17th November, 2014

Competition Policy Review Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

Response to the Harper Competition Policy review Panel report released 22nd September 2014

I write to you as an independent supermarket business owner and also as the IGA National Council Chairman as I know, through my contact with many retailers, that they hold the same views.

Ryans Supa IGA is a family owned supermarket business based in Western Victoria with 6 Supa IGA supermarkets and 2 stand alone liquor stores. We employ approximately 450 local people and are a key part of the local communities we serve. In the last 5 years we have donated over $900,000 to local community groups through our Community Rewards program. We also support many local farmers, manufacturers and small business by selling their products or using their services. Our preference is to support local business wherever possible. We believe this local business engagement is extremely important for the prosperity and wellbeing of our local economy. This activity maximises local innovation, local investment, streamlined efficiencies and productivity which are vital ingredients for the sustainability of local communities – this is good for Australia and Australians……

We believe our business makes a significant contribution to the community it trades in. It is the part of the hub of the local community. The increasing market power and dominance of the 2 chains is putting at risk robust competition, consumer choice and retail diversity…….that is why we believe we need major Competition Law reforms.

Without local businesses like ours the community will be adversely affected with the loss of local jobs in retail, farming and local services. In both the short and long term the community and consumers will suffer due to a lack of choice, reduced pricing tension and less innovation in the retail sector.

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We support the Harper Review recommendation to introduce an **"effects test**"……. The '**effects test'** will protect competition and long term consumer choice, by deterring big businesses from crowding out and destroying small businesses, by misusing their market power, that substantially lessens competition. However, 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.

I don't support the proposition that a dominant market player should be able to claim a defence for misusing its market power. Once a market player is dominant, their misuse off market power should simply be prohibited. And if a defence is to be given to dominant market players, it should be crystal clear what that defence is. The current proposal based on what a small player would rationally do is impossibly vague and will render s46 useless.

Currently competition laws are unable to be enforced except by the largest of companies in Australia, because the potential scale of cost orders for failing are so disproportionate to the damage caused by misuse of market power or acquisitions that substantially lessen competition. It is to be observed that even the ACCC is constrained as much as small business by the implications of the extent of cost orders.

Access to justice must enable meritorious cases to proceed. A prima facie meritorious case brought by small business under the CCA should be able to be certified as such by a Court and then able to proceed on the basis that cost orders will not apply, unless the case is conducted inappropriately. A high filing fee of say $25,000 for seeking this certification would reduce substantially the possibility of vexatious claims being brought forward.

If small business remains unable to access the Courts to enforce the CCA, it may remain not fit for purpose in a critical sense.

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. **Therefore there should be "no cost orders".**

We acknowledge the Harper Competition Policy Review Panel's findings; **that state planning and zoning legislation and processes** lack effective economic objectives and proper consideration for competition. However, we disagree with

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the principle that more floor space & more entrants in a market equals more competition, this is simply not sustainable. Businesses (Coles, Woolworths, Costco, Aldi), with the deepest pockets (unlimited resources), will crowd out family owned businesses, who have limited resources, thus reducing consumer choice and lessening competition. **There must be state planning and zoning controls put in place to protect competition and consumers.**

There is no mention of a **Supermarket and Liquor store 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 code.

Thank you for the opportunity to make a response. The future prosperity of all Australian small businesses and families concerns, including my own, is very much dependent upon the strong recommendations for Competition Law reform, as recommended by the Harper Competition Policy Review Panel and the will of our politicians to recognise that Australia is not just about Big Businesses – it's about a balance between large and small businesses all competing on a level playing field.

Yours Sincerely

Ben Ryan

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