

13th November 2014

Response to the Harper Competition Policy Review Panel Report released 22nd September 2014

My name is Fred Harrison. I am a shareholder, the CEO and a Director and an employee of 40 years standing with Ritchies Stores Pty Ltd. Our Head Office is based in Carrum Downs in Victoria. We place this submission on behalf of Ritchies Stores Pty Ltd.

We are the largest licensed independent supermarket chain in Australia, with 69 supermarkets and 53 liquor licences. We currently employ in excess of 5,000 people.

Ritchies Stores Pty Ltd has been trading since 1870, with the original supermarket trading in Frankston, Victoria. The company has grown steadily since 1994, from 8 supermarkets to the current number, turning over approximately \$900M per annum.

Our company is 'famous for' our Community Benefit program, whereby we have donated nearly \$44M cash to more than 5,000 local clubs, schools and charities. Customers can use their Community Benefit card when shopping in a Ritchies supermarket or liquor store, nominate their own favourite club, school or charity and we donate a percentage of their shop to their nominated local organisation. As our famous advertising jingle says "*Ritchies....Where the Community Benefits*".

In recent years we have felt the impact of the duopoly and their incessant desire to take control of Australia's supermarket and packaged liquor business. They have opened store after store, land banked property and generally tried to crush independent competition. The reality is, unless more stringent controls and regulations are put in place by the Federal government, the longer term supermarket future for independents and all small businesses selling food and liquor is challenged. We need urgent action and attention now.

Our business has struggled in recent years, due to the insatiable appetite of the chains to take any market share - even if it means locating stores in unprofitable trading markets. Camperdown, Bright, Churchill and Seville are examples of areas where the chains have targeted independent supermarkets, purely with the aim of crushing and closing the business. It is time to hold them accountable for their actions and decisions!

Facts show that Ritchies are currently closing more stores than we are opening. As leases expire we are simply not taking up the option to continue trading, due to the unsustainability of these locations. In fact, we will have closed six stores within an 18 month period and have only opened one store in that same time. Unfortunately, we will continue to close stores into the future. This isn't good as another of other independent retailers are following suit across the country.

Unfortunately, our new greenfield store growth has slowed in recent years, which is very much the tactic of the chains. If they hurt us in key performing stores, this then limits our ability to expand our store network and therefore reduces direct competition to their businesses. Long term, this is not in Australia's best interest. To achieve our size we have grown by two to three stores on average over the past twenty years. We have not opened a single store in the 13/14 financial year and have virtually nothing planned for the 14/15 financial year, due to the market domination of the chains.

Woolworths and Coles have been very clever in disguising their desire to crush and minimise competition. With their deeper pockets, they can certainly afford to operate stores that would clearly be unprofitable to an independent retail operator. If it reduces the profitability or competitiveness of a major independent player, the chains would regard this as a win, as it ultimately slows down more competition growth against their businesses.

Throughout our 143 year history, Ritchies have employed many, many locals and we are proud of the start and experiences we have given many young Australians. We are gravely concerned about the viability, not only of our company, but also the independent supermarket sector, as too many chain supermarkets have opened in recent years, severely impacting the Independents ability to compete effectively.

Fuel is a classic example of where the chains cross subsidised between their various divisions and had a clear advantage over independent retailers. Since the removal of excessive fuel discounts, that is discounts greater than 4 cents per litre, independents in the fuel industry have survived and thrived. In fact, they are busy opening more fuel outlets, providing more competition to the likes of Shell and Caltex who are linked with the chains' fuel stations.

We compliment the Harper Competition Draft Policy Review, on many positive and proactive initiatives particularly for the independent retail sector. We believe the Harper Review is serious about implementing change for a sustainable future, particularly for Independent, family owned businesses.

The Harper Review at long last, looks to put checks and balances in place to ensure that competition thrives within our Industry and we commend the panel for their recommendations to date.

We wish to make the following comments in regards to the draft report:

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

We congratulate the Harper Panel for their courage and conviction in recommending the introduction of an “effects test” into section 46 (Misuse of Market power), in the Competition and Consumer Act. This recommendation alone will hold any major corporation with a substantial degree of market power to account, for misuse of their market power. The ‘effects test’ will protect competition and long term consumer choice, by deterring big businesses from crowding out and destroying small businesses, through the misuse of their market power that subsequently and substantially lessens competition.

We would like the original wording in S 46 to remain unchanged so that anti competitive behaviours, irrespective of whether they substantially lessen competition in the market or not, are clearly captured. Anti-competitive behaviours can include predatory pricing, predatory capacity and anti-competitive price discrimination and must be prohibited.

The ‘effects test’ will enhance Australia’s productivity and prosperity by enabling a level playing field for all Australians to compete upon. This initiative will provide more certainty, confidence and motivation for all Australians (including independent supermarket and liquor store owners) to drive economic productivity, by innovating and investing in their businesses.

