

Via email economics.sen@aph.gov.au

Mr John Hawkins
Committee Secretary
Senate Economics Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Mr Hawkins

Supplementary Submission - Inquiry into Aspects of Bank Mergers

I have pleasure in enclosing a supplementary submission which has been prepared jointly by the Trade Practices Committee and the Financial Services Committee of the Business Law Section of the Law Council of Australia.

This submission has been approved by the Business Law Section. Owing to time constraints, the submission has not been reviewed by the Directors of the Law Council of Australia Limited.

If you have any questions in relation to the submission, in the first instance, please contact the Chair of the Trade Practices Committee, Dave Poddar on (02) 9296 2281.

Yours sincerely



Bill Grant
Secretary - General

August 2009

**Trade Practices Committee and Financial Services Committee
Business Law Section
Law Council of Australia**

**Supplementary Submission to the
Senate Economics Committee Inquiry: Aspects of Bank Mergers**

1 Introduction

The Senate Economics Committee on 10 August 2009 raised the question as to the conditions of banking competition in Australia at this time, our views on competition dynamics and our views on creeping acquisitions proposals. At the hearing, we referred to various reference materials, in particular submissions made by the Law Council's Trade Practices Committee and Financial Services Committee ("the Committees"). This supplementary submission now references those submissions and additional reference materials.

2 Conditions of competition

The Committees take the view that it is premature to seek changes to Australian merger laws and bank merger laws in particular at this time, while issues from the global financial crisis (although perhaps stabilising), have not yet fully worked through the economy.¹ Nonetheless, we do support in principle some reform of unfair contract terms in accordance with the submissions to the Senate Economics Committee from the two respective Committees. We note that both Committees have concerns with aspects of the proposed law reform proposals as more fully set out in our submissions.

In terms of laws to facilitate competition from regionals or non bank financial institutions or merger laws to protect them, the Committees believe that increased regulation will not achieve that and may instead be to the detriment of consumers. Increased focus on sources of funding may be better means to facilitate competition. We do not believe that special merger laws should apply in relation to acquisitions of smaller financial institutions.

3 Creeping Acquisitions

The Trade Practices Committee's two submissions to Treasury on the latest round of Creeping Acquisitions reform since our submission to this Committee of 4 March 2009, are available on the Treasury website at <http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=1530>, and for convenience are annexed to this supplementary submission.

4 Conclusion

We thank the Senate Economics Committee for the opportunity to make our submission on aspects of bank mergers. We believe that financial services is an important area for Australia. As set out in our earlier submission, we believe that a balanced approach needs to be taken so as not to over regulate given Australian regulatory laws appear to have worked well.

August 2009

¹ The reference to the United Kingdom Office of Fair Trading Financial Services Plan is available at OFT Press Release 92/09 - 29 July 2009 - <http://www.oft.gov.uk/news/press/2009/92-09>