

THE REGULATION OF RETAIL GROCERY SHOPPING HOURS

and

THE IMPLICATIONS FOR COMMUNITY WELFARE

– a discussion paper

July 2007

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EXECUTIVE SUMMARY

The National Association of Retail Grocers of Australia (NARGA) represents the independent grocery sector. We have long been concerned about the manner in which the review of shopping hour regulation, part of the National Competition Policy reform process, has been undertaken.

Where states have deregulated retail trading hours, they appear to have done so on the basis of simplistic concepts regarding the economic benefits that could result from reduced regulation – which were supposed to improve competition leading to lower prices and higher levels of employment.

Instead the retail grocery sector has seen the entrenchment of the market dominance of the two major chains, to the disadvantage of smaller grocery retailers, resulting in reduced competition.

We show that the flow-on effects of reduced competition have included reduced employment in the sector, impacts on suppliers – particularly local suppliers – and an increase in grocery prices and reduced access to shops and goods for consumers.

This paper demonstrates that the decision to deregulate retail trading hours needs to be accompanied by a rigorous analysis of community costs and benefits, and that the conclusions reached in relation to trading hours may be different for different sectors of the retail industry.

We show that there is ample evidenced to suggest that there are positive economic and social benefits associated with the regulation of shopping hours and that there may well be an optimum range of opening times that provides an appropriate balance in terms of convenience and cost – i.e. it is in the public interest.

WHO WE ARE

The National Association of Retail Grocers of Australia (NARGA) is the peak national body representing the independent retail grocery sector in Australia. It is composed of and related to the following organisations:

- Retail Traders and Shopkeepers Association of NSW
- The Master Grocers Association of Victoria
- Queensland Retail Traders and Shopkeepers Association
- WA Independent Grocers Association
- Tasmanian Independent Retailers
- IGA Retail Network
- State Retailers Association of SA

Together these represent more than 5000 small to medium sized businesses employing over 150,000 people

Retailers are at the end of a complex product supply chain and provide the interface between manufacturers and producers and the general public.

Independent retailers serve the community by providing consumers with wider access to groceries and basic foodstuffs, than that provided by major chains. This is because the independent sector runs a significantly larger number of stores located closer to where people live, and because they source product from a broader range of suppliers.

It is the independent sector that has been damaged by the deregulation of shopping hours.

INTRODUCTION

This paper takes a detailed look at the issue of deregulation of shopping hours. It reviews elements of the National Competition Policy process, including:

- the specific recommendations contained in the Hilmer report¹,
- the approach taken by the National Competition Council (NCC) in their review of the progress of deregulation,
- the nature of retailing in Australia, and in particular grocery retailing
- economic, societal and social factors to be taken into account when deciding on a shopping hour regime

The paper shows that a case can be made for ongoing regulation of shopping hours, and demonstrates that such regulation could be consistent with National Competition Policy – i.e. need not result in a state being penalised by NCC for not deregulating hours.

It demonstrates that shopping hour regulation has a valid role in the coordination of retail supply and consumer demand, and that there may be a case for a different regulatory approach to be taken for different types of retail operations.

The economic and social benefits of shopping hour deregulation are discussed.

We conclude that, where the deregulation of shopping hours has occurred under National Competition Policy reviews, there has been little attempt made to analyse the consequences in economic and social terms, i.e. the costs and benefits of the proposed deregulatory approach have tended to be assumed, rather than assessed – to the extent that the National Competition Council (NCC) has been an advocate of the *deregulation* of retail trading hours *per se*, rather than, as is required under National Competition Policy, the proper *review* of such legislation in community cost and benefit terms.

As a result, significant damage has been done to the independent grocery sector, among others, and to competition within that sector, to the detriment of small retailers, employment within the sector, suppliers (particularly local suppliers) and consumers.

¹ Hilmer F et al, National Competition Policy, Report by the Independent Committee of Inquiry, August 1993, Australian Government Publishing Service, Canberra

National Competition Policy

The Hilmer Report

The Hilmer Report provided the basis for Australian National Competition Policy (NCP) and the resulting reform process. Much of what has been achieved through these reforms has had a net positive impact on the Australian economy and community welfare. However, we posit that the deregulation of retail grocery shopping hours has, in most states, been undertaken without due regard to public interest and is therefore not consistent with the Hilmer philosophy or the intent of NCP.

The Hilmer Report makes it clear that legislation should not, in general, restrict competition, but that such restriction can be justified in the public interest.

Hilmer recommends a set of policy principles in relation to regulation that involve (among other things):

- *'acceptance of the principle that any restriction on competition must be clearly demonstrated to be in the public interest; and*
- *reviews of regulations taking an economy-wide perspective to the extent practicable'*²

Hilmer links concepts of effective competition with community welfare, derived principally from the benefits that flow from increased economic efficiency, which includes technical or productive efficiency (resulting in lower cost), allocative efficiency (highest benefit relative to costs), and dynamic efficiency (which is responsive to change).³

Hilmer set out the six elements of a National Competition Policy, which were adopted by Australian governments in the resulting reform program. These elements include the review of *unjustified* regulatory restriction of competition and the need to control the anti-competitive conduct of firms.

We have seen NCC actively pursue deregulation of shopping hours and penalise states that did not follow the NCC deregulation dictates. However, we have seen little attempt made to fully assess the impact of the deregulation of shopping hours across the various retail sectors. Rather, a simplistic approach has been taken, one which suggests that

² Hilmer F. op. cit. P. xxx

³ Ibid pp 3 - 4

such deregulation automatically results in increased employment and enhanced consumer convenience. Whilst such conclusions may be able to be supported by broad retail data, they are not necessarily valid for the retail grocery sector.

