the same product in different outlets operated under the same trading name in the same geographic area raises marketing costs and reduces the effectiveness and impact of such marketing.

It is far simply and cheaper from a marketing perspective to advertise a single price for a product, than to advertise a variety of prices for the same product. Clearly, having a single price for the same product maximises the impact of a marketing campaign in relation to the product, particularly as a single price becomes a clever marketing ploy to reinforce the massage that consumers are being charged the lowest possible price for the product everyday and everywhere. Finally, reductions in marketing costs where only a single price needs to be advertised can easily be passed onto consumers in cheaper retail prices for a product.

A single lowest price strategy will also reduce considerably the data analysis/management costs associated with the company setting different prices for the same product in the same geographic area. Indeed, where a company charges a different price for the same product it is clear that company staff will need to analyse pricing and other data when making and reviewing decisions regarding the different prices at which the same product is sold. In short, making different pricing decisions for the same product in the same geographic area is a costly and time consuming exercise for company management and staff. In fact, the greater the number of pricing decisions being made about each individual product, the greater the amount of data that needs to be analysed to ensure that the product is being sold at a profitable level.

The increasing level of ongoing data analysis associated with having different prices for the same product is a costly exercise in terms of management time being taken up with such analysis and the increasing costs associated with the information management, storage and technology systems needed to keep track and make sense of pricing data and decisions. A single lowest price strategy allows the company to simplify pricing decisions considerably and allows it to reduce the costs associated with pricing decisions, thereby increasing the efficiency of pricing decisions. Again, these savings in costs from implementing a single lowest price strategy can be passed onto consumers in the form of lower prices for a product.

In short, the Blacktown Amendment is a targeted and balanced measure designed to provide the minimum required legislative response to ensure that consumers get the lowest possible price everyday and everywhere from the same retailer operating under the same trading name in the same geographic area.

Recommendation

(1) Enact the *Trade Practices Amendment (Guaranteed Lowest Prices - Blacktown Amendment) Bill 2009* without amendment

The Blacktown Amendment is concerned only with geographic price discrimination

Geographic price discrimination is a particular and discrete form of price discrimination. Geographic price discrimination is simply the practice of selectively charging consumers a different price for the same product in different retail outlets operated by the same retailer under the same trading name in the same geographic area. Quite simply, consumers are being charged a different price in a different location, even though the retailer is selling the product in retail outlets operating under the same trading name, in the same geographic area reflecting the same business format having the same cost structure.

While geographic price discrimination may or may not involve other anti-competitive practices such as predatory pricing in particular locations (or what can be described as "location-specific predatory pricing"), the Blacktown Amendment is solely concerned with geographic price discrimination as a distinct practice aimed at price gouging consumers on the basis of location.

The rationale behind geographic price discrimination explained

For the sake of clarity, it is important to note that there is only one basic rationale for geographic price discrimination. That is, a company can, through access to price data about a competitor's pricing behaviour, ascertain the intensity of competition offered by the competitors in a local area and tailor the company's pricing behaviour to selectively cut prices only in locations where they are forced to by local competition. In short, where there is a strong price competitive independent in the local market, the company will lower its price for a product to match or undercut the independent in that local market. Conversely, the company's price for the product will be higher in those locations where the company faces little or no real competition in the local market.

Clearly, the point to be remembered in such circumstances is that the company is in fact able to selectively lower its prices in some locations where it chooses or is forced to do so. This is a significant point as the company's business model allows the company to lower its retail prices in those locations where there is a strong price competitive independent. So the question to ask is if a company's business model allows it to sustain lower retail prices in price competitive locations, why can't the company offer those lower retail prices in all other locations in the same geographic area? Well, quite simply because the company doesn't have to offer those lower prices in all other locations in the same geographic area. In short, even though a company's business model allows it to offer lower prices in price competitive locations, a company will not offer those same low prices in other retail outlets unless it is forced to by the local competition. In this way a company can simply get away with charging different prices in different locations.

