Small Business: Should We Protect It?

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Small business is often regarded as the heart of John Howard's constituency. Unfortunately, the prime ministerial heart may go out to it rather too much.

IT has been almost universally accepted that markets, more often than not, deliver better outcomes through the efficient distribution of resources and provide better goods and services than the command-and-control alternatives. The driving force behind the success of markets is competition. Competition generates better products through innovation and provides better value for money for consumers. Competition is the engine of economic growth that underlies our standard of living.

Because of the benefits delivered through competition, many countries have laws that protect the competitive process. Australia is no exception with the *Trade Practices Act* (TPA). Australia's competition laws are, however, flexible. They enable parties to obtain immunity from legal proceedings for arrangements that might otherwise be in breach of the TPA—provided they can demonstrate that an overwhelming public benefit is generated by the conduct that outweighs any anti-competitive detriment caused. One of these types of immunities is known as an 'authorisation'.

NEWSAGENTS: PROTECTING TERRITORY…

One authorisation case that has recently attracted a lot of public attention is the newsagent distribution system on the eastern seaboard of Australia. Under the terms of this authorisation, newspaper and magazine publishers were able to distribute their products on an exclusive basis through newsagents, who each had their own exclusive territory or territorial monopoly. Any other business in a particular territory which also wanted to sell newspapers and magazines had to enter into a sub-agency agreement with their local newsagent whereby the newsagent received a hefty commission on the sale of newspapers and magazines. In other words, unless you were a newsagent, your supply of newspapers and magazines (when they arrived) was completely dependent on your direct competition.

Only after significant political pressure was applied by the Fraser Government to the Trade Practices Commission (TPC), did newsagents receive their original authorisation in 1980. Although the TPC found that the effect of the distribution system on competition was substantially anti-competitive because of the territorial monopoly granted to newsagents, it justified its decision on the public benefits delivered by the newsagents providing a home delivery service. Newsagents have long argued that they require the profits generated by their territorial monopoly, especially through sub-agency arrangements, in order to cross-subsidise their newspaper home delivery service.

> ***Competition is the engine of growth that underlies our standard of living***

Consideration of the newsagents' authorisation was opened up again in 1994 when the Trade Practices Tribunal (TPT) handed down a decision in regard to revised newsagency arrangements in Victoria in late 1994. Although the Tribunal recognised that there was a public benefit generated through the home delivery of newspapers, it found that the viability of newspaper home delivery was not dependent upon a cross-subsidy provided by the territorial monopoly. The Tribunal set aside the revised Victorian newsagency authorisation.

In 1995, after the TPT decision, the Trade Practices Commission decided to review the newsagent distribution system in New South Wales/ACT, Victoria and Queensland. Newsagents could no longer defend the anti-competitive elements of their territorial monopoly on the basis of an overriding public interest. There was also the threat of the Trade Practices Commission revoking their authorisation altogether. So the newsagents began a political lobbying campaign.

It is hardly surprising that newsagents would seek to retain the arrangements that underwrite the profitability and value of their businesses. As the TPT observed about the newsagents: 'There is a particular concern to protect, at least to a degree, the goodwill of existing newsagency businesses'.

Newsagents were able to find comfort in assurances provided by the Liberal and National Party Coalition before the 1996 election. Coalition campaign documents for the 1996 election expressed the view that the authorised newsagency system is in the public interest and will be preserved.

The then Leader of the Opposition, Mr Howard, told the *Sunday* programme before the 1996 election that the Coalition would not dismantle the system as 'I don't think any Australian would appreciate, in the name of

economic theory, getting rid of an arrangement that delivers' (the benefit of) 'your favourite local metropolitan newspaper on your front lawn each morning'.

The only economic theory that Mr Howard could have been referring to in this instance was the enforcement of the *Trade Practices Act*!

Mr Howard, now as Prime Minister, told the Parliament in December 1996 that:

> The Government believes that the maintenance of an efficient low cost home delivery system for newspapers does generate a lot of public benefits and that these offset any anti-competitive effects that may flow (from) any arrangements that are necessary to protect and support the system.

It was unfortunate that Mr Howard sought to perpetuate an argument that had been well and truly debunked by evidence and detailed analysis carried out by the Trade Practices Tribunal in 1994. Obviously, Mr Howard's support for newsagents in the past has been based on less than complete information about the relevant facts.

In November last year, the Australian Competition Tribunal (successor to the Trade Practices Tribunal) handed down a decision which finally set a deadline for the abolition of the territorial monopoly enjoyed by newsagents.

After the Tribunal decision, the Government requested the Australian Competition and Consumer Commission to consult with newsagents and other interested parties over the future of newspaper and magazine distribution arrangements. Who wouldn't mind the ACCC helping to sort out their trade practices difficulties? The prospect, however, of the Howard Government legislating an outcome to protect newsagents from competition still looms large if no acceptable compromise can be found.

It is the legitimate right of the Government to legislate to protect existing newsagency arrangements if it sees fit to do so. If, however, the Government is going to legislate, it should be intellectually honest about its rationale for doing so. In this instance, the rationale behind bestowing legislative protection on the newsagency system is to protect the profitability and goodwill of existing newsagency businesses. Any argument about the maintenance of the newspaper home delivery system will be completely bogus unless and until the Government commissions an independent study that refutes the previous findings of the Trade Practices Tribunal.