Hilmer provides the following caveat in relation to competition:

“Competition policy is not about the pursuit of competition for its own sake. Rather, it seeks to facilitate effective competition in the interests of economic efficiency while accommodating situations where competition does not achieve economic efficiency or conflicts with other social objectives. These accommodations are reflected in the content and breadth of application of pro-competitive policies, as well as in the sanctioning of anti-competitive arrangements on public benefit grounds.”⁴

In fact Hilmer makes a number of references in his report for the need to balance the public interest and competition reform.

- *There should be no regulatory restrictions on competition unless clearly demonstrated to be in the public interest. Governments which chose to restrict consumers’ ability to choose among rival suppliers and alternative terms and conditions should demonstrate why this is necessary in the public interest.”⁵*
- *All existing regulation that imposes a significant restriction on competition should be subject to regular review to determine conformity with principle 1. The review should be performed by an independent body, involve a public inquiry process and include a public assessment of the costs and benefits of the restriction...⁶*

We contend that continued regulation of shopping hours in the retail grocery sector can be shown to be in the public interest and, rather than being anti-competitive, can be shown to enhance competition and community welfare in the sector.

Hilmer saw the NCC, which was set up as part of the NCP process, as offering independent analysis and advice. We suggest that the NCC analysis of the retail trading hour issue has been relatively simplistic and has not considered the unique factors that impact on competition in the grocery sector. Rather, it appears that NCC has tended to assume that all retail shopping hour deregulation was in the public interest and has promoted deregulation as an end in itself, as opposed to it being the

⁴ Ibid P. 6

⁵ Ibid P. 206

⁶ Ibid P. 207

outcome of a process that balances the associated costs, benefits and impacts.

It should be noted here that nowhere in the Hilmer Report is the deregulation of shopping hours specifically recommended. In every case where referenced is made to deregulation, it is in the context of '*the notion that the costs and benefits of alternative policy options should be evaluated in an open and rigorous way.*'⁷

We contend that, in the case of shopping hours deregulation, the required rigour has been lacking.

Hilmer also emphasises the need to limit the anti-competitive conduct of firms. '*No participant in the market should be able to engage in anti-competitive conduct against the public interest*' (Box 1.2 Agreed Principles for a National Competition Policy).⁸

No consideration appears to have been given to the possibility that deregulation of shopping hours may, in fact, be anti-competitive and against the public interest.

Certainly the available analyses of the issue suggest that little attempt has been made to look at the 'economy wide' implications, as recommended by Hilmer.

Hilmer made his position, and that of the Committee, clear in a paper delivered to the Australian Graduate School of Management in 1994⁹ in which he states:

*"Competition policy covers a broad set of laws and government actions that should be seen as an integrated whole. This set establishes the guidelines that determine the nature and extent of competition, **and the way in which possible conflicts between the results of competition, economic efficiency and other social goals are to be handled.***

*The main elements of competition policy dealt with the by the review were the processes, institutions and broad principles that would generate specific guidelines for various sectors of the economy. **A national competition policy could not, in our view, sensibly prescribe detailed***

⁷ Ibid P 7

⁸ Ibid P 17

⁹ Hilmer F. G. The Bases and Impact of Competition Policy, AGSM, UNSW, 1994 P.2

guidelines for competition in every sector, ranging from electricity generation to farming and professional practice.

*The recommended processes and institutions leave much of competition policy squarely in the political domain. While part of competition policy, such as the conduct rules of the Trade Practices Act and the administration of access and pricing regimes, lend themselves to administrative and at times judicial processes, **most other areas of policy require trade-offs between the interests of different groups in the community. Economics rarely provides clear answers to these kinds of issues, though economic analysis can and should be used to make the trade-offs more transparent” (Our emphasis)***

The National Competition Policy Agreement that resulted from the negotiations following the release of the Hilmer report provided for the continuation of those regulations that were seen as restricting competition if it could be shown to be in the public interest. (i.e. the benefits exceeded the costs.)

Written into the agreement are the following matters (among others) that can be taken into account when assessing response to competition policy undertakings:¹⁰

- *“ social welfare and equity considerations...*
- *economic and regional development, including employment and investment growth*
- *the interests of consumers generally, or a class of consumers*
- *the competitiveness of Australian businesses; and*
- *the efficient allocation of resources.”*

The opening paragraph to the relevant clause makes it clear that the list was not meant to be exhaustive, and that other matters may be taken into account when determining costs and benefits.

This detail does not appear to have been taken into account by NCC in its regular reviews of state government progress against NCP objectives.

National Competition Council

NCC has undertaken a number of reviews of state governments' responses to the NCP program, and in particular, the deregulation of shopping hours.

¹⁰ National Competition Principles Agreement 1995

Judging by the NCC assessment reports, the Council appears to have taken a 'tick the box' approach to the assessment of state governments' progress in their review of legislation, and has assumed that the need to deregulate all retail trading hours is a given, and a pre-condition to the receipt by states of competition payments.

In the latest report¹¹ issued by NCC the chapter dealing with retail trading hours (A2.3) appears to be based on such assumptions. States which still restrict retail trading hours are criticised.

The corresponding NCC progress report¹² is critical of Western Australia (among others) for not deregulating retail trading hours stating: '*....the Council did not consider that the changes announced by the Western Australian Government, retaining restrictions until 2005, constituted an appropriate transitional reform measure underpinned by a public interest case.*' (p. 14.30)

And, in relation to the provision by the Western Australian Government of the results of a referendum held on retail trading hours, in which 58% of voters / consumers voted against extension of week night trading and 61% were against Sunday trading, the report states: 'The Council considers that conducting a referendum does not absolve a government from its NCP legislation review obligations.'

The Productivity Commission

The Productivity Commission conducted an inquiry in 1999 into the impact of Competition Policy Reforms on rural and regional Australia¹³. In relation to the deregulation of trading hours it found: '*....**These more flexible trading hours have weakened the competitiveness of some retailers.** At the same time, they have been of net benefit to consumers and appear to have increased employment, including in country Australia.*' (Finding 9.1 p. 260)

We agree with the first part of that finding, but debate the remainder of the finding in this paper.

