
Recommendations

Recommendation 1

The Committee recommends that the *Trade Practices Act 1974* be amended to give the Australian Competition and Consumer Commission the power to undertake representative actions and to seek damages on behalf of third parties under *Part IV* of the Act.

The Committee believes that, due to this measure, the Australian Competition and Consumer Commission may be burdened by an increased caseload. The Committee therefore recommends that the Government give consideration to providing extra funding for this purpose to the Australian Competition and Consumer Commission in future Budget Appropriations.

Recommendation 2

The Committee is of the view that the Australian Competition and Consumer Commission should consider heavily concentrated regional markets, such as that which exists in South East Queensland, when assessing acquisitions or mergers under the provisions of section 50 of the *Trade Practices Act 1974*.

The Committee therefore recommends that section 50(6) of the *Trade Practices Act 1974* be amended to provide for the definition of ‘market’ to include a ‘regional market’. Thus, subsection 6 should provide that:

50(6) In this section:

‘market’ means a substantial market for goods or services in Australia, in a State or a Territory, or in a region of Australia.

Recommendation 3

The Committee recommends the establishment of an independent Retail Industry Ombudsman through which small business can bring complaints or queries relating to the retailing sector for speedy resolution. The Committee believes that the Retail Industry Ombudsman should consider, among other things, the application of the Retail Industry Code of Conduct (Recommendation 5) in his or her deliberations.

Where complaints received by the Retail Industry Ombudsman raise issues that fall within the jurisdiction of another established body, such as the Australian

Competition and Consumer Commission, those complaints should be referred to such bodies for further investigation.

The Committee recommends that the Retail Industry Ombudsman be appointed and funded by the Government.

The Committee recommends that the Retail Industry Ombudsman be required to produce a bi-annual report to the Parliament in order to increase transparency in the retailing industry.

Recommendation 4

The Committee recommends that mandatory notification of retail grocery store acquisitions by publicly listed corporations be prescribed within the mandatory Code of Conduct (Recommendation 5), and approved by the Australian Competition and Consumer Commission, with a requirement that the Australian Competition and Consumer Commission consult with local authorities and other relevant parties in order to make an informed assessment of the likely impact on local businesses of such acquisitions. The Committee recommends that the Australian Competition and Consumer Commission also be required to assess and approve new store development applications on a similar basis, and to provide a detailed response to these notifications within 30 days.

The Committee appreciates that the drafting of a mandatory Code of Conduct may take some time to complete. The Committee therefore recommends that, as an interim measure, the Minister make a direction that mandatory notification be required to take effect immediately.

Recommendation 5

The Committee recommends the drafting of a Retail Industry Code of Conduct by the Australian Competition and Consumer Commission in consultation with retail industry groups and other relevant parties for the purpose of regulating the conduct associated with vertical relationships throughout the supply chain.

The Committee recommends that the Code of Conduct be a mandatory code, and should contain a precise form of dispute resolution, with the process of resolution clearly spelled out.

The Committee recommends that the Code of Conduct be drafted to include specific provisions that address:

- (a) The general principle of ‘like terms for like customers’ – where the Australian Competition and Consumer Commission may seek information from**

corporations, on a confidential basis, revealing key terms and conditions of contracts of supply.

- (b) Transparency in ‘vulnerable’ supply markets – where growers have to deal with a range of market characteristics, including perishability, market volatility and a high degree of risk exposure.
- (c) Product labelling and packaging requirements – with a view to implementing a more equitable system than that which currently exists.
- (d) Contractual uncertainty – in particular, the passing of ownership of produce and the circumstances under which produce can be returned.
- (e) Truth in branding – so that businesses, which are subsidiaries of, or are substantially owned by, a listed public company or major retailer, note that association on shop front signage, in advertising, on stationery, and so on.

The Committee recommends that disputes falling under the Code of Conduct should not be limited to resolution by the Retail Industry Ombudsman. For example, disputes raising issues relevant to National Competition Policy or the *Trade Practices Act 1974* would be more appropriately dealt with by the Australian Competition and Consumer Commission.

Recommendation 6

The Committee considers that the \$1 million transactional limitation of section 51AC of the *Trade Practices Act 1974* hinders access by some small businesses to the unconscionable conduct provisions of the Act. The Committee therefore recommends that this limit be increased to \$3 million.

Recommendation 7

The Committee is concerned that *Recommendation 2.1* of the *Reid Report*, which deals with the Uniform Retail Tenancy Code, has not been implemented. In particular, the Committee is concerned that, in major shopping centres, there is a lack of transparency with regard to the cost of floor space rent. That is, the seller (landlord) has knowledge – the buyer (prospective tenants) has none. Prospective tenants are therefore prevented from making informed decisions in assessing the ‘market rent’ as it applies to particular areas of retail space.

The Committee therefore recommends that the Government re-visit this recommendation, with a view to implementing a Uniform Retail Tenancy Code through the operations of the Council of Australian Governments.

Recommendation 8

The Committee recommends that major supermarket chains take note of widespread community and pharmaceutical industry concerns that the nature of the role played by pharmacists is unique, as it relates to matters of public health. The Committee is therefore of the view that expansion by the major chains into the dispensing of pharmaceutical products should be discouraged.

Recommendation 9

The Committee believes that there may be anti-competitive impacts where retailers and wholesalers are operated by the same, or related, entity. For example, where a major retailer enters the independent wholesaling sector, intimate commercial details could be gained from that wholesaler's dealings with its independent retail customers. The Committee therefore recommends that future acquisitions of wholesalers by retailers, and vice versa, be subject to mandatory notification and approval by the ACCC in order to assess the likely competitive impacts of such acquisitions.

Recommendation 10

The Committee recommends that the Parliament reconstitute the Committee three years from the date of tabling this Report in order to review the progress of the recommendations, in particular the operation of the Code of Conduct, and to determine whether further legislative changes are required. Such changes may include:

(a) An amendment to section 46 of the *Trade Practices Act 1974* to provide that:

Once it has been established that a corporation with a substantial degree of market power has used that market power, the onus of proof shifts to that corporation to prove it did not use that power for a prohibited purpose (as prescribed).

(b) An amendment to section 80 of the *Trade Practices Act 1974* to include divestiture of assets as an additional remedy for contravention of Part IV, IVA, IVB or V.