Of course, there may be a more sinister rationale for geographic price discrimination. Quite simply, a big business can lower its prices in a particular local market with the express purpose of driving out of that local market a strong price competitive independent. The big business can do this simply by cross subsidizing the lower prices used in a particular location to drive out the price competitive independent with the higher prices that the big business charges in other local markets where local competition is weak or failing to drive down retail prices. While the big business can cross-subsidize lower prices in this manner, independents generally lack such an ability making them "sitting ducks" in a concerned campaign by the big business to force them from local markets. The removal of a strong price competitive independent from the local market will have an adverse impact on the choice and retail prices paid by consumers in that local market once the independent has been removed.

So clearly the lower prices that a company offers in a price competitive location may be intended to drive out an independent competitor in the local market. In this way geographic price discrimination can have the purpose of driving out a strong price competitive independent from the local market to the detriment of competition and consumers. Once the strong price competitive independent has exited the local market, the big business can simply raise its prices to the same high levels as those high prices in those growing number of other local markets where the local competition is weak or failing to drive down retail prices.

Predatory pricing to be considered separately from geographic price discrimination

Geographic price discrimination can also occur along side predatory pricing. Indeed, the lower prices offered by the company in a price competitive location may also mean that the company is selling a product below cost. It must be emphasized that this practice, which can be best described as location-specific predatory pricing, is a separate issue to geographic price discrimination. More importantly, location-specific predatory pricing is not the focus of the Blacktown Amendment. Rather, the focus of the Blacktown Amendment is to ensure that consumers get the lowest possible price for a product everyday and everywhere in the same geographic area.

Contrary to incorrect and ill-informed assertions in submissions by big business vested interests groups and their legal advisers and defenders, the Blacktown Amendment does not seek to make judgements or assumptions about the existence or otherwise of location-specific predatory pricing. Whether location-specific predatory pricing exists is a separate and distinct question to the issue of geographic price discrimination. In short, references in various submissions to predatory pricing are misplaced and, even mischievous, given that the Blacktown Amendment does not in any way, shape or form mention predatory pricing.

Predatory pricing is a separate issue to geographic price discrimination and, more importantly, the issue of predatory pricing has already been dealt with effectively under s 46(1AA) of the *Trade Practices Act*, otherwise known as the Birdsville Amendment.[2]

The debate has moved on to the separate question of geographic price discrimination and, in this regard, the Blacktown Amendment simply requires that the company charges consumers the lowest price for the same product everyday and everywhere in all retail outlets operated by the company under same trading name in the same geographic area. Under the Blacktown Amendment so long as the company charges consumers the lowest price for the same product everyday and everywhere in the same geographic area, it is a matter for the company to choose that price, and even whether or not it chooses to sell products below cost.

Comparing "like" with "like" to justify the same lowest price – the central tenet of the Blacktown Amendment

While the explanation for why a company engages in geographic price discrimination has been included to help observers understand why geographic price discrimination occurs in practice, it is important to understand that the Blacktown Amendment deals only with geographic price discrimination by ensuring that a retailer charges the same lowest retail price at each point in time for the same product in all its retail outlets operating under the same trading name within the same geographic area.

Clearly, the Blacktown Amendment is concerned with comparing "like" with "like." The focus is on the *same* lowest retail price; the *same* product; the *same* point in time, retail outlets with the *same* trading name and the *same* geographic area. This focus ensures that the Blacktown Amendment is concerned with identifying all the reasons why consumers ***can*** get the lowest possible retail price everyday and everywhere in the same geographic area.

With the Blacktown Amendment focusing on the reason why a retailer ***can*** charge the lowest possible retail price to consumers everyday and everywhere in the same geographic area, the Blacktown Amendment has taken a positive approach to the issue of pricing. Importantly, the drafting of the Blacktown Amendment has carefully considered the pricing behaviour of retailers having regard to their cost structures and turnover of a particular business format.

The central focus of the Blacktown Amendment is on retail outlets operated by the company under the same trading name. In this context, a trading name is not merely the legally registered name of the company but also the name by which it is known to its suppliers or customers. Thus, consumers will, for example, know that Woolworths is the *name* of supermarkets operated by Woolworths Ltd, while Big W is the *name* of the department store format operated by Woolworths Ltd. So the point of the Blacktown Amendment is to focus on the same trading name so as to cover the same retail outlets

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[2] For the sake of complete transparency the author of this Submission also drafted the Birdsville Amendment to the *Trade Practices Act*.

reflecting the same business format or same store branding and the same cost structure.