The Commission noted a concern from participants in the inquiry relating to the expansion of national retail chains into country Australia and the

¹¹ National Competition Council 2006, Annual Report 2005-06, Melbourne. pp. 75 -79.

¹² National Competition Council 2005, Assessment of governments' progress in implementing the national Competition Policy and related reforms, Melbourne. pp 14.29 - 31

¹³ Productivity Commission 1999, Impact of Competition Policy Reforms on Rural and Regional Australia, Report No. 8, Canberra

concentration of their market share. *'..... Some participants feared that the national chains could be so successful in attracting customers that few competitors would remain. The chains could then use their market power to increase prices, thus reducing benefits to consumers. Some argued that, if a new competitor came into the market, the national chain store would use predatory pricing to oust it.'* (p.263)

The Commission went on to say that, whilst the expansion of national chains into country Australia is not NCP reform, *'.....the ability of national chains to use their facilities even more efficiently in response to the removal of restrictions on trading hours or on cross-selling (should that occur as a result of regulation reviews) means that there is a link to NCP.'* (p.265)

The Commission noted that *'....the broader matter of assessing the degree of dominance in the retail food and grocery market (and the possible consequences for markets in country Australia of any abuse of market power) is essentially the responsibility of the ACCC.....The outcome of legislation reviews, however, may contribute to expansion and dominance by national chains. Legislation reviews are intended to take into account the legitimate concerns (such as those raised by participants) of those potentially affected by the reviews on a case by case assessment of net benefits.....The best outcome for the community can be guaranteed only by ensuring the integrity of the of the legislation review process, including the operation of the **public interest** test.'* (p.266)

This comment was followed by the finding: ***'The potential for legislation reviews to introduce important changes affecting peoples lives and livelihoods highlights the need for integrity in the review process, including the operation of the 'public interest' test provisions of NCP.'*** (Finding 9.2, p. 266)

The 2005 Productivity Commission review of NCP reforms¹⁴ also addresses deregulation of retail trading hours. The Commission reports that the resulting benefits to consumers do not appear *'to have come at the cost of reduced employment in retailing overall – though obviously the distribution of that employment has changed.'* (p.78)

The Commission's conclusions are supported by comments from the Tasmanian government quoting *'increased convenience to consumers'* (p.79), although we know this came at the cost of the loss of hundreds of

¹⁴ Productivity Commission 2006, Review of national Competition Policy Reforms, Report No. 33, Canberra.

small retailers; and by comments from the Shopping Centre Council of Australia, Coles Myer and Woolworths, all of whom would have been beneficiaries of the changes.

The Commission recommended continuation of the legislation review program but that the modified mechanism should (among other things) ensure that the public interest test explicitly recognises distributional, regional adjustment and other transitional concerns.

Conclusions:

- *The Hilmer Report that forms the basis of Australia's National Competition Policy framework advocates the review of regulation capable of hindering competition, but requires the consideration of public benefit, and any review to take 'an economy-wide' perspective. Where the deregulation of shopping hours has taken place, analysis undertaken in support of change appears to have been simplistic.*
- *Hilmer emphasises that competition policy is **not about competition for its own sake** – rather it is a balancing act between enhanced competition (and the benefits that may bring) and the achievement of other social objectives.*
- *The rigorous analysis required under Hilmer / NCP for changes to regulation appears to be lacking in the case of deregulation of shopping hours. No consideration has been given to the possibility that deregulation may be anti-competitive and against the public interest in a grocery retail environment dominated by two large chains.*
- ***Nowhere in the Hilmer report is the deregulation of shopping hours specifically recommended.** It appears to have proceeded without analysis of the costs and benefits.*
- *The National Competition Council (2000) appears to have put deregulation of shopping hours on its 'hit list' on the basis of a simplistic understanding of the consequences, and then has put pressure on state government to implement this change, denying competition payments to states that have tried to take a wider perspective of the issue. The Productivity Commission, in its review of NCP reforms agreed that deregulation of shopping hours 'has weakened the competitiveness of some retailers' (read 'small business').*
- *The Commission noted concern about the market dominance of large retailers and recommended proper review of legislation should include the operation of the public interest test.*

- *In the Commissions 2005 report on NCP it was noted that the distribution of employment in the retail sector had changed and use of the public interest test in the regulation review process was again recommended.*

The Australian Retail Grocery Sector

The Australian retail grocery sector is the most concentrated in the developed world. A paper presented at the 2005-06 Pacific Food System Outlook conference by ABARE¹⁵ records the market share of the two major grocery chains in Australia as 76%. More recent (June 2006) Nielsen data suggests that this share has grown to 78.5%.

Comparable data for other markets quoted include:¹⁶

Country	No. of firms	Market Share
Australia	2	76%
Canada	5	56%
Singapore	5	55%
Germany	3	53%
United Kingdom	3	52%
France	3	44%
Chinese Taipei	5	40%
United States	5	34%

The paper reports that the Australian Competition and Consumer Commission (ACCC) reports the share growth of the two companies as moving from 40% in 1975 to approximately 80% in 1998.

The authors go on to say:

'Two firms controlling such a significant share of Australia's retail food sector indicates that the industry is a duopoly / oligopoly. Industry structures characterised as duopoly / oligopoly generally involve barriers to entry, which restrict new firms entering the industry. The incumbent firms also already possess the premium retail outlet locations and benefit from

¹⁵ Jacenko A, Gunasekera D, Australia's retail food sector, Some preliminary observations , ABARE, 2005, The Pacific Food Systems outlook Conference 2005-06, Kuming, China, 11-13 May 2005.

¹⁶ Ibid. p.3

economies of scale, providing them with the ability to effectively compete with any new competitors.' (p.3)

The paper reports changes in supermarket milk sales as a case study and shows that, since the dairy industry was deregulated in 2000, the majors have become the dominant milk retailers through a strategy that uses lower priced generic milk.

