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SUBMISSION TO THE COMPETITION POLICY REVIEW

BAKING ASSOCIATION OF AUSTRALIA

About the Baking Association of Australia

The Baking Association of Australia is an employer organisation representing the baking industry on a national level. It represents the interests of member bakeries and allied organisations in promoting business opportunity, government lobbying and provides a range of services to individual members.

Affiliated with other baking organisations, BAA provides up-to-date information and advice to members on industry matters, workplace relations and technical guidance.

Submission

Baking Associations of Australia submits that the amendments proposed by the Panel to the law relating to section 46 of the Competition Act should be supported.

The baking industry has been greatly effected over the last few years with the major supermarket chains discounting their bread to \$1.00 in 2011 and then 85 cents a loaf in 2014.

The effect on the industry was devastating. Bakeries lost many customers because of the move, and continue to suffer with the perception that bread should be cheaper.

The Association went to various government representatives and the ACCC. The action that could have been taken by the ACCC was prevented by the wording of section 46, which was

restrictive. The advice was that the industry could not prove that it was the intention of the supermarkets to harm the smaller bakeries.

The Current Legislation

Section 46(1) provides:

(1) A corporation that has a substantial degree of power in a market shall not take advantage of that power in that or any other market for the purpose of:

- (a) eliminating or substantially damaging a competitor of the corporation or of a body corporate that is related to the corporation in that or any other market;
- (b) preventing the entry of a person into that or any other market; or
- (c) deterring or preventing a person from engaging in competitive conduct in that or any other market.

Where the ACC could not assist was in (1)(a) – it was going to be almost impossible to prove that the major supermarkets were acting with the intention to “eliminate or substantial damage” the baking industry.

The Panel has proposed:

To mitigate concerns about over capture, the Panel proposes that a defence be introduced so that the primary prohibition would not apply if the conduct in question:

- *would be a rational business decision or strategy by a corporation that did not have a substantial degree of power in the market; and*
- *the effect or likely effect of the conduct is to benefit the long term interests of consumers.*

We recommend that the following be added to the recommendation:

To mitigate concerns about over capture, the Panel proposes that a defence be introduced so that the primary prohibition would not apply if the conduct in question:

- *would be a rational business decision or strategy by a corporation that did not have a substantial degree of power in the market; and*
- *would be a rational business decision or strategy by a corporation as if it were a product specialist retailer in that market; and*

- *the effect or likely effect of the conduct is to benefit the long term interests of consumers.*

This would mean that small specialist business such as butchers, bakers, fruiterers, etc. have protection that such decisions by major retailers could not be held to be rational if it had a drastic effect on their profit margin.

If this test was adhered to, the pricing of bread at \$1.00 or 85 cents a loaf could not possibly be held to be a rational business decision.

This test would level the playing field so that a small decrease in price could be defensible, but not a large decrease for a substantial period of time.

Many food retailers discount food at the end of the day in order to clear the product. This test would not stop that practice. The test would stop major retailers selling a product for lengthy periods of time at a substantial discount.

If you have any queries please contact Tony Smith, Executive Officer.