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The Secretary
Senate Standing Committee on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

Tuesday 15th December 2009

Dear Sir / Ms

Re Trade Practices Amendment
Material Lessening of Competition
Richmond Amendment Bill - 2009

Over recent years, much has been written on the matter of lessening competition either by creeping acquisitions or predatory pricing ~ or both.

This Association either directly or indirectly via its associates such as COSBOA or Narga, has previously commented and we would have to conclude, that those who could have brought about fair change, have been in total denial of the issues. Such is the power of big business in Australia.

In fact, some years ago, the writer – in a brief discussion with the then Prime Minister of Australia, commented that Australia desperately needed the Anti-Trust Laws that tended to make America a fairer place in which to conduct business... the reply was ..' it was too late for that'!!

On the basis of that throw-away line, we do nothing about anything that seems beyond control.

Notably, the world's largest retailer, (America's Wal-Mart), has achieved that status despite anti-trust laws and by Australian Standards, a low share of the total US market.

Wal-Mart is a very aggressive retailer and has, we are told, some input into Woolworths' way of doing things. So, we know what to expect if nothing is done to curb their practices, which have given them (and Coles) a market domination that far exceeds anything that can be identified in any other country.

In this particular case, it is said, that Woolworths have purchased land across the road from one of their extensive number of liquor outlets and next to a privately owned United Petrol outlet. Woolworths', it is said, want to open a petrol outlet there, which may well bring with it predatory pricing for an introductory period – just long enough to destroy the viability of the other petrol outlet.

Is that competition or unconscionable conduct; in that the other petrol outlet, with no buying power is incapable of competing against Woolworths, who now dominate the petrol supply market?

We sense that the over-riding problem really is that Woolworths & Coles now dominate to the point that no government is brave enough to say "enough is enough!" Your market share (80% +/-) has reached the point where the oligopoly so created is in fact anti-competitive, anti small business and not in the best interests of Australian consumers, not to mention job seekers.

While the amendment focuses on creeping acquisitions, this is but one part of a much bigger problem – market domination to the point where, in order to achieve the growth expected of them, Woolworths and Coles must, in fact, destroy the investment of others. This is costing Australia in real terms and we also refer to the loss of jobs involved with this now relentless and seemingly uncontrollable process.

We are seeing a loss of business opportunities in the retail sector as Coles & Woolworths continue to move in on market sectors which previously were safe to invest in and had bright futures as independent business operations.

What is also desperately needed is a requirement for an economic impact statement to accompany every proposal for a new development or the take-over of a small business by a big business which may dominate a sector. Strengthening Section 50 of the Act is but a very necessary start.

Local government cannot take on the likes of Coles or Woolworths, with their only real weapon being perhaps a traffic impact survey. Zoning is not a problem to big business as their financial power usually achieves what they want.

In the meantime, we have the very worrying comments from the Productivity Commission that one way to achieve competition and lower rents in retailing would be to relax zoning laws to enable developers a free go!

This proposed amendment talks of preventing corporations that already have a substantial share of the market from acquiring shares or an asset which would have the effect of lessening competition in the market. Sounds good except it leaves someone to decide what the word 'SUBSTANTIAL' might mean at law and then the other matter of proving a lessening of competition without any prescribed or established means of arriving at that fact. Sounds good, but the result is likely to be a bad one.

We would refer you to the Martin Report – Review of ACT Supermarket Competition Policy, September '09. This report, from the pen of an experienced person in competition, supports what the likes of Naga have been alluding to for years.

Until regulators can escape from the influence of the likes of Coles & Woolworths, Australia will progressively be sold off, or plundered for the benefit of a decreasing number of big businesses who will eventually also be bought out by overseas investors.

Australia will have increasingly less business opportunities to offer people choosing Australia as a new home and indeed, the projections of a population of 35 million would be fanciful, if not very ill advised.

This country needs to offer everyone at least a fair and reasonable opportunity to succeed in whatever is their chosen vocation. The matters highlighted by Woolworths predatory move against a small and private petrol seller, very adequately show that we will have decreasing opportunities, not to mention the business failures already set to occur as the result of uncontrolled market domination.

The writer is a Director of Narga and has seen a draft copy of their submission, which is strongly supported.

Yours sincerely



John Brownsea
Executive Director.