Over the period 1999 to 2004, total milk sales in supermarkets grew from 478ML to 555ML, with the generic market share increasing from 30% to 72%.

Following deregulation the price of milk fell to \$1.26 per litre for branded milk and \$1.05 per litre for generic milk.

By 2004, the generic milk price had risen to \$1.12 (an increase of 6.6%) whilst the branded product had risen to \$1.42 (an increase of 12.6%) (It should be noted here that the price of milk in the route trade had increased even more).

The ACCC is reported¹⁷ as stating in relation to the strategy used by major supermarket chains that they '*set reduced milk prices nationally for generic label milk to attract more customers to the stores rather than to increase milk sales revenue. This is likely to have resulted in increased competitive pressure on other retailers, such as convenience and corner stores that sell branded products...*'

The paper goes on to explain the house brand strategy promoted by both major chains which has seen many branded products replaced by generics or store brands. The authors conclude:

*'The suppliers of national brands will need to decide whether they will invest large amounts of money to try to maintain existing shelf positions, or whether they will work with retailers to produce generic branded products...suppliers have been given the option of paying to keep some of their products on shelves. If a supplier declines to pay, they may need to ensure that a decline in branded activity is offset by house brand activity.'*¹⁸

Unfortunately, in other product categories, many suppliers do not even have that choice, as many house brand and generic products are sourced overseas. The response by many has been to increase the price

¹⁷ Ibid p. 4

¹⁸ Ibid p. 5

of branded goods to independents, increasing the differential between them and the major chains and effectively forcing independent retailers to cross-subsidise their own competitors. The above milk market example demonstrates this effect – known as the ‘waterbed effect’.

The authors explain the impact of the growth of major chain dominance as follows:

‘The traditional outlets are becoming smaller in number and are declining in importance. Previously, many small outlets like the local corner store were open longer hours to cater for smaller purchases when larger stores were closed. Now supermarkets are open long hours and provide a wide range of goods and services at highly competitive prices. Traditional and small retail outlets are finding it difficult to compete against the larger supermarkets following the loss of their ‘convenience’ related comparative advantage after trading hours were deregulated. The limited extent of economies of scale prevents smaller and traditional outlets from competing based on price.’¹⁹

Supermarket chain dominance also affects suppliers. The authors make the following additional comments:

‘....there is some anecdotal evidence to show that the market power of Woolworths and Coles is often leaving certain agricultural producers in a ‘take it or leave it’ situation....It has been argued that producers either accept the terms of the retail grocery chains or risk not supplying Australia’s two largest retail food outlets.’ and:

‘Given the high level of market concentration within the Australian food sector, it is important that competition policies are equipped to deal with issues that may arise from such market conditions. This is required to ensure that business practices in the national interest are maintained.’²⁰

The above information not only confirms the increasing dominance of the major supermarket chains, but also suggests that they are following parallel strategies – such as would be the case in a cartel, although there is no suggestion here that a formal cartel exists.

In this context it would appear common sense to maintain some restriction on retail trading hours. This would help dilute the competitive pressure

¹⁹ Ibid p. 8

²⁰ Ibid p. 9

from the dominant supermarket chains, ensuring some competitors survive to compete.

Market dominance results in lower prices paid to suppliers; anti-competitive pressure on independent retailers; higher prices to consumers and higher margins for the major chains.

The Productivity Commission produced a research paper on productivity in the wholesale and retail trade in 2000²¹ which confirms that '*the large supermarkets may have increased their share of sales and output at the expense of smaller convenience stores.*' (p. 28) - as a result of shopping hour deregulation.

*'In the case of supermarkets, there may have been market share effects. For example, Pilat found that more liberal opening hours strengthen the position of larger firms, as these are generally better able to respond to longer opening times. Some small firms (convenience stores) may gain, but the majority lose market share to larger shops. The dominance of the (then) three main supermarket chains in the food segment of the Australian market is reflected by smaller supermarkets and general food stores losing market share.'*²²

Governments must decide whether a continuing trend towards market share concentration in the grocery retail sector is in the public interest, and what role the regulation of shopping hours plays in the mix of policies that could be used to address this issue.

'Community' facilities provide quality of life for aged, young, families and low income earners. Local retail outlets are anchor infrastructure – there are social and economic costs associated with public or private travel, time and inconvenience of parking associated with visiting a larger centre. This means that the average local spend is around \$20.00.

This market dominance has significant implications for consumer prices, as is already being recognised overseas. In a paper²³ by Paul Dobson and others it is made clear that consumer prices are a factor of retail concentration – i.e. the higher the retail concentration, the higher consumer prices are.

²¹ Johnston A., et. al. 2000, Productivity in Australia's Wholesale and Retail Trade, Productivity Commission Staff research Paper, Canberra.

²² Ibid p. 76

²³ Dobson P. et al, Retail Power: recent Developments and Policy Implications, *Economic Policy*, Vol 14, No 28. (Apr., 1999), pp. 133 - 164

They show that retailing is not as competitive as generally assumed and that factors such as market concentration and own-brand strategies lead to market distortion arising from market power. They analyse the European retail grocery sector and show that UK grocery retailers (where the market is more concentrated) are substantially more profitable than their European counterparts: *'...the fact that UK retailers simultaneously enjoy selling power and buying power may largely explain why UK supermarkets are so highly priced and profitable relative to the European average.'* (p.137)

The Australian market is even more concentrated than is the UK market, and Australian chains have also adopted an 'own-brand' strategy. The high level of market concentration in the retail grocery sector has, in general, not been taken into account when states have decided to deregulate shopping hours.