The same trading name is central to understanding the “like” for “like” approach taken by the Blacktown Amendment. In particular, the same trading name reflects the same business format and store branding which, in turn, reflects the same basic cost structure of each retail outlet reflecting the same business format and store branding. Indeed, a Woolworths Ltd will seek to ensure that that the business format, store branding and cost structure of each Woolworths will be the same, or as close to being the same as possible, in the same geographic area.

It is this “like” for “like” comparison of the business format, store branding and cost structure that enables “like prices” in “like business formats.” Thus, consumers would expect a bottle of coke to be the same price in each Woolworths supermarket in the same geographic area. Similarly, consumers would expect a bottle of coke to be the same price in each Big W in the same geographic area. Clearly, in understanding the Blacktown Amendment it is important to first understand that the Blacktown Amendment is not concerned about the same price for the same product in *different* trading names/business formats/store branding that may be operated by the company even in the same geographic area. Rather, the Blacktown Amendment is solely concerned about the same price for the same product in same trading name/business format/store branding operated by the company in the same geographic area.

Now the “like” for “like” comparison in relation to trading name/business format/store branding extends a “like” for “like” comparison in relation to *transport costs* to each of those retail outlets operating under the same trading name in the same geographic area. Indeed, the company will operate or draw from distribution centres to service retail outlets in a particular geographic area. So, for example it’s the same logistics operation that delivers to each retail outlet in the same geographic area. Accordingly, the cost of that logistics operation will be the same, or so close to being the same to each of those retail outlets in the same geographic area, that transport costs cannot be used to justify differences in retail prices of a particular product in different retail outlets in that same geographic area.

Finally, it needs to be remembered that in relation to the thousands or even hundreds of thousands of products delivered to the retail outlets operated by the company under the same trading name in the same geographic area, transport costs are such a small, or at times even minuscule, part of an individual product’s price that transport costs again cannot be used to justify differences in retail prices of the particular product.

The “like” for “like” comparison in relation to trading name/business format/store branding extends beyond transport costs to *occupancy costs* (i.e. rent and outgoings). Once again, a company will in relation to the retail outlets operated by the company under the same trading name in the same geographic area seek to ensure that occupancy costs will be same or as close to being the same as possible in the same geographic area. In this regard, of course, occupancy costs need to be considered in comparison to the sales or turnover of the particular retail outlet. This is know as the “occupancy cost ratio” and is calculated by dividing the occupancy costs of the retail outlet by the sales or turnover of the particular outlet.

The occupancy cost ratio is a much better reflection of the cost structure of the particular retail outlet as it assesses the occupancy costs by reference to the sales or turnover of the particular retail outlet. Thus, while a company will seek to keep occupancy costs within a very tight band in relation to the retail outlets operated under the same trading name in the same geographic area, the company may pay higher occupancy costs where the sales or turnover in a particular outlet are expected to be higher. So in order to be able to make a “like” for “like” comparison of occupancy costs it is essential to compare the occupancy cost ratio for each of the retail outlets in the same geographic area.

Once again, a company will target a particular occupancy cost ratio for each of retail outlets in the same geographic area which, in turn, means that cost structures as compared to sales or turnover will be the same, or so close to being the same in each of those retail outlets in the same geographic area, that cost structures when compared to turnover also cannot be used to justify differences in retail prices of a particular product in different retail outlets operated under the same trading name in that same geographic area.

Finally, a company will target a particular level of *labour costs* for each of retail outlets in the same geographic area which, in turn, means that labour costs as compared to sales or turnover will also be the same or so close to being the same in each of those retail outlets in the same geographic area that labour when compared to turnover also cannot be used to justify differences in retail prices of a particular product in different retail outlets operated under the same trading name in that same geographic area.

The Blacktown Amendment will <u>not</u> lead to higher prices as wrongly asserted by big business vested interest groups

Contrary to incorrect and ill-informed assertions in submissions by big business vested interests groups and their legal advisers and defenders, the Blacktown Amendment will **not** lead to higher prices. In fact, the Blacktown Amendment will lead to a company having to offer the **lowest** possible price everyday and everywhere in the same retail outlets operated under the same trading name in the same geographic area.