A further Harper report recommendation within section 46 of the Competition and Consumer Act is that a large corporation will be required, as a defence, to prove that their actions/behaviours will not substantially lessen competition – in other words the onus of proof is to be reversed. We support this initiative as we hope it will deter large corporations from misusing their market power through anti-competitive behaviours.

An effective competition framework is a vital element of a strong economy that drives continued growth in productivity and living standards. It promotes a strong and innovative business sector and better outcomes for consumers.

No Cost Orders

At present, it is completely cost prohibitive for an independent supermarket or liquor store owner to bring an action in the Federal Court seeking relief from anticompetitive behaviours, without the threat of having to pay the other party's costs in the event that the application is unsuccessful. Many independent supermarkets and liquor store owners have genuine claims to misuses of market power, but the costs of litigation are far too high, resulting in a reluctance to lodge potentially successful claims. We strongly recommend the Harper Panel consider recommending that a "no costs order" be introduced. 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.

A Supermarket and Liquor Retail Industry Code

There is no mention of a Supermarket and Liquor Retail Code of Conduct in the Harper Competition Policy Review report. To protect competition and the consumer and to assist the ACCC, it is vital that anticompetitive behaviours can be dealt with through a mandatory enforceable industry code.

We would like a greater emphasis and a specific recommendation made by the Harper Competition Policy Review Panel for the development and introduction of an enforceable Supermarket and Liquor Retail Industry Code in which:

- Predatory capacity and anti-competitive price discrimination is specifically defined and prohibited;
- Where there is a proposed acquisition, the ACCC will give specific enquiry into the effect on the local community, the availability of other supermarkets or stores, and the general commercial impact;
- There will be scope to address bundling schemes which are substantially lessening competition;
- It will be mandatory for any business acquiring a site, lease or existing business to pre-notify the ACCC;
- A merger or acquisition in breach of the Code will require the business to dispose the store/site in the same way as divestiture.

Planning and Zoning – States

We acknowledge the Harper Competition Policy Review Panel's findings, that planning and zoning legislation and processes lack effective economic objectives and proper consideration for competition. If the amenity and economies of local communities are to prosper and the long term interests of consumers are to be seriously considered, then state planning and zoning legislation must be reformed, simplified and inclusive of a net community benefit test, to protect robust competition between supermarkets and liquor stores. It is also our observation that Councils need firm guidelines to know how to implement planning and zoning correctly and consistently.

Packaged Liquor - States

Independent supermarket retailers in Queensland, South Australia and Tasmania welcome the Harper Competition Policy Review suggestion to reduce regulatory liquor licensing restrictions, on their ability to compete with Coles and Woolworths supermarkets, by ranging and selling packaged liquor, to offer consumer's more choice and allow more competition. The productivity and efficiency of Queensland, South Australian and Tasmanian independent supermarket businesses will increase, competition will be enhanced and the consumer will be exposed to retail diversity and choice if they are permitted to retail packaged liquor. I would like this to be a strong recommendation for reform, not simply a suggestion made by the Harper Competition Policy Review Panel "to have a discussion" with each State!

On behalf of our company, we appreciate the opportunity to make a formal response and we congratulate the initiative taken by the Minister for Small Business, Mr Bruce Billson, who has unashamedly led the charge to introduce the Harper Competition Policy Review.

We also recognise the great work being done by the members of the Panel, many of whom I have met on several occasions for submissions and discussion – including at the recent Forum in Melbourne.

We believe the future success and prosperity of all Australian small businesses is very much reliant upon the Harper Competition Policy Review panel maintaining their current stance and perhaps incorporating some of the additional recommendations contained herein. From there, we need strong leadership by political parties to support and endorse what comes out of the final report in March 2015.

All we ask is for a level playing field and that the duopoly is not allowed to use their might and financial muscle to severely impact the effectiveness of a strong, healthy and vibrant independent sector, similar to what happened with fuel. With proper planning and the correct laws, there is plenty of market share, not just for the larger international and domestic public companies, but also for a thriving, healthy independent, family orientated supermarket sector.

In closing, we would like to finish with the following quote: *“I am sick to death of reading and hearing announcements from the chains and the politicians whenever a new chain supermarket opens, that it creates x number of new jobs. Where are the corresponding announcements on the net number of job losses due to the opening of a new chain supermarket within the community? Our experience shows there is a net loss of employment when these chain store openings occur. It is easy to take the high ground and say the chains create new jobs but the reality is there are many jobs lost, not just out of the supermarket sector, but by other businesses who retail similar product to the chains. Ultimately, there is a net community loss.”*

We appreciate the opportunity to lodge this submission.

Yours faithfully,
RITCHIES STORES PTY. LTD.

FRED HARRISON
Chief Executive Officer.