Conclusions:

- *Australia's retail grocery sector is dominated by the two major chains which together make up close to 80% of the market – the highest concentration of market power in the world.*
- *Other jurisdictions have sought to alleviate the anti-competitive impacts of far less concentrated grocery sectors.*
- *The market power of each of the majors is such that it is a major barrier to entry of a new competitor.*
- *The two major chains both have a house / generic brand strategy that increases the competitive pressure on smaller stores and disadvantages suppliers of branded products.*
- *Prices of goods in independent retailers are increasing as suppliers try to offset the costs of dealing with the major chains – this is the 'waterbed effect'.*
- *The market power of the chains is having an adverse impact on the agricultural sector.*
- *The Productivity Commission concedes that deregulation of shopping hours has strengthened the position of larger firms and has caused independents to lose market share.*
- *The highly concentrated nature of the market needs to be taken into account when deciding whether or not to deregulate shopping hours.*
- *Keeping small retailers in the market results in a social benefit.*

The Retail Grocery Sector – A Special Competition Case?

The various studies and reports dealing with the deregulation of shopping hours tend to clump all retailing together – so the deregulation of hours for the local car yard is seen as the same as that for the local deli. No account appears to be taken of differences in shopping patterns or consumer needs.

Further, by looking at retailing in the broad, rather than on a sector by sector basis, it is possible to come out with general statements as to the benefits of deregulation say, in terms of employment, as the decline in one sector, albeit significant, is masked by growth elsewhere. Loss of full time employment is masked by an increase in part-time jobs. This appears to be the case when we look at the deregulation of retail trading hours.

The retail grocery sector needs to be viewed in the context of the services it provides to the community and how the community interacts with it. Traditionally there has been a mix of smaller, local stores and larger, more regional supermarkets. The local stores tended to be used for smaller purchases at a higher frequency whilst the supermarkets provided an opportunity to meet the needs of a weekly or twice weekly shopping trip. In that context, it made sense for the smaller stores to be able to stay open longer, whilst the larger stores could be accessed during 'normal' trading hours (six days a week and one late night, for example).

It is not surprising that, when supermarkets are able to open for longer hours, some of the shopping that used to be done locally moved to the supermarket and that such a shift could lead to the demise of the smaller local trader. There are a range of social and competition factors that need to be considered as a result of this trend. They will be addressed in the next section.

In this section we deal with the fact that the retail grocery sector behaves differently from other sectors of the Australian retail trade. This is demonstrated in the detail of the Productivity Commission report²⁴ on productivity in the wholesale and retail trade. The report deals with the distribution sector in the broad, encompassing all products – not only groceries. It made some interesting observations:

- The retail trade as a whole showed a loss of productivity between 1984/85 and 1991/92, due to increases in labour input growth as a

²⁴ Johnston A. et al 2000, Productivity in Australia's Wholesale and Retail Trade, Productivity Commission Staff Research Paper, Canberra

- result of some shopping hour deregulation. (p. xxi) However supermarkets and grocery stores recorded positive growth (p. 71)
- In the 1990s the supermarket / grocery sector showed a further reduction in labour input growth relative to sales. (p. xxi)
 - In undertaking the study *'there was a need to decompose the MFP (multifactor price) estimates to the level of the divisions that comprise the market sector'* and *'Aggregate level data for Australia as a whole is the most robust tier of MFP estimates'* (p xxv) i.e. what is happening within each sector is more difficult to define.
 - Part-time employment levels increased substantially between 1978 and 1997 – from 26.2% to 45.5% (Table 2.5 p.12). As these figures are for all retail, the growth in the supermarket / grocery sector may have been greater. The proportion of casual employees also increased over this period.
 - *'....more liberal opening hours appear to have strengthened the position of large firms which have gained market share at the expense of smaller and relatively more labour-intensive establishments.'* (p. xxi)
 - *'....deregulation of trading hours can impose costs on some smaller retailers that formerly relied on less competition outside of the previously restricted trading hours. For retail firms, it is likely that, in aggregate, longer trading hours have not led to a significant increase in merchandise sales.'* (p. 28)
 - *'.....hours worked grew strongly in household goods and furniture, but was modest for supermarkets and grocery stores....'* where *' there may have been market share effects'* (p. 76)
 - *' The dominance of the (then) three supermarket chains in the food segment of the Australian market is reflected by smaller supermarkets and general food stores losing market share.'* (p. 76)
 - *'.....deregulation of trading hours typically leads to an increase in part time and casual employment. Certainly an increasing trend away from full time employment is borne out in the data for the retail sector.'* (p. 86)

Whilst the major chains have, on a number of occasions, stated that they would employ significantly more people in a deregulated environment, it is clear that any temporary increase in numbers has come at the expense of full time jobs and of employment in the independent sector.

Added to the employment losses in the independent sector identified by the official data should be the numbers of self-employed and family members that lose their livelihood once a small business dies. These numbers do not show up in official employment statistics.

A recent summary of employment trends published in the *Business Review Weekly*²⁵ suggests that, contrary to the official view of employment in the retail sector, both Woolworths and Coles have shed a substantial number of jobs in recent years (i.e. post shopping hours deregulation), as shown by the following quote:

" Supermarket giant Woolworths is now Australia's biggest employer after increasing its staff by 19 per cent to 94,408 in the past year. The sharp increase in employees is attributable mainly to acquisitions, including Foodland and the Tavener Group.

However an examination of Woolworth's workforce over the past five years reveals a different picture. In spite of increasing its revenue by 75 per cent since 2001, Woolworths has cut its workforce by 27% or 35,592 people during the same period. Retail rival Coles has also slashed its workforce over the past five years, down from 160,000 in 2001 to 94,000 this year."

Conclusions:

- *The retail grocery sector behaves differently from the total retail sector in terms of employment. This is most likely due to its structure being a mixture of large supermarkets and small local stores.*
- *Whilst claims of increased employment in retail as a result of the deregulation of shopping hours are substantiated by the aggregate retail data, it is clear that the retail grocery sector has winners and losers, and overall levels of employment have decreased.*
- *Deregulation of shopping hours has led to an increasing proportion of part time and casual jobs, at the expense of full time jobs (and the self employed)*
- *There has not been a significant increase in hours worked in the retail grocery sector – rather a shift from one form of employment to another.*
- *Deregulation of shopping hours has hurt smaller businesses.*
- ***It is important to consider the impact of deregulation of shopping hours on a sector by sector basis.***

²⁵ Thomson J. Lean and Hungry at Work, BRW, November 9 – December 13, 2006.

