THE SOUTHERN SYDNEY RETAILERS ASSOCIATION

INC9885645

P.O Box 514 Moorebank, NSW 1875

1st August 2007
The Commissioners
Market for Retail Tenancies Leases Inquiry
Productivity Commission
PO Box 80
Belconnen ACT 2616

By email : retailtenancies@pc.gov.au

Non-confidential – we request that this submission be published on the PC website.

Dear Commissioners,

Re : Market for Retail Tenancies Leases Inquiry

The Southern Sydney Retailers Association welcomes the Inquiry into the Market for Retail Tenancy Leases in Australia called by the Treasurer Mr. Costello.

Much of evidence to this inquiry will unfortunately be a repeat of the 1997 Inquiry *Finding a Balance*, however since the 1997 inquiry failed to come up with the answers, over the last decade the situation for independent specialty retailers has deteriorated even further, where today the life of the independent retailer is best described as; poor, nasty, brutish and short.

The current situation has resulted from a failure of our competition laws and the inaction following the 1997 Inquiry allowing the "existing retailing hierarchy" to engaging in a series of anti-competitive practices unprecedented in modern times, which have subverted the functioning of our free enterprise system.

The "existing retailing hierarchy" have protected themselves for competition by the manipulation of state government planning regulations, which has enabled them to obtain monopolistic powers over independent retailers which they have ruthlessly exploited. As a result, countless numbers of small businesses have been driven to ruin and bankruptcy, individuals have lost life savings and homes, families have been destroyed, and there have even been suicides. We are aware of one store manager that took a rope and hung himself inside his shop after Thursday night trading.

Through a Predatory Pricing strategy to lure major retailers away from their competitors (the retail strips) the existing retail hierarchy have caused devastation to the nations retailing strips, and have turned once prosperous retail strips into retail deserts and some even into graffiti filled urban slums – and now with their competitors decimated and customers lured away,

many retailers have little option than to located their business inside a shopping centre, where they now face a landlord with monopoly powers.

Through anti-competitive price discrimination, the existing retail hierarchy has split the Australian retail sector in two – they have created an 'upper class', a small group of privelegded retailers, whom have been granted such preferential rents that these retailers have become free riders, a burden on the nation, as they no longer pay their fair share of the economic resources they use – which has triggered off a chain reaction of massive distortions throughout the entire economy.

To finance these special privileges, the existing retail hierarchy have also created a lower class of oppressed specialty retailers, who crippled with rents and occupancy costs absurdly more than double international averages, are no longer are able to bring any competitive pressure to market, and their owners have become cannon fodder for the existing retail hierarchy in their never ending pursuit to drive rents higher regardless of whether or not they are unsustainable.

To justify the Price Discrimination, and to hide its true predatory intent, the existing retail hierarchy has used the crude argument that the privileged upper class of retailers "generate most of the customer traffic to the shopping centre", however empirical evidence irrefutably proves this argument as a myth. What attracts customers to a shopping centre is the sum of all the retailers put together, not one particular retailer.

The substantial reduction in competition resulting from Price Discrimination in retail rents, has thrown up an umbrella of protection for several large retailers, and shielded from the competitive pressures from the independent sector, these large retailers have grow fat and lazy, and with their inefficiencies allowed to fester, they have evolved into stumbling giants larded with redundant layers of management bureaucracy and burdened with outmoded technologies – an inefficiency has chilled Australia's productivity growth, and resulted in Australian consumers paying higher prices

Through secrecy and suppression, the existing retail hierarchy have created a system of secret pricing, whereby the concept of "market rent" is non-existent.

But it is not only the specialty retailer sector that have fallen victim and is suffering under these anti-competitive practices, at the end of the day, the biggest loser has been Australian consumer. Recent research reveals that claims of "lower prices" by the supermarket duopoly have been nothing more than a deceptive marketing ploy so successful that it has even hoodwinked the upper echelons of the Government, the ACCC and most of Australian media, with a few notable exceptions.

