

19th July 2007

Mr Peter Hallahan
Secretary
Senate Standing Committee on Economics
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Mr Hallahan,

- Reference (1) Trade Practices Legislation Amendment Bill (No. 1) 2007
(2) Trade Practices Amendment (Predatory Pricing) Bill 2007

Submission on behalf of Newsagents Australia and Queensland Newsagents Federation Ltd.

This submission is made on behalf of Newsagents Australia (NA) a national representative body for newsagents throughout Australia and also the Queensland Newsagents Federation Ltd (QNF).

NA is a new national representative body for newsagents throughout Australia which has support from the QNF and Newsagents Association of NSW and ACT (NANA).

NA and QNF are not members of the Fair Trading Coalition (FTC) but supports its goals and will be seeking representation to that organisation.

QNF has had concerns about Trade Practices Act issues for small business for sometime and particularly the considerations of Collective Authorisation and Collective Boycotts, Market Power, Take it or Leave it Contracts, and Unconscionable Conduct.

We have reviewed recent proposed amendments to S.46 and S.51AC of the Trade Practice Act and the further proposed amendments on Predatory Pricing introduced by Senator Fielding.

Firstly we wish to outline strong support for the Government's recommendation of a second Deputy Chairman at the ACCC who will have particular focus on small business matters. It is to be hoped that this role will provide address and liaison on key small business issues.

In regard to the amendment proposed we submit

- (1) QNF and NA supports the proposed legislation as a move to address some of the weakness issues of the TPA and believe that any improvements on misuse of market power, unconscionable conduct, and predatory pricing are welcomed.

We therefore support the Government's amendments and also the amendments proposed by Senator Fielding.

- (2) We also detail that the \$3 million cap may be too low for some small business and support the committee's recommendation to raise the threshold to \$10 million.



- (3) We wish to register our strong concerns for the considerations of unconscionable conduct associated with "take it or leave it" contracts which have been experienced in our industry with terms determined to the detriment of the small business operator.
- (4) We wish to register strong concern for the implication of unconscionable conduct via threats of supply contracts being terminated by the strong and dominant supplier party to the contract without just cause and opportunity for the small business party to redress such doings.
- (5) We wish to raise concern for subsequent introduction of variation of contracts via term amendments or policy changes which become binding on the small business party without sufficient redress.
- (6) We believe that some further amendment should be made to the TPA to:
 - (a) Possibly provide some exemption to TPA for small business under a certain cap, say under \$3 million turnover, to remove unfair restrictions on independent small business operators in regard to collective negotiation and boycott as required by the TPA because such restrictions are not placed on other business structures such as franchises and corporate conglomerations.
 - (b) Provide some redress on the matter of collective negotiation to overcome these situations wherein the powerful and dominant supplier can readily dismiss requirement for Collective Negotiations.

We believe that the party refusing to participate in Collective Negotiations should have to substantiate reasons for such and the matter should be referred to an arbiter or, maybe, the ACCC Deputy Chairman having carry for small business matters.

The arbiter and/or ACCC Small Business Deputy Chairman should be able to exam reasons given, determine fairness of such, and make a recommendation for consideration of need to have some negotiations and allow each party to put their viewpoints forward.

Unless some provisions are made on this, the Collective Negotiations procedure will not present outcomes and will lead to Collective Boycott applications, which again may not serve purpose of outcomes for small business.

This matter is critical to allowing small business to have some appropriate capabilities under the TPA as is intended (so we believe?).

We await further considerations with much interest.

Regards



Ken Murphy

*On behalf of Newsagents Australia,
Qld Newsagents Federation Ltd and
Newsagents Association of NSW & ACT*