

WESFARMERS' SUBMISSION ON COMPETITION POLICY REVIEW'S DRAFT REPORT

In its overview to the final terms of reference for the Competition Policy Review, the Federal Government made this point:

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.

Wesfarmers agrees. It strongly supports the above sentiment and believes the broad thrust of the Draft Report of the Competition Policy Review led by Professor Ian Harper provides a platform for significant and positive improvement in competition policy in Australia. We support the overwhelming majority of the Draft Report's recommendations and congratulate Professor Harper the Panel members on the work they have done so far.

The overview went on to say:

The Government has commissioned an independent 'root and branch' review of Australia's competition laws and policy in recognition of the fact that the Australian economy has changed markedly since the last major review of competition policy in 1993.

Wesfarmers believes the current review is, indeed, the most comprehensive review of Australia's competition law and policy since the Hilmer report of 1993, which led to very substantial and nationally beneficial microeconomic reform, and hopes benefits similar to those founded in Hilmer can emanate from Harper.

A number of proposed regulatory changes could have an impact on Wesfarmers' businesses and those of its competitors, including changes to retail trading hours, planning and zoning laws, liquor licensing, product standards and labelling. It should be noted that most of these recommendations would require the co-operation of the States and Territories coordinated by the proposed Australian Council for Competition Policy. Such cooperation should be vigorously pursued.

It has been cogently argued in discussions surrounding the Review that Australia's competition laws are already among the best in the world. In Wesfarmers' view, this is true. The *Competition and Consumer Act 2010* generally works well in promoting and protecting competition. Nevertheless, Wesfarmers believes there is merit in simplifying or amending some provisions as suggested by the Panel so as to remove impediments to competition. Read together, for example, Draft Recommendation 11, that all Australian governments, including local government, should review regulations in their jurisdictions to ensure unnecessary restrictions on competition are removed; Draft Recommendation 17, that the central concepts, prohibitions and structure enshrined in the current competition law be retained; and Draft Recommendation 18, that the competition law provisions of the CCA should be simplified, provide a baseplate for sensible reform.

The Draft Report contains a number of other welcome proposals to improve regulatory processes. Draft Recommendation 51 dealing with trading hours is a primary example. The Panel recommends that 'remaining restrictions on retail trading hours be removed. To the extent that jurisdictions choose to retain restrictions, these should be strictly limited to Christmas Day, Good Friday and the morning of ANZAC Day'. We strongly agree. While recognising the issue of trading hours lies with state and territory jurisdictions, as we argued in our initial submission to the review, restrictions on retail trading hours are anti-competitive and should be removed.

Recommendation 10, dealing with improved planning and zoning laws, is supported; and the Panel's statements that 'restrictions preventing supermarkets from selling liquor are also an impediment to competition' and that 'retail liquor licensing should be prioritised as part of a new review of regulatory restrictions proposed at Draft Recommendation 11', reflect Wesfarmers' own view.

We also support, in particular, Draft Recommendations 28, 36, 48 and 52.

As we have previously submitted, in our view any proposed amendments to the *Competition and Consumer Act 2010* should be assessed on the basis of whether they truly protect competition and enhance the outcome for consumers. Competition laws are necessary to prevent anti-competitive practices such as cartels, collusion and the misuse of market power preventing the entry of competitors into markets or substantially lessening competition. New regulations should only be introduced where there are clear public benefits in doing so and these benefits justify the cost and uncertainty of any change.

The Draft Report's rejection of arguments put forward for a divestiture provision in competition law, therefore, is to be welcomed. As the Panel says, 'divestiture is likely to have broader impacts on the general efficiency of the firm. Such changes could also have negative flow-on effects to consumer welfare.'

In the Draft Report, the point is well made that: 'Strengthening competition brings economic benefits, including choice and diversity, as well as lower overall prices. An economy that responds more flexibly to people's changing needs and preferences, with a wider array of products from a greater variety of sources at cheaper prices, improves the everyday lives of Australians. Our competition policy, laws and institutions serve the national interest best when focused on the long-term interests of consumers'.

On page 38 of the Draft Report, the Panel adds: "Law that is complex imposes costs on the economy: direct costs are imposed by reason of the need for legal advice and prolonged legal disputation; and indirect costs are imposed by reason of business and regulatory uncertainty." We agree. Those costs would ultimately be borne by consumers.

However, the most significant change to the general competition laws the Draft Report recommends is the introduction of a new "effects" test for misuse of market power. We are grateful to have had the opportunity to meet with Professor Harper and Panel members to discuss at length our concerns about the recommendations relating to section 46. However, we firmly believe this change, if implemented, would add very significant uncertainty, complexity and cost for the Wesfarmers Group and for other companies with significant market share.

We refer to and adopt the BCA submissions in this regard. We also oppose the introduction of 'concerted practices' provisions for the reasons set out in the BCA submissions.

In its original submission, Wesfarmers recognised there was unquestionably a role for government in regulating business and industry. Good governance is vital to a healthy economy, but regulation and support must serve to protect competition, not strangle it or protect uncompetitive participants. We simply restate the position: demands for increased bureaucratic intrusion into and regulation of competitive markets will not increase national wealth; they will diminish it.

Again, we commend and thank Professor Harper and the panel for the breadth and depth of the work they have done so far and express our gratitude for the opportunities provided to be constructively engaged in the process.

Further contact

We will be pleased to further engage the Review panel directly on the issues raised here, particularly as they relate to the detail of potential impacts on individual Wesfarmers businesses. Should you wish to clarify any particular issue raised in our submission, please contact Wesfarmers' Executive General Manager - Corporate Affairs, Alan Carpenter acarpenter@wesfarmers.com.au (08) 9327 4267.