The shocking reality is that since 1990, as retail rents have spiraled out of control, some one has had to pay the price, and it has fallen of the shoulders of Australian consumers, who have been punished with the developed world's highest food inflation. As unbelievable as it may seem, the truth as revealed by OECD figures is in Australian retail shops, food price have increased ***twice as fast*** as the rest of the developed world over the last 17 years.

Further recent research also reveals that Australian consumers have been cheated out of the full benefits of tariff reform, and instead of the benefits of tariff reform in Clothing, Footwear and Homewares flowing through into the pockets of Australian consumers, it has instead been stolen, and ended up lining the pockets of the existing retailing hierarchy.

The current dysfunctional market of retail leases also poses great risks for the 9 million Australians that have their superannuation savings tied up in Australian Shopping Centres.

It may be of concern for these 9 million citizens whose savings finance Australian regional shopping centers, to discover that 75% of the leaseable space that their retirement savings have financed, has in fact been given away at uneconomic peppercorn rents, to a handful of privelegded retailers on 20-25 years leases.

These nine million Australians are now dependant upon the specialty retail sector and small business that occupies the remaining 25% of the leaseable space, to not only recoup the losses from these uneconomic peppercorn rents, but also for these small business to continue to pay international uncompetitive rents for long enough to enable them to fund their retirements.

However by the special privileges and uneconomic rents that they have given to these larger retailers have obtained artificial powers, and with their inbuilt thirst for growth, they now threaten the every existing of the same the small businesses in the specialty retailers sector, whose future survival is essential to fund the retirement of 9 million Australians.

As occupancy cost rise ever upwards for specialty retailers in Australia – so to has the competitive disadvantage they face against the upper class of privileged retailers - and like a giant elastic band, the competitive disadvantage in occupancy costs has been stretched from 5% v 10% in 1990 to 5% v 20% + today - a level which is now beyond breaking point. If the independent retail sector implodes, which it is on the verge of doing - so to will the superannuation savings of nine million Australians.

Through exploitation of market power pumping retail rents in an every upwards spiral, Australia's specialty retail sector is now a massive international competitive disadvantage, which can only have a detrimental effect to nations economy, including our entire tourist industry.

The 'existing retail hierarchy' and current dysfunctional market of retail rents in Australia, is a clear and present danger to the nations economy and the nation's future prosperity.

Failure to act now, to repair the broken market of retail leasing, places grave threats over the Australian economy, with the prospect of higher inflation, greater pressure on interest rates, lower productivity growth, ever increasing trade deficits and a growing mountain of foreign debt.

The Productivity Commission faces its most important and difficult challenge in sorting out the mess of retail leasing in Australia, and to create a set of rules that rein in the exploitation of market power by the existing retail hierarchy and to restore the forces of normal competition for the benefit of Australian consumers.

Following is our Submission No.1 "*Australian Regional Shopping Centres – the Nations most protected and featherbedded market*".

Supplementary submissions will follow.

Regards,

Craig Kelly
President Southern Sydney Retailers Association
Ph 0413 433 288

Productivity Commission Inquiry

The market for retail tenancy leases in Australia

Submission No.1

Australian Regional Shopping Centres – The Nation's most protected and featherbedded market.

Non-confidential
We request that this submission be published on the PC website.

Southern Sydney Retailers Association

Contact : Craig Kelly 0413 433 288

August 2007

Australian Regional Shopping Centres –
The Nation's most protected and featherbedded market.

The Australian retail sector is ***not*** a free and open and market.

Through regulation, and restrictive planning laws, Australian shopping centres have been able to fence off the competition, whereby they have been able to obtain market power and monopolistic positions over independent retailers which they have had no hesitation in ruthlessly exploiting.

As a general principle, free markets and a winding back of regulation should be encouraged; however the Shopping Centre Landlords simply cannot have it both ways.

