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**A Response Submission to the
Harper Competition Policy Review
Draft Report**

Competition Policy Review Secretariat

The Treasury

Langton Crescent

PARKES ACT 2600

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Executive Summary

The independent business sector and supermarket industry in particular welcomes the opportunity to make a response to the Harper Competition Policy Review Draft Report.

The Australian supermarket industry is dominated by Coles and Woolworths which presents an industry concentration never seen anywhere else in the world. The future prosperity of all Australian independent businesses is very much dependent upon strong and supportive proposals for Competition Law reform, as recommended by the Harper Competition Policy Review Panel.

The implementation of an 'effects test' and possible avenues to resolve competition dispute issues would be welcomed to ensure detrimental impacts do not adversely affect overall consumer choice.




Planning and zoning laws directly correlate to creating a fair playing field in the interests of achieving true competition.

The recommendation to remove any remaining restrictions to retail trading hours will only contribute to the market in Australia being no longer workably competitive leaving shoppers with less choice and no real downward pressure on prices.

This impacts on local business in a way not just limited to the impact on the independent supermarket but to all small business, suppliers and service providers who have the opportunity to provide products and services to an independent supermarket; that they don't have with Coles & Woolworths.

Introduction

Independent Grocers of Australia (IGA) represents a network of 1400 independently owned and operated supermarkets across Australia. Individual States incorporate a leadership committee of elected retailers and Metcash executives, known as an IGA Retail Board, to address important industry issues.

Metcash Limited is Australia's leading wholesale distribution and marketing company specialising in grocery, fresh food, liquor, hardware and automotive parts and accessories. Metcash Limited and independent supermarket retailers maintain an interdependent working relationship to deliver a competitive, alternative shopping option to Australian consumers. The Queensland IGA State Retail Board represents approximately 300 IGA stores across three main channels namely ,  and .

This submission has been prepared by the Queensland IGA State Retail Board on behalf of the network it represents. This report aims to highlight some of the critical issues within the recently published Harper Competition Policy Review Draft and to respond accordingly.

This submission will primarily focus on two main factors being planning and zoning and retail trading hours. IGA stores are members of industry organisations such as Master Grocers of Australia which represent the broader views of our sector.

Competition and Consumer Act – section 46 – Misuse of Market Power

We congratulate the Harper Panel for their recommendation to introduce an ‘effects test’ into section 46 (Misuse of Market Power), in the Competition and Consumer Act. We believe the introduction of an ‘effects test’ is vital to protect competition, longer term consumer choice and sustainable communities. Possible negative flow on impacts to many industry players may arise when big business is sanctioned to crowd out smaller players.

An effective competition framework is a vital element of a strong and sustainable economy that drives a strong agenda for productivity, innovation and positive outcomes for Australians.

3. No Cost Orders

We strongly support the Harper Panel consider recommending that a ‘no costs order’ be introduced. Large corporations with unlimited resources, has the ability to drown out or deter competition to enter a market.

Independent or family owned business operations, do not have the resources to defend against being muscled out by big business, simply due to the costs associated with testing the current laws in the court system, particularly should the case be unsuccessful. The introduction of a ‘no-costs order’ or other dispute resolution avenues should be considered by the Panel when formulating a workable competition policy.

The reassurance of a ‘no-costs order’ would be likely to encourage businesses to challenge situations where they believe an application to defend a particular right is justified.

4. Planning and Zoning

In reference to the recommendations contained in Section 8.3 Planning and Zoning, IGA independent retailers provide the following commentary;

We have reviewed the Harper Report, whilst we are encouraged by a range of initiatives that assist the market in determining the proper provision and placement of retail facilities, there are a number of matters for your consideration as part of the consultation process.

We recognise that planning processes can be improved to assist new retail developments to enter the market. This still needs to be balanced against maintaining viable and sustainable levels of trade within existing and retail centres.