Shopping Hours and Retail Competition

The question of shopping hours as a factor in retail competition is well documented. If a competitor can force higher costs onto a rival, the higher cost rival loses market share and the competitor can increase prices.

The major chains have been strong proponents of longer shopping hours. Once implemented, these impose proportionately higher costs on small retailers, putting them at a competitive disadvantage. The history of extended trading hours in Australia and elsewhere has seen market share shift to the larger chains.

In a paper²⁶ analysing the relationship between shopping hours and price competition, the authors show through a modelling exercise that opening hours are part of the competitive offering and that longer opening hours leads to higher prices and a softening of price competition. They also report a survey by Tangay et al²⁷ who predicted (through modelling) '*that a trade hour deregulation would shift demand from small shops towards large ones and that this shift in demand makes it possible for large shops to increase prices. In empirical tests based on Canadian data they found that the Canadian deregulation of shopping hours in 1990 has generated price increases in large stores that tend to maintain extensive business hours.*' (without loss of market share)

Another author²⁸ cautions regulators about the microeconomic effects of deregulating shopping hours, again suggesting that '*large-scale stores gain more from this deregulation.*' His modelling shows that for a small store there is an efficiency loss associated with longer hours due to the threshold labour costs, whereas large stores can vary hours for existing employees and better utilise capital resources. He uses his model to derive 'optimal' opening hours balancing costs and benefits for the consumer and retailer – and establishes this to be 51 hours per week.

In a policy paper²⁹ published in *Regional Science*, Robert Baker says time is not benign in the competition equation:

²⁶ Shy O. and Stenbacka R. Price Competition and Business Hours, October 15, 2003, Swedish School of Economics

²⁷ Tangay G.L. et al. 1995, Shopping Hours and Price Levels in the Retailing Industry: A Theoretical and Empirical Analysis. *Economics Inquiry*, 33: 516 - 524

²⁸ Gradus R. The Economic Effects of Extending Shopping Hours, *Journal of Economics*, Vol 64 (1996) No. 3, pp 247 – 263.

²⁹ Baker R G V. Towards a dynamic aggregate shopping model and its application to retail trading hour and market area analysis, *Papers Reg. Sci.* 79, 413 – 434 (2000)

'The supermarket equation states explicitly that time is not benign in its impact on retail hierarchies....'and,

' Clearly, the policy response in the UK and NSW has been inadequate since there has been little understanding of the relationship between shopping times and shopping places. The result has been a proliferation of vacant shops and the cumulative decline of traditional retail centres. The deregulation of trading hours has not instigated, but rather accelerated, this structural change.....Until this space-time connection is made, retail policy will not solve the problems of maintaining the viability of town and suburban centres.'

It is now possible that we will see employment in the sector decline in the future. This could reflect the fact that major chains have started to reduce their opening hours. Stores that were open 24 hours or late into the night are now closing earlier. There could be two factors responsible, one being the decline of independents (less competition), and the other the recent dominance gained by the chains in petrol retailing and the associated convenience outlets, where the same chains can charge higher prices.

Conclusions:

- *Shopping hours do more than provide a 'convenience factor' for consumers. They are an integral part of the product offering.*
- *Shopping hours can be used by larger stores / chains to disadvantage smaller stores, by driving up costs.*
- *Longer shopping hours are a factor in the increased market concentration of the Australian grocery sector.*
- *This higher concentration has and will lead to increased consumer prices.*

Retail Competition is Local

Australia's competition authorities and regulators have repeatedly asserted that the retail grocery market is 'competitive' – even with the market dominated by two players. The assumption appears to be that these two compete effectively at an aggregate level in the grocery 'market'.

Reality is quite different. There are, in fact, several ways that the grocery market can be defined.

At the national level, the available evidence suggests that the two majors, because of their market power, can demand favourable terms from suppliers, which in turn need to increase prices to independents in order to remain viable (the waterbed effect).

At the local level, the two majors are rarely head to head – rarely directly competing in the same locale – and essentially the grocery market, as far as consumers are concerned, is local. This is because they need local access to the items they need to source on a daily basis.

This means that they make a choice between going to a supermarket (owned by a major chain) or a local store, the former generally involving a longer trip, and the latter usually being one of a number of local shops.

The outcome of this decision then depends on a trade off between the cost (in terms of money and time) and benefit of each alternative. Traditionally the choice has been to favour the smaller local store for daily items or smaller purchases, and to make a less frequent shopping excursion to the supermarket for larger purchases.

The increasing market share of the two major chains has seen the number of smaller stores decline and a greater proportion of shopping trips captured by the supermarket. This is reflected in a decline in the size of the average supermarket purchase. (Independents have more but smaller stores, and fewer prime sites.)

This changing trend has implications for local shopping centres, transport / congestion and, of course, the environment.

The increase in retail power of major supermarket chains and its impact on shopping patterns and local competition has been extensively studied.

In a paper³⁰ published in the *European Journal of Marketing*, Ian Clarke suggests that retail competition tends to be defined too narrowly and ignores the questions of consumer product choice and competition at the local level. He reaffirms previous assertions regarding the '*....weaknesses of the majority of economic work on retailing, which assumes the existence of perfect competition in the sector. In reality...real competition cannot exist at either pole of the competitive spectrum. A major retailer on its own in a catchment area does not have any immediate competition (i.e. within its own type of store format). Equally, when two retailers capture a market to themselves, then this situation can also be uncompetitive, since retailers are only in 'perfect' competition when they can capture a perceptible share of market at each other's expense.*

The article goes on to explain how the domination of the grocery sector by large chains can result in declining consumer choice as these chains become the gatekeepers for branded products and can increasingly divert sales to their own house brands. Choice is further restricted by the elimination of smaller competitors who would normally provide outlets for other brands.