It is nothing other than sheer hypocrisy to hide behind "regulations" which protect them from competition which bestows them with market power, while at same time argue for 'the winding backing' of any regulations that attempt to keep their ruthless exploitation of market power in check.

We hope that the Productivity Commission will able to see through such appalling hypocrisy that it is likely to receive in submissions to this inquiry.

Lessons from History

A time honoured tactic used by large corporations to shield themselves from the competition, is to lobby the government of the day to grant them exclusive rights to control a particular service in a specific region, and then have any competition that might upset this cosy and featherbedded arrangement declared as "illegal".

In seeking these exclusive rights and protection from competition, large corporations will often argue that they have their 'customers best interests' at heart, but these are just crocodile tears – as the best way to charge a monopoly price for a good or service is to create some type of "barrier" to keep the competition out - and one of the best way to fence off the competition, is to use government regulations.

This tactic to suppress the workings of the free market by seeking protection through government regulation was turned into an art form back in the 17th Century, by the British East India Company the largest corporation of the day.

In 1681, The British East India Co. lobbied King Charles II and the English Parliament (nearly all of whom were British East India Co. stock-holders) to pass "An Act for the Restraining and Punishing Privateers & Pirates." This law required a special license to import anything into the Americas and other British-controlled parts of the world. And just by co-incidence, these licenses were rarely granted to anybody except the East India Company Co. and a few other large British corporations, which shielded these companies from competition, and protected their market power. This enabled them to pocket monopoly profits by exploiting consumers with higher prices than otherwise would exist in a free and open market.

In the 17th and 18th centuries, anybody that sought to enter the market and bring competition to the British East India Co was labelled a privateer – "a pirate" for which the penalty was "death without the benefit of clergy."

Three Hundreds later, these lessons from history have been well learnt by those behind the "existing retail hierarchy" in Australia.

Just as the British East India Company lobbied King Charles to grant them exclusive rights to control a particular service in a specific region, today the "existing retail hierarchy" have successfully lobbied Australian State Governments[1] into granting them exclusive rights to control retailing in a specific region, thereby protecting themselves from competition. This has enabled the existing retail hierarchy to pocket monopoly profits by exploiting independent retailers with higher rents than otherwise would exist in a free and open market – which ultimately is paid for by consumers in higher retail prices.

In 1681, King Charles signed into law "An Act for the Restraining and Punishing Privateers & Pirates" which the British East India Company used to have any competitors declared as "operating illegally".

Today, State Governments have signed into laws such regulations as 'Melbourne 2030' and the 'NSW Centres Policy' which have allowed the "existing retail hierarchy" to have any unwanted competition declared as illegal and have them closed down.[2]

The following is written by the journalist Mr. Mike Nahan, in *The Herald Sun*, February 11th, 2006, titled - *They're here to help you (oh yeah);*

> '*Under Melbourne 2030, retail activity is to be increasingly concentrated in a limited number of existing large centres. This is reinforced by existing planning laws which require new retail developments to prove they will not have a deleterious impact on existing retail centres in their region --* ***in other words, they will not compete with existing centres.***
>
> *The planning laws also require that new centres provide the same level and character of public amenity and access as existing facilities, irrespective of their clients' desires and nature.*
>
> *As such, planning laws have greatly reduced the scope for expansion of retail infrastructure and handed monopoly development rights to shopping centre owners.*

Imagine running a business in a market so highly regulated that new competitors are banned from entering the market to compete against you if the new competition has a "deleterious impact" on you – but this is the regulation and protection from competition that Shopping Centre landlords enjoy.

[1] It's only a co-incidence that members of the existing retail hierarchy are Australia largest political donors.

[2] Just a few examples are the Orange Grove Affair and *Westfield Management Ltd v Pine Rivers Shire Council & Anor* [2005] QPEC 015 where the courts ruled in was illegal for a retail shop to sell food and groceries in competition with the existing retail hierarchy.

No other industry sector enjoys such corporate welfare and regulations that protect them from competition.

