

Motor Trade Association (Inc.)

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Trans-Tasman Study
Productivity Commission
LB2 Collins Street East
Melbourne
Victoria 8003
AUSTRALIA

Motor Trade Association Incorporated ("MTA"):

Submission to Productivity Commission on the Australian and New Zealand competition and consumer protection regimes

1. Introduction

- 1.1 Established in 1917, the MTA is an association of New Zealand's motor industry professionals. We have over 5,500 members representing all facets of the industry, from repair workshops, vehicle sales and service stations to specialists in alternative fuels and outdoor power equipment.
- 1.2 The MTA has two major objectives:
 - a. to help our members' businesses succeed; and
 - b. to protect the interests of our members and our members' customers (the motoring public).
- 1.3 To accomplish the first, we provide information to our members about technological developments and changes to the law that affect the industry. We also provide industry training (both technical and business) to increase the skill levels of our members to help them serve the public better. To fulfil our second objective, we act as a lobby group to Government and other agencies on behalf of motorists and our members. We comment on issues affecting our members, the motoring public, and small businesses generally in New Zealand.
- 1.4 It is with these objectives and background in mind that we provide this submission to the Australian Productivity Commission on the Australian and New Zealand competition and consumer protection regimes. Our key area of concern is the lack of statutory protection for franchisees in New Zealand when compared with the Australian market. The MTA is also concerned with protecting small to medium-sized businesses from the abuse of market power by large companies, for example, independent service stations retailers from the large oil companies.
- 1.5 To this end this submission relates primarily to the difference in the substantive laws around franchisees, the Senate Committee Report on "The effectiveness of the Trade Practices Act 1974 in protecting small business" (the "Senate Report") and the Trade Practices Legislation Amendment Bill 2004 (the "TPA Bill").

- 1.6 In summary:
- a. The MTA supports the further aligning of the policy objectives behind both the competition law and consumer protection regimes. In particular, the policy around the protection of franchisees and small businesses should be aligned.
 - b. In relation to substantive laws, New Zealand should have a franchise code or legislation, similar to the Australian scheme. In relation to the Senate Report and the government response to it, any change to the Australian legislation should be replicated in the Commerce Act 1986 ("the Commerce Act"). The changes proposed in the TPA Bill strengthening the position of small businesses should be introduced in New Zealand.
 - c. The MTA supports the policy options, and divisions, outlined by the Commission.

2. Policy Objectives

- 2.1 The MTA supports the aligning of the policy objectives between the Australian and New Zealand competition and consumer law.
- 2.2 In particular, insofar as the Australian regimes have a specific policy objective of protecting small business, this should also be an objective of the New Zealand regimes.

3. Substantive Laws

- 3.1 The MTA wishes to make submissions on three areas of substantive law, those being the situation relating to franchise law, the Senate Report and the TPA Bill in relation to small businesses.

a. Franchise Law

In Australia it is our understanding that the Franchising Code of Conduct was enacted in 1998 via s 51AE of the Trade Practices Act 1974 (the "TPA"). The Australian Franchising Code of Conduct includes remedies of injunctions, corrective advertising, damages and the possibility of other orders. The Australian Competition and Consumer Commission ("ACCC") is empowered to enforce this statute.

In contrast, New Zealand has no specific laws relating to franchising. The Franchise Association of New Zealand ("FANZ") has its own Code of Practice however, franchisors who choose not to join FANZ, or who are unable to meet the criteria of eligibility, have no constraints on their conduct beyond those which are prescribed by general statutes and the common law. In addition approximately two thirds of New Zealand franchisors do not belong to FANZ, including the world's most famous franchisor McDonalds, because they disagree with FANZ's dispute resolution and other policies.

It is of particular importance to protect franchisees given their generally modest financial resources and, in many cases, lack of commercial experience. These two factors make them vulnerable to exploitation by franchisors.

This is a substantive area of law which is significantly different between Australia and New Zealand. It is for this reason that the Productivity Commission should consider the harmonisation of franchise law on the basis of the Australian model.

b. The Senate Report

The recent Senate Report on the effectiveness of the TPA in protecting small business, along with the Australian Government's response to that inquiry, provide for numerous changes that will help protect small business. Although the final form and implementation of those recommendations have not been finalised as yet:

- i. a similar review should be undertaken in New Zealand looking at the effectiveness of the Commerce Act in protecting small business (in particular section 36); and

- ii depending on the findings of that report, similar changes should be implemented to the Commerce Act as those proposed to the TPA (in particular in relation to section 46).

c. The Trade Practices Legislation Amendment Bill 2004

The Australian Government has recently announced a major package of amendments to the TPA, to improve the operation of fundamental provisions in the Act and to enhance administrative processes that have a major impact on business, particularly small business. These are a direct response to the review of the competition provisions of the TPA, the Dawson Review.

The relevant parts of the TPA Bill for the purposes of the MTA are those in relation to protecting small businesses. In particular the part of the TPA Bill that will reduce the regulatory burden on small business by introducing a notification process for collective bargaining by small businesses as an alternative to the authorisation process. The provision that third parties can make a collective bargaining notification on behalf of a group of small businesses with a specific target will also be of benefit to small business. These new provisions could be used for motor vehicle dealers, motor vehicle repairers (specifically automotive glass repairers and collision repairers), service station owners, and numerous other small businesses. The TPA Bill will also reduce the fee charged for an application for authorisation, which is yet to be established.

The proposed changes to the competition regime for small businesses in Australia should be considered and implemented in New Zealand.

4. Policy Options

- 4.1 The MTA supports the Productivity Commission's analysis of the available policy options. The Productivity Commission has made an appropriate division of the options.

5. Conclusion

- 5.1 The primary focus of the Productivity Commission's study is on the trans-Tasman harmonisation of competition law and consumer protection law in facilitating the trans-Tasman business environment. However, the three areas identified in this submission are important and contributing subsets, relevant to the terms of reference. They should not be 'lost' as part of the wider review framework of this broader inquiry.
- 5.2 The MTA appreciates the opportunity to submit our views on these issues and looks forward to meeting with the Commission when it visits New Zealand later in the year.

Yours sincerely



Stephen Matthews
Chief Executive Officer