IGA independent retailers are located within a large number of local centres that perform an important role in establishing areas for local services and the communities. In this regard we note that IGA independent retailer's trade on relatively lower retail trade densities compared with other larger operators such as Coles and Woolworths.

In Queensland, including code and impact assessable planning provisions as per the Harper Review has the potential to remove out of centre provisions e.g. typical impact assessable locations which raises concerns from a commercial prospective in terms of maintaining viable and sustainable businesses. For example, the entry of a new store in an out of centre location may be supportable where no other locations are available and the market size is sufficient to allow it. But in other instances where the market is relatively thin with limited growth a new store in an out of centre location may only prove to erode the local centre town planning outcome.

The majority of local centres in which IGA are located perform well within a town planning perspective for both convenience and walk-ability. Many out of centre locations do not exhibit the same profile.

IGA oppose unacceptable impacts occurring. In order to understand the distribution of impacts upon the existing retailer additional competition being introduced into a market has been guided by the below catchment analysis:

- 50% of trade will be sourced from within the Primary Trade Area (approx. 2klm radius)
- 25% of trade will be sourced from within the Secondary Trade Area (approx. 5klm radius)
- 25% of trade will be sourced from beyond the defined trade area.

In general terms, retail turnover impacts are interpreted as the percentage of sales 'lost' by a retailer through a nearby proposed development as a proportion of likely sales that new competition would have achieved without the nearby proposed development. It is generally considered that impacts can be categorised into three cohorts:

- Over 15% – Viability of retailer at risk. Requires a strong community benefit to justify development.
- 10% – 15% - Caution should be taken for approval, research into impact implication and community benefit.
- Less than 10% - Generally acceptable competitive impact.

While the above impact guidelines should be considered, the resultant impact upon a particular retailers trading viability also needs to be considered. For example, if a retailer is trading well in excess of national benchmarks then a significant percentage impact is less likely to affect the retailer's long term viability and actually indicates there is an under-supply of retailing in a locality.

Where a retailer may be trading at benchmark levels and viability may be a concern, a new retailer's contribution to meeting market demand and creating net community benefits such as jobs, competition, choice, travel savings, convenience, localised investment, retailer revitalisation and amenity needs to be considered as well.

In order to estimate the likely turnover impacts upon the competitive retail supply network, the following methodology should be employed:

- Estimate sales turnover generated by proposed store (assumed first full-year of trading) – *Store A
- Estimate sales turnover at competing store (without proposed development impacts) – *Store B
- Estimate sales turnover at competing store (with proposed development impacts)
- Estimate impacts as percentage of total yearly turnover to determine effects on viability

Working Example:-

Store A \$30,000,000 (assumed first full-year of trading)

Store B \$46,000,000 (without proposed development impacts)

Store B \$39,000,000 (with proposed development impacts)

Estimated impact = 17.9% - Viability of retailer at risk.

We acknowledge the Harper Competition Review Panel's findings that planning and zoning legislation lacks effective economic objects and proper consideration for competition and therefore recommend that all new developments should be subjected to an economic impact assessment based on incumbent retailers, approved sites and proposed growth within the Primary, Secondary and any other defined trade area.

5. Retail Trading Hours

Trading hours are currently regulated by the publication of variations to the 'Order' following decisions by relevant Full Benches of the (Queensland Industrial Relations Commission) QIRC, from time to time.

In essence, the Act permits certain default core hours across the State, with variations generally being determined because a party has made an application to the QIRC. Those applications [insofar as our interests are involved] are made by the National Retail Association [NRA] on behalf of the majors; Coles, Woolworths, Kmart, Big W, Target, Myer and the like.

It is interesting to note that each of the applications made, where approved, result in significant differences in trading hours across the State and within regions. Whilst the NRA has publically criticised these outcomes, they arise directly because of the applications they have pursued and we find it somewhat inappropriate of them, to publically infer that the multiplicity of defined areas and trading hours, is somehow the fault of government.