The Need for Regulation in Retail Leasing

In what can only be described as gross hypocrisy, those that enjoy this unprecedented protection from competition by regulation which has handed them market power, which they exploit ruthlessly – will likely whine to the Productivity Commission about "excess regulation" which might in any way rein in their abuse of market power in the market for retail leases.

We hope the Productivity Commission is able to see through such appalling hypocrisy.

As a general principle, free markets and a winding back of regulation should be encouraged; however the Shopping Centre Landlords simply cannot have it both ways.

As long as existing regulations such as restrictive planning laws continue to grant shopping centre landlords special privileges and shield them from competition which artificially hands them market power – then the market for retail leases must have a clear set of rules and regulations to prevent those granted special privileges which protect them from competition from exploiting their market power.

This exploitation of the market power, and the failure to have a clear and effective set of rules to govern competition in retail leasing has resulted in current dysfunctional market, with internationally uncompetitive retail rents that pose a clear and present danger to the Australian economy.

For this reason that Government must act to repair the current market failure and restore the balance of our free enterprise system by providing a clear set of rules in the market for retail leases and to prevent the exploitation of market power which ultimately is against the interests of consumers.

CASE STUDY - Protection from Competition

It is often claimed that there are *"no barriers to entry in the Australian food retail sector"* [3]

The authors of these ill-formed comments would do well to contact *The Warehouse* group, and study how they were taken to court by Westfield for the 'crime' of trying to engage in competitive conduct by selling food and groceries in competition to the existing retail hierarchy.

In 2003 the Warehouse (an established chain of retail stores in Australian & New Zealand) were granted permission by the Pine Rivers Council to sell food and groceries from just 6% of the floor space of their Strathpine store in Qld.

Westfield (with a large shopping centre close by, of which Woolworths were a tenant) were outraged such competition would be allowed – this is Australia, the existing retail hierarchy must be protected from competition at all cost.

Therefore, Westfield sued both the Pine Rivers Council and The Warehouse Group in the Planning & Environment Court of Queensland.

Westfield argued to the court;

> *"The Warehouse sells food and groceries. They are at the centre of dispute. The Warehouse group wants to keep selling groceries. The Pine Rivers Council has approved 6% of the Floor area for food and groceries, and continues to support that position. Westfield says the council is wrong, that food and groceries have to go !!"*[4]

The ratepayers of the Pine Rivers Council and the Warehouse were forced at great expense to engage lawyers to defend their position **- the democratic right to sell food and groceries in a free enterprise society** - but at the end of the day, in just another example of how regulations protect the existing retail hierarchy, and completely against the Australian ideals of free enterprise, the Court found in favour of Westfield.

The ruling means that Woolworths are free to compete against everything the Warehouse sell, but the Warehouse are preventing from competing against Woolworths in food & groceries.

The courts ruling also means that if the Warehouse continues to sell food and groceries there managers risk imprisonment. Therefore all food and groceries were removed from sale in the Warehouse, and a competitor of Woolworths was eliminated, competition was reduced, and today the government scratches it head, trying to work out why Australia has the developed world's highest food inflation, and it is facing annihilation at the coming Federal election, as prices on Australian supermarket shelves continue to rise faster than anywhere else in the developed world, resulting in higher inflation and putting upwards pressure on interest rates.

---

[3] Delforce, Dickson and Hogan, Australian Commodities Vol 12, No2 June 2005

[4] Westfield Management Ltd v Pine Rivers Shire Council & Anor [2005] QPEC 015

By their court actions Westfield also served a warning to other potential competitors - Why risk being taken to court by a company with a market value of over $40 Billion just to sell a few groceries. Their actions have no doubt deterred other competitors from entering the market to sell to groceries.

In what one would think could only happen in Communist controlled Eastern Europe during the Cold War, we have a situation in Australia in today, where individuals risk going to jail for the crime of selling groceries in competition with the existing retail hierarchy.

Let no one delude themselves, the Australian retail market today is not free, nor fair, nor an open market.