In order to understand how the Blacktown Amendment will drive down retail prices to the benefit of consumers it is important to understand market dynamics before and after the introduction of the Blacktown Amendment. For example, at the moment companies like Coles and Woolworths will lower their price where there is a strong price competitive independent in the local market. It is the presence of that strong price competitive independent which currently forces Coles and Woolworths to lower their prices in that local market. Of course, Coles and Woolworths could theoretically choose to raise their prices in that local market at the moment, but if they did so they would simply lose business to that strong price competitive independent.

So currently Coles and Woolworths lower their prices where they have to because of a strong price competitive independent in the local market and raise their prices in other local markets where there isn't a strong price competitive independent. Clearly, consumers currently get a lower price in local markets having a strong price competitive independent, but are forced to pay higher prices where there isn't a strong price competitive independent in the local market.

Now under the Blacktown Amendment the market dynamics remain the same in the sense that the strong price competitive independent which was there before the enactment of the Blacktown Amendment will still be there to force Coles and Woolworths to lower their price in that local market after the enactment of the Blacktown Amendment. Under the Blacktown Amendment, of course, that lower price in the local market having a strong price competitive independent would then need to be offered by Coles and Woolworths to all consumers across the same geographic area.

The fact that a strong price competitive independent remains in a local market after the Blacktown Amendment comes into force means that if Coles and Woolworths chose to then raise their prices they would not only be treating their customers with contempt, but, more importantly, Coles and Woolworths would, by raising their prices, simply lose business to the strong price competitive independent in the same way that they would lose business to that independent if Coles and Woolworths chose to raise their prices today.

So under the Blacktown Amendment the lower prices enjoyed in one local market because of the presence a strong price competitive independent would continue to be enjoyed in that local market after the Blacktown Amendment, but, significantly, those lower prices would then also be enjoyed by all consumers everyday and everywhere across the same geographic area.

The Blacktown Amendment will <u>not</u> lead to a higher compliance or regulatory burden

Contrary to incorrect and ill-informed assertions in submissions by big business vested interests groups and their legal advisers and defenders, the Blacktown Amendment will <u>not</u> lead to higher compliance or regulatory burden. In fact, as discussed above, a single lowest prices strategy will simplify pricing decisions and will *reduce* costs with the lower costs able to be passed onto consumers in cheaper retail prices.

Importantly, it is much easier to comply with a single lowest prices strategy than it is to pursue a multi-layered approach to the pricing of a particular product. A "lowest prices everyday and everywhere" slogan becomes a very powerful marketing strategy. Similarly, a single lowest prices strategy becomes self-enforcing in the sense that consumers will be on the look out for price discrepancies. Consumers will expect a single price for the same product and if they don't get a single price they will become "enforcers" of the Blacktown Amendment by raising discrepancies with staff at the outlet.

In doing so, consumers can easily provide evidence of price discrepancies as mobile phones are increasingly equipped with a camera that allows consumers to take photographic evidence of pricing discrepancies. In that way, the Blacktown Amendment is "self-enforcing" and does not require an "army of regulators" to police the Amendment as incorrectly asserted by big business vested interest groups and their defenders opposed to delivering the lower retail prices that the Blacktown Amendment will deliver to consumers everyday and everywhere in the same geographic area.

Critics of the Blacktown Amendment are self interested or missing the point

Sadly, the critics of the Blacktown Amendment are, with all due respect, negatively focused on trying to identify reasons why consumers can't get the lowest possible retail price everyday and everywhere in the same geographic area. With respect, such negativity is either self-interested or reflects an unnecessarily defeatist view, which is unsympathetic or unresponsive to the very important consumer need to get the lowest possible price everyday and everywhere in the same geographic area.

Self interest is very powerful, and explains the hysterical and ill-conceived attacks by some on the Blacktown Amendment. There can be no doubt that the focus by vested interest groups on the reasons why consumers can't get the lowest possible retail price everyday and everywhere in the same geographic area simply reflects a self-interested view that geographic price discrimination is "good for business" as it enables a retailer to get away with price gouging consumers in locations where the intensity of local competition is low.

In relation to others who may also be focusing on why consumers can't get the lowest possible retail price everyday and everywhere in the same geographic area, the danger is that those commentators are missing the point on what the Blacktown Amendment is trying to achieve.