We also note that the NRA itself, although the applicant, does not provide any direct evidence about its reasons, motivation or decisions as to why any particular boundary or set of trading hours has been applied for. In recent years the NRA has relied upon witness evidence principally from Coles, Woolworths and or where relevant, the department store majors.

The Act covers all forms of business trading hours, including retail, grocery, hospitality and even real estate, across Queensland. To this extent, the Act has a significant and welcome reach across the retail/grocery/independent industries and the broader community of consumers.

The objectives are:

- To decide the allowable trading hours of shops, other than exempt shops, throughout Queensland;
- To require employees be given a holiday for, and to decide when certain places must close on, Anzac Day;
- To provide for closure of banks and insurance companies on bank holidays;
- To prohibit soliciting in any publication for business to be transacted outside allowable trading hours at any factory or shop;
- To facilitate trading in tourist areas.

It has been asserted, that an unstated objective of the Act may also be to protect small businesses by restricting larger businesses from operating during certain times. We say this is a worthy objective, and that it should be made explicit in the Act, and the net benefits of the restriction on competition and the reasons for or against it, should be fully assessed in any application to extend trading hours in Queensland or more particularly repeal the legislation.

Currently Queensland seeks to provide a genuine balance between unregulated trading hours for businesses across the State and addressing however modestly, the imbalance inherent in particular in the grocery sector, due to the duopoly in Australia of Coles and Woolworths.

We support the retention of this legislation as a valuable tool designed to encourage competition and maintain support for the independent sector. We commend the Queensland Government for its current support and its commitment to improving the operation of this legislation.

In June 2011 across Queensland there were:

- 1932 businesses operating in the store based retail sector;
- 1113 businesses operating in the food and beverage providers sector;
- 3713 businesses operating in the property operators and real estate services sector.

These businesses would all be somewhat impacted by the Act. Most of the Queensland population would be impacted as consumers of retail/grocery services. [Source: Queensland Office of Best Practice Regulation October 2012 THE CENTRE FOR INTERNATIONAL ECONOMICS].

Economic Impacts – IGA Stores and other independents [exempt stores]

Current and recent applications are focused on changing boundaries; extending early morning trade from 7am to 9pm Monday to Friday; extending Saturday trading and introducing widespread Sunday trading and public holiday trading [especially in

regional Queensland]; in almost every instance where independent retailers [IGA; Foodworks Spar, Night Owl etc.] are operating as exempt stores within the close vicinity of the Woolworths/Coles operations. These are the key adverse decisions that will most affect existing IGA operators across the State.

Measurable economic impacts [on for example a Sunday] are that the exempt stores' income dropped between 30-35% on Sundays; and applying this knowledge generically across IGA, these losses are sustained over the following months/years, and have led to exempt store closures and significant downgrading of operations. Having regard to the respective capacity of the parties to sustain/spread their losses, we would think the smaller retailer would ultimately be lost to the community.

Other Impacts

The decline of custom, turnover and profitability of small retailers, leading to increased hours for the Principals, long term reduction in capital value of asset; increased wholesale costs due to lack of bargaining power and reduced choice for customers are outcomes which correlate directly to competition policy. Other impact factors are:

- An increase in costs for small retailers;
- The consequent closure of many small retailers and thus the destruction of many full-time, part-time and casual jobs with no clear evidence these jobs transfer into the non-exempt sector;
- The destruction of family lifestyles for those small retailers who decide to persist with their chosen calling despite the great adversity of the introduction of the major Coles/Woolworths power into their market sector;
- The decline of regional and rural economies as important focuses of commercial life.

Distorted economic effectiveness redistributes wealth in an inequitable manner. This has the effect of increasing the dominance of the two major retailing chains in Australia without improving levels of service and convenience to the community or filling a gap in response to new or emerging changes to consumer behaviour.

We acknowledge that consumer behaviour has changed and that there are now categories of grocery buyers that are 'buy as you need' shoppers and 'convenience' shoppers. We do not agree however that these categories are not currently being serviced or need to be serviced by extending trading hours for non-exempt stores.