The impact on competition at both the retail level and supplier level is substantial.

The author suggests further research is needed on the social impacts of the trend towards larger stores and retail concentration. One of the implications from the loss of local stores could be reduced access for the less mobile in the community, the aged and the disabled, and for those that do not have access to private transport. Such research would enable policy makers to take an integrated approach to competition and social policy making – as is required under competition policy.

Another paper³¹ analyses the impact of market concentration in the retail petrol sector on product choice, and concludes that '*increases in concentration reduce product variety. Ignoring this product variety effect is likely to lead to an underestimate of market power in structural merger analysis.*'

In the grocery retail sector the concentration of market power has enabled the two major chains to present themselves as a brand, and to

³⁰ Clarke I., Retail power, competition and local consumer choice in the UK grocery sector, *European Journal of marketing*, Bradford 2000. Vol. 34, Issue 8, p. 975 -1002

³¹ Goetz G and Gugler K, Market Concentration and Product Variety under Spatial Competition: Evidence from Retail Gasoline, CESifo Working Paper No. 1289, September 2004.

use that brand identity to market a range of own-brand or house brand products – each of which displaces a number of nationally branded products. This strategy reduces the number of brands available to consumers, and the number of suppliers in the market. Add to this outcome the fact that many of the house brand products are sourced off-shore, the implications for local suppliers and local manufacture are significant.

Conclusions:

- *Local factors need to be taken into account when deciding policies that impact retail competition. The local nature of shopping means that the two major chains rarely compete 'head to head'.*
- *Consumers make choices about where to shop depending on both immediate and medium term needs. A disparity in store opening times can advantage the store that can afford to stay open longer.*
- *The local nature of shopping means that retail grocery competitiveness needs to be judged in terms of competition at the local level.*
- *The concentration of market power in the retail grocery sector is limiting consumer choice as smaller local stores are forced to close and as the majors replace a range of branded products with a smaller number of house brands.*
- *There are significant implications for social policy – including access to retail by disadvantaged groups of the population.*
- *Grocery market concentration has implications for suppliers and local manufacture.*

The Regulation of Shopping Hours

The reports issued by the National Competition Council suggest that the NCC assumes that deregulation of shopping hours is a 'good thing' – yielding both community and economic benefits. Little evidence has been presented to confirm this assumption, either for retailing as a whole, or specifically, the retail grocery sector.

There are a number of factors to consider in relation to store opening hours. To date there appears to have been analytical emphasis on employment and / or sales impacts. However, the situation is more complex than that. There is a need to consider, as has already been discussed, the competition aspects, including the downside of further market concentration, as well as social needs in terms of access, product choice and time management.

A number of overseas studies address such concerns and demonstrate that, even on purely economic grounds, there is a rationale for restricting shopping hours.

Restriction of shopping hours can be traced back to the UK Fairs and Markets Act of 1448. In the USA Maryland introduced restrictions on retail trading hours as early as 1649, Massachusetts followed in 1653.³²

The regulation of shopping hours has several advantages. It is one way of regulating competition, ensuring that all stores operate on a level playing field as far as their availability is concerned. It also helps to reduce the cost to the community of retailing, both in terms of financial costs associated with providing the various retail services, and the time costs to the individual or family.

Stephen Ferris, in a paper³³ on shopping hour regulation, suggests that families and individuals incur costs as a result of shopping, with time being a significant factor. Households economise by choosing an optimal shopping frequency by trading off the falling cost of postponing a shopping trip with the rising cost of holding higher inventories. These calculations depend on store location. Reducing the distance to the shop reduces the time taken (and other costs) and lowers the cost of the optimal plan. Consumer time costs can be reduced by co-location of

³² Grunhagen M. et al, The impact of store hours and redistributive income effects on the retail industry: Some predictions for Germany, *Int. Rev. of retail, Distribution and Consumer Research*, 11:1 January 2001 49 – 62.

³³ Ferris J. S. Time, Space, and Shopping: The regulation of Shopping Hours, *Journal of Law, Economics, and Organization* vol 6, no. 1, Spring 1990.

stores and by stores opening for longer. However, the latter is reflected in higher retail prices, and can be sub-optimal.

Regulation of shopping hours provides a mechanism for the coordination of inputs provided by both shops and households – i.e. it ensures that stores are open for a known period and that therefore no shopping trip is wasted. Regulation can also ensure that stores are not open for so long as to result in increased retail costs and prices.

The author makes the following observations and conclusions:

- *“When retail markets are competitiveuse of the political process to restrict the hours of retail operation may increase efficiency. In economic terms, a (state) property right in time is created. With its delineation, the ability to exclude permits the use of competition to transfer the right to hours of scarce time to higher-value users.”*
- *“....one advantage of a politically organised response comes fromthe focus on the median rather than the marginal voter. Given that the externality in **this problem arises from the discrepancy between the tastes of the average and the marginal customer, a decision process that is weighted towards the median customer will bias the decision process towards efficiency.**”*
- *“From the community’s perspective, a regulatory restriction in store hours produces a larger number of retail stores.”*
- *“....regulating early closing hours are a low-cost community response to net social costs when time can be used as an effective competitive mechanism for redistributing consumers.”*

Again we see that shopping hours are part of the competition equation, and that deregulated hours can be anti-competitive by helping to reduce or eliminate competition. This theme is taken up by Michael Burda and Phillippe Weil in their paper³⁴ on shopping hours. He notes that a fundamental problem in society is the coordination of activity. Shopping hour regulation can be seen as having a coordination function. De Meza³⁵ suggests that: *“shop regulation can actually induce more competition and result in lower travel costs as well as lower prices.”*

Conclusions:

- *The regulation of retail trading hours has a long historical precedent of more than 500 years.*

³⁴ Burda M. and Weil P. Blue Laws, Proceedings of the SOLE Conference, 2001

³⁵ De Meza D. Is the Fourth Commandment Pareto Optimal? Economic Journal 94: 379 - 383

