

**Submission to
the Productivity Commission's Review
of
National Competition Policy Arrangements**

18 June 2004

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Who is the LSAV?

The Liquor Stores Association of Victoria Inc is an Association of independent small business owners licensed under the Victorian *Liquor Control Reform Act 1988* to sell packaged liquor for off-premise consumption. Our members, in the main, are family business operators who own and operate stand alone bottle-shops or licensed grocery stores. The two major chains, Coles/Myer and Woolworths and their subsidiaries are not members of this state Association.

Our involvement with National Competition Policy (NCP)

This Association has had considerable involvement with NCP policy issues over the past 4-5 years. This included the Victorian government's review of the '8% cap' on packaged liquor licences in the state. The review gave rise to the removal of 'the cap' and the parliamentary amendments of May 2002, which removed several provisions from the *Act* deemed anti-competitive. This reform allowed the chain stores to increase their licence holdings beyond the 8% level and saw a proliferation of packaged liquor licences and other licence categories.

Trade Practices Act Reform

The Association realized that unless reform of the *Trade Practices Act* (*TPA*) occurred, around collective bargaining, the misuse and abuse of market power, unconscionable conduct and creeping acquisitions, then deregulation would destroy small businesses in this country. To achieve reform of the *TPA*, the Association made submissions to the 'Dawson Inquiry' in 2002 and also to the Senate Select Committee Review on Trade Practices Act Reform' during 2003.

Where is NCP now?

After years of engagement, the Association believes that in some areas NCP deregulation has been a mechanism allowing the strong and powerful obtain and increase their market share over small business, with little or no cost to

the victors. In fact, deregulation created a playing field designed for a duopoly.

In some areas, such as Western Australia, deregulation in dentistry has become a clarion cry for 'public health quackery' to usurp qualified medical providers and replace them with unskilled quick-fix, Steptoe and Sons. In Victoria, especially in liquor, 'public health quackery' is a mechanism re-regulating the industry and destroying initiative and choice.¹ Elsewhere in this state NCP guidelines are by-passed by government agencies in order to achieve a political outcome.²

In packaged liquor reform, in Victoria, the major beneficiaries of deregulation are the two major chains, Coles/Myer and Woolworths. In Queensland, in packaged liquor reform, the only beneficiaries of the sham that purported to be a NCP review, were some retail food chains, who like the chameleons disguised themselves as hotels and picked up the market. Should liquor deregulation ever eventuate in that state so that small independents might gain entry, it will emerge that the chains already have the stranglehold on the off-premise industry. Small independents, choice and diversity were totally excluded from the QLD market. NCP is a mechanism, whereby the large consumed the small and more efficient competitors. Long term deregulation if not redressed, will destroy diversity of choice for Australian consumers. In some cases, deregulation and NCP was a free meal ticket for the big predators. NCP gave legitimacy to the elimination of small business by the large and powerful corporations, in the name of maximizing returns to shareholders.

To date NCP and the *Trade Practices Act* have failed to check the powerful corporations growing their market share through anti-competitive means. NCP has failed to reign-in the various forms of anti-competitive conduct used by large and powerful corporations, to undermine competition. Large companies are able to subsidize losses in one competitive area, with profits extracted from those markets lacking competition. This tactic is not about enhancing the competitive process, but rather destroying competition, in order to gain an unfair advantage and control of a market.

The object of any amalgamation of capital and production units...must always be the object of the largest possible reduction in the costs of

¹ Scrutiny of Acts and Regulations Committee, *Annual Review 2003: Regulations 2003*, May 2004, pp. 26-27.

² Ibid. pp. 14-18.

production, administration and sale, with a view to achieving the highest possible profits by eliminating ruinous competition.³

The 1998 Victorian Government NCP Review of the 1987 *Liquor Act* noted that both in metropolitan Melbourne and in regional Victoria, the markets for liquor were oligopolistic; dominated by a few relatively large firms. In Melbourne, vigorous price competition in the packaged liquor market was acknowledged, whilst the monopolistic position of single hotels in small and isolated country towns was accepted. By 2004, despite deregulation and reform, retail grocery and packaged liquor, in rural Victorian towns, is concentrating into the hands of two chains stores, with petrol adding a further impetus. Yet nothing is being done because in the short term, this is regarded as competition. Long-term? Government does not seem to care.