We believe that any independent study would show that the market is adequately catered for by the exempt stores; and that many of the applications being made, are about addressing the issue of the duopoly building/providing floor space, far in excess of short to medium term community needs. We say the duopoly then relies upon trading hour case approvals to address this problem, thus permitting them to 'future proof' their investments. The result is that the exempt stores, who survive day by day, are squeezed out, and the trade ultimately transfers to the non-exempt retailers.

Approvals in trading hour's cases have been described as an 'administrative function'. The real outcomes however substantially increase the market power of the two supermarket chains that dominate retail in Australia. Rather than meeting unmet needs of service and convenience, we say that these approvals lessen competition and distort economic efficiency.

The evidence is that, although the major chains were at the forefront of efforts to deregulate trading hours and initially tended to open for extended trading – even to the extent of opening for 24 hours seven days a week, that over time trading hours have been cut back to more closely match peak purchasing periods, suggesting that shift workers or on-line shoppers who were the supposed justification for longer hours will again miss out. It is asserted that larger stores [the Woolworths & Coles Duopoly] use opening hours as a means of putting additional pressure on smaller local competitors, knowing that they are free to reduce their opening hours once the competition has been driven out of the market.

Value comes from healthy competition. If extended trading hours are continued to be introduced, then competition will be stifled. Longer trading for non-exempt stores will threaten the viability of many small businesses, and this will only benefit the large corporations. Markets will be increasingly controlled by a small number of large firms. This can make the consumer liable to paying higher prices for products and services.

There will be a downstream and upstream impact to local small businesses that the independent supermarket draws products and services from. Currently Coles and Woolworths use their supply chains to leverage their economies of scale and scope.

Therefore like other States the Queensland Coles/Woolworths store managers will continue to be constrained and be unable to purchase from local service providers and local manufacturers, farmers and suppliers who all have the opportunity to establish new products and services via the independent supermarket.

Downstream impacts of approved applications

Approved applications potentially impact Queensland based service providers, suppliers, manufacturers and farmers. For example; there is no requirement on IGA stores to purchase 100% of their requirements from the wholesaler Metcash. IGA stores average 65% of their purchases from Metcash. Currently Queensland IGA stores source millions of dollars per annum from Queensland based suppliers, manufacturers and farmers therefore any inequitable shift in wealth to the two majors as a result of the approvals, impacts not only the IGA stores but also Queensland manufacturers, suppliers and farmers. Conversely as stated above, the chains are required to purchase through their own corporate supply chains.

Overall, the market will not grow but the available pool of consumer funds effectively shrinks significantly for the affected independents; culminating in reduced trade and commensurate loss of values.

We oppose Recommendation 51 in the Harper Draft Review that the remaining restrictions of retail trading hours are to be removed because it will contribute to a further distortion of market share dominance by Coles and Woolworths in the grocery sector and providing them with even more market power. This could only facilitate the lessening of competition, which will in the longer term reduce alternative shopping options to consumers.

Essentially, recommendations to deregulate retail trading hours, state by state, should rigorously undergo careful consideration and comprehensive consultation with consumers, all tiers of business and the broader community. Otherwise; unintended adverse implications would be the subsequent outcome if full deregulation of retail trading hours were simply adopted.

Prosperous local economies and diverse communities rely on many industry sectors, all participating, contributing and maintaining their financial viability through a fair and sustainable economic platform. Retail trading hours contributes to creating a sustainable platform for all tiers of business, which has a flow on effect to communities and consumers.

6. Conclusion

Queensland IGA retailers welcome the review of competition policy and applaud the Panel for the considerable consultation and engagement that has taken place throughout the past few months.

The independent grocery sector plays a vitally important role by contributing to the local and domestic Australian economies, supporting and fostering cohesive communities across Australia and providing an alternative and differentiated shopping offer to consumers.

Fair and healthy competition aims to sustain the economy and fulfil consumer demand. We support relevant measures be adopted to ensure the Competition and Consumer Act is 'fit for purpose' to achieve this.