Indeed, the Blacktown Amendment is, at its simplest, trying to replicate, in the least intrusive way possible, a competitive outcome in those areas where local competition is weak or is failing to drive down retail prices. In this regard, the Blacktown Amendment is a "third way" of delivering the lowest possible retail prices to consumers everyday and everywhere in the same geographic area.

Currently, there are two basic ways in which prices can be driven down in those areas where the intensity of competition is weak. One is to ensure that the intensity of competition in the local area is as strong as possible. Since a retailer will offer its lowest possible price where the local competition is at its most intense, it is clear that the retailer will currently only offer those lowest prices in those locations having the same intensive level of competition. This requires the entry of strong price competitive independents in the local market given that it is simply not enough to just rely on dominant companies as such companies act a cozy club and merely shadow one another on price in those locations where they are the only ones in the local market.

The other way is for Governments or Government Agencies to set prices in local markets. This approach requires the Government or Government Agency itself to correctly price the product. This is a difficult and complex task as the Government or Government Agency may not have full information about each company's cost structure.

Within this context, the Blacktown Amendment provides a third approach to the challenge of driving down prices in those areas where local competition is weak or is failing to drive down retail prices. In particular, the Blacktown Amendment would require the retailer to extend the same lowest price from its most intensively competitive local markets to all those other local markets in the same geographic area where the local competition is weak or is failing to drive down retail prices. The Blacktown Amendment puts the spotlight on the retailer to deliver the lowest possible retail prices to consumers everyday and everywhere in the same geographic area. Since the retailer knows its cost and profit structures, the retailer is best placed to know the lowest possible price it can charge for each product in all its retail outlets in the same geographic area.

Importantly, the Blacktown Amendment does not prevent a retailer from changing its prices at any time, or from changing its prices over time. Retail prices can change as often as a retailer wants, provided that the retailer charges consumers the lowest possible retail price for the same product everyday and everywhere in the same geographic area.

The Blacktown Amendment

46C Guaranteed Lowest Prices Rule

(1) A corporation must, at a retail outlet operated by the corporation or a related entity, supply or offer to supply a particular product to a consumer at a price being the lowest price the product is supplied or offered for supply at the same time at any retail outlet operated by the corporation or a related entity under the same trading name within a distance of 35 kilometres.

(2) The rule set out in subsection (1) is the ***Guaranteed Lowest Prices Rule***.

(3) Subject to subsection (4), the following are to be disregarded for the purposes of subsection (1):

(a) a price of a product supplied or offered for supply at a genuine factory, warehouse, or clearance outlet;

(b) a price of a product marked down because the outlet is genuinely closing down;

(c) a price of a product marked down because the product is imminently perishable;

(d) a price of a product marked down because the product or its packaging is damaged;

(e) a price of a product marked down because the product is to be permanently removed from the range of products supplied or offered for supply at the retail outlet;

(f) a price of a product marked down because the product has deteriorated in value as a result of being on display in a retail outlet for a substantial period of time, having regard to the nature of the product.

(4) Where the corporation or a related entity operates more than one of the outlets referred to in paragraph (3)(a), the Guaranteed Lowest Prices Rule applies in relation to each of those outlets.

(5) Where a corporation or a related entity offers a discount, rebate, credit, allowance, or special deal to consumers in relation to a product or products to which the Guaranteed Lowest Prices Rule applies, it must, where the terms and conditions relating to discount, rebate, credit, or allowance or special deal are met, offer the same discount, rebate, credit, allowance, or special deal in relation to that product or those products at each retail outlet covered by the Guaranteed Lowest Prices Rule.

(6) Where a corporation or a related entity imposes a surcharge on consumers in relation to a product or products to which the Guaranteed Lowest Prices Rule applies, it must impose the surcharge in relation to that product or those products on the same terms and conditions at each retail outlet covered by the Guaranteed Lowest Prices Rule.

(7) Subsections (1), (4), (5) and (6) do not apply to a corporation where that corporation or a related entity operates five retail outlets or less in Australia under the same trading name.

(8) In this section:

price means the price at which the product is available for purchase by any member of the general public.

retail outlet operated by, in relation to a corporation or a related entity, means a physical establishment where products are offered for sale to the general public and where the corporation or a related entity sets the price at which the products are offered for sale.

trading name, in relation to a corporation or a related entity, means the name that the corporation or a related entity trades under or the name by which it is known to its suppliers or customers.