- *Whilst much of the economic literature on store opening hours concentrates on the economic benefits of extended trading, there is also evidence to show that the regulation of trading hours can yield economic and social benefits.*
- *The economic rationale behind trading hour regulation is the improved efficiency that results from better matching the availability in time terms of retailers with the times that the majority of shoppers want to buy a particular good or service. This timing may vary by product / service type – e.g. cinemas and restaurants – vs – grocery. Regulation works as a coordination mechanism.*
- *Coordinating shopping time also results in better coordination of leisure / family time, providing opportunities for leisure oriented businesses.*
- *Just as shopping costs for customers can be reduced by the co-location of stores, costs are reduced when stores are open at similar and known times.*
- *Restriction of shopping hours is a cost effective means of enhancing competition because it results in a level playing field and therefore a larger number of competitors.*

Comments

We conclude that, where the deregulation of shopping hours has occurred under National Competition Policy reviews, there has been little attempt made to analyse the consequences in economic and social terms, i.e. the costs and benefits of the proposed deregulatory approach have tended to be assumed, rather than assessed – to the extent that NCC has been an advocate of the *deregulation* of retail trading hours *per se*, rather than, as is required under National Competition Policy, the proper *review* of such legislation in community cost and benefit terms.

NCC has also decided to penalise those states that did not fully comply with their shopping hour deregulation agenda.

As a result of the approach taken, significant damage has been done to the retail grocery sector. The deregulation push has helped to entrench the position of the two major retail chains and accelerated the decline of the independent grocery sector, to the detriment of smaller retailers and suppliers – particularly at the local level.

The result has been a reduction in employment levels within the sector and steadily increasing grocery prices – as the majors consolidate their position and dampen genuine competition.

Whilst the concept of deregulation is good in theory, review of regulation needs to be accompanied by rigorous and thorough assessment of costs and benefits. This appears to be lacking within the current approach.

Conclusions:

- *The deregulation of shopping hours per se, rather than the proper review of such regulation, appears to have been an objective of NCP*
- *As a result, significant damage has been done to competition within the retail grocery sector, with resultant impacts on small retailers, suppliers, employment and consumer prices and convenience.*
- *There is ample evidence to suggest that regulation of shopping hours is in the public interest.*

SUMMARY of CONCLUSIONS

National Competition Policy

- *The Hilmer Report that forms the basis of Australia's National Competition Policy framework advocates the review of regulation capable of hindering competition, but requires the consideration of public benefit, and any review to take 'an economy-wide perspective. Where the deregulation of shopping hours has taken place, analysis undertaken in support of change appears to have been simplistic.*
- *Hilmer emphasises that competition policy is not about competition for its own sake – rather it is a balancing act between enhanced competition (and the benefits that may bring) and the achievement of other social objectives.*
- *The rigorous analysis required under Hilmer / NCP for changes to regulation appears to be lacking in the case of deregulation of shopping hours. No consideration has been given to the possibility that deregulation may be anti-competitive and against the public interest in a grocery retail environment dominated by two large chains.*
- *Nowhere in the Hilmer report is the deregulation of shopping hours specifically recommended. It appears to have proceeded without analysis of the costs and benefits.*
- *The National Competition Council (2000) appears to have put deregulation of shopping hours on its 'hit list' on the basis of a simplistic understanding of the consequences, and then has put pressure on state government to implement this change, denying competition payments to states that have tried to take a wider perspective of the issue. The Productivity Commission, in its review of NCP reforms agreed that deregulation of shopping hours 'has weakened the competitiveness of some retailers' (read 'small business').*
- *The Commission noted concern about the market dominance of large retailers and recommended proper review of legislation should include the operation of the public interest test.*
- *In the Commission's 2005 report on NCP it was noted that the distribution of employment in the retail sector had changed and use of the public interest test in the regulation review process was again recommended.*

The Australian Retail Grocery Sector

- *Australia's retail grocery sector is dominated by the two major chains which together make up close to 80% of the market – the highest concentration of market power in the world.*
- *Other jurisdictions have sought to alleviate the anti-competitive impacts of far less concentrated grocery sectors.*
- *The market power of each of the majors is such that it is a major barrier to entry of a new competitor.*
- *The two major chains both have a house / generic brand strategy that increases the competitive pressure on smaller stores and disadvantages suppliers of branded products.*
- *Prices of goods in independent retailers are increasing as suppliers try to offset the costs of dealing with the major chains – this is the 'waterbed effect'.*
- *The market power of the chains is having an adverse impact on the agricultural sector.*
- *The Productivity Commission concedes that deregulation of shopping hours has strengthened the position of larger firms and has caused independents to lose market share.*
- *The highly concentrated nature of the market needs to be taken into account when deciding whether or not to deregulate shopping hours*
- *Keeping small retailers in the market results in a social benefit.*

The Retail Grocery Sector – A Special Competition Case?

- *The retail grocery sector behaves differently from the total retail sector in terms of employment. This is most likely due to its structure being a mixture of large supermarkets and small local stores.*
- *Whilst claims of increased employment in retail as a result of the deregulation of shopping hours are substantiated by the aggregate retail data, it is clear that the retail grocery sector has winners and losers, and overall levels of employment may not have increased.*
- *Deregulation of shopping hours has led to an increasing proportion of part time and casual jobs, at the expense of full time jobs (and the self employed)*
- *There has not been a significant increase in hours worked in the retail grocery sector – rather a shift from one form of employment to another.*
- *Deregulation of shopping hours has hurt smaller businesses.*
- ***It is important to consider the impact of deregulation of shopping hours on a sector by sector basis,***

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Concluding Comments

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- *As a result, significant damage has been done to competition within the retail grocery sector, with resultant impacts on small retailers, suppliers, employment and consumer prices and convenience.*
- *There is ample evidence to suggest that the regulation of shopping hours is in the public interest.*