Commissioner Horsfall's Decision 664 (Liquor Licensing Commission, 18 May 1999, File No 20387A01, pp 14-16) stated:

Safeway on their own account will have at least 22.34%, and probably more up to 27% of the market for total packaged liquor sales in Victoria (excluding light beer), but only has 8% of the packaged liquor licences... Parliament in 1983 appears to have underestimated the current market power of a Safeway Supermarket, when it now appears that 1% of the packaged liquor licences held by them can hold over 3% of the market.

Much has changed since Horsfall's decision. Deregulation is part of the licensing provisions and the power of the chains has increased, yet no one in government hears the fire sirens.

Under the *Trade Practices Act* if domination of any market was imminent the market concentration thresholds that would trigger action by the ACCC are:

- where the top four firms gain greater or equal to 75 per cent of the market; and
- where at least one firm gains more than 40 per cent of the market.

For the packaged liquor industry, reliance on the protection of the *Trade Practices Act* would be thwarted by recent cases in the High Court. The *Boral* decision did nothing to aid the small business community's faith in the system. Therefore, the *Trade Practices Act*, as it stands, is not a satisfactory

³ Carl Duisberg, founder of I. G. Farben, 1903-04, in 'German Cartels from 1873-1914', cited in E. J. Hobsbawm, *The Age of Empire 1875-1914*, Guild, London, 1987, p. 24.

means of ensuring adequate protection from undue market concentration. Neither, NCP or the *TPA* is assisting small business to survive against anti-competitive conduct. The NCP and the *TPA* appear non-active and uninterested in the likelihood of duopolies or oligopoly players emerging in Australia industry sectors be it groceries, liquor, hardware or petrol.

What is to be done?

In the retail grocery industry or other industries where four or less players control more than 75% of the market, the National Competition Council must have a pro-competitive mandate as part of its NCP brief. A Victorian country town with one retail chain at the North end, and another at the Southern end, with a deserted main street, its butcher shops closed, the bottle-shops closed, the banks gone and the four petrol station replaced by one offering a 4c discount for those who shopped at a certain supermarket buying meat, vegetables and liquor at that one-stop, is not competition. It is a social disaster. In some New South Wales towns, everything is closed in the name of competition with all retail services located thirty to sixty kilometers down the road and outside the next town.

NCP makes financial payments to the States and Territories for reforms attributed to NCP. At the same time some small businesses sectors sacrificed and dissected on the altar of NCP receive no compensation from the state or out of NCP monies. In Victoria, the LSAV argued for a compensation package and was partially successful. The major beneficiaries of deregulation, the state and the two chains contributed a sum of money; but overall it was a cheap means of forcing small business to hand over its hard won gains to the victor. Other states made no payments to the small business liquor retailers dissected by NCP.

Conclusion

Australia requires an effective set of competition laws. To date NCP provided a convenient vehicle to transport the interests of large and powerful corporations and their shareholders. The Australian consumers' interests were subverted. Australia needs mechanisms, which can bring those who collectively control more than 75% of a market, to account and stop their creeping acquisitions. Part of the problem is defining what constitutes an industry sector market. In groceries, for example, while the average person understands what constitutes the retail grocery market, the powerful chameleons re-define it to include all food, so as they appear less preponderant. Of the *Trade Practices Act*, Professor Evan Jones of Political

Economy faculty of the University of Sydney delivered an eloquent summation of the Association's position.

An Act and a regulator that tolerates Coles' and Woolworths' insatiable takeover of niche players in the liquor industry is an Act in urgent need of remediation and an overseer in urgent need of re-education.⁴

Whilst the Association is not advocating the retention or abolition of the National Competition Council or of National Competition Policy, we believe that while it had some macro benefits on the big issues surrounding power and government, at the micro level it has not delivered a fairer or even level playing field to all participants. Overall the beneficiaries are the state governments who received and are receiving millions in NCP payments and the powerful corporations who picked up much of the small business market share for little or no cost. The losers in the exercise have been family owned small businesses, the rural sector including fruit and vegetables growers and those mugs termed 'consumers' conned into believing there would be jobs, cheaper prices in a land flowing with milk and honey because of competition theory.

National Competition Policy is not delivering competition and cannot deliver that promise, unless there is reform of the *Trade Practices Act* to redress the profound imbalance for small business and consumers.

Forwarded for your consideration

Yours faithfully

Peter Wilkinson
President

18 June 2004

⁴ Evan Jones, 'Competition policy still hits hard at small businesses' in *Canberra Times*, 6 Feb 2004.