Leading opponent—and longstanding critic—of competition policy is prominent National Party Senator Ron Boswell. Senator Boswell described the Tribunal decision on the newsagents as totally unacceptable and said that 'it was time to draw a line in the sand against the actions taken by non-elected bodies … to deregulate simply for the sake of it' and also went on to say 'We have to restore sovereignty over these issues to the Parliament and government who are ultimately responsible to the people for the competition policy processes'.

A creeping tide of small business protectionism appears to be growing within the Coalition Government

Senator Boswell makes competition sound like pretty extreme stuff when it can threaten to undermine the decisions of democratically elected Parliaments. The major flaw in this line of reasoning is that the Australian Competition Tribunal was merely interpreting the law as legislated by the Commonwealth Parliament under the *Trade Practices Act 1974*.

If the Howard Government decided to override the *Trade Practices Act* through legislation to protect the territorial monopolies of newsagents—even though the newsagents have failed on several occasions to demonstrate a sufficient continuing net public benefit with the current arrangements—such a precedent would inevitably lead to other groups calling for similar exemptions from Australia's competition laws.

AND SO TO PHARMACIES …

A creeping tide of small business protectionism appears to be growing within the Coalition Government which is muddling its policy deliberations; a trend apparently spearheaded by Mr Howard himself.

Another group that is seeking exemption from competition policy and competition law is the nation's pharmacists. Once again, Mr Howard has lent his support to the continuation of restrictions on competition in retail pharmacy. Prior to the 1996 election, Mr Howard wrote to the Pharmacy Guild of Australia telling it that:

> the Federal Coalition believes that the tradition of pharmacies owned and operated by pharmacists has served Australia well, and we are committed to seeing this preserved.

As far back as 1979, the Ralph Inquiry found that restrictions on the ownership and operation of pharmacies increased dispensing costs and drug prices, and recommended that ownership restrictions and prescription dispensing should be liberalised.

The 1996 National Commission of Audit commissioned by the incoming Howard Government recommended that:

> Contestability in retail pharmacy should be improved by allowing non-pharmacists, including large retailers such as supermarkets, to own pharmacies dispensing PBS drugs and by allowing pharmacists to own an unrestricted number of pharmacies.' (Recm 4.14, page 55 NCA.)

According to a 1995 Industry Commission report on *The Growth and Revenue Implications of Hilmer and Related Reforms*, there are potential savings of around 15 per cent in retail margins on pharmaceuticals through liberalising current restrictions and allowing greater competition.

With the escalating cost of the Pharmaceutical Benefits Scheme estimated to be over $3 billion to the Government in 1999–2000, the cost saving to consumers from greater contestability in retail pharmacy is not insubstantial.

The Pharmacy Guild, just like the newsagents, contends that the current pharmacy arrangements are in the public interest. The main arguments it uses to retain the current restrictions are that:

- medications are not ordinary items of commerce and are not suited to ▶

being sold in a supermarket environment;
- the level of competition now enjoyed in pharmacy would be reduced under open ownership; and
- outside commercial interests would, ultimately, consume and compromise the pharmacist.

These arguments will be closely examined and scrutinised by a national review of pharmacy regulation due sometime this year.

The Pharmacy Guild is also seeking exemptions from the application of the *Trade Practices Act*. The Guild has called on the Government to:

> exempt the Guild from the provisions of the Trade Practices Act so far as the Guild may issue recommendations in relation to certain pharmaceutical products and in relation to certain dispensing fees.

According to the Guild, it has received legal advice that it would be unlikely to receive an authorisation for issuing such price recommendations. What all this means in plain English is that the Guild wants exemption from the price-fixing provisions of the *Trade Practices Act* and believes that it is unlikely to be able to substantiate any net public benefit under the existing law that would override the anti-competitive detriment of such conduct.

The efficiency gains and potential cost savings to consumers at least deserve to be weighed against the claims of net public benefit from maintaining the existing system.

FOLLOWING ON ...

The initial successes of newsagents and pharmacists have prompted other small business groups to seek special favours and protection from competition. The National Association of Retail Grocers of Australia (NARGA) has launched a crusade against the growth of the major supermarket chains in Australia—Woolworths, Coles and Franklins. According to NARGA, competition and the unchecked growth of the major supermarket chains threaten to tear apart the very social fabric of the nation.

NARGA believes that the growth of the major grocery chains has created an oligopoly that is anti-competitive and which destroys small businesses and jobs in rural and regional Australia. It wants the market share of the major grocery chains capped and reduced, as well as an end to the deregulation of shop trading hours.

Whenever a group perceives a threat to its livelihood then, in the great Australian tradition, it goes running off to government to complain about unfair competition. The great crime committed by the major grocery chains is to provide a service to consumers through convenient shopping hours, cheaper prices as well as one-stop shopping where consumers can obtain most of the goods they want under one roof.

If the members of NARGA were providing such a great service, they wouldn't be losing customers to the major grocery chains as they assert. Nobody has forced consumers to shop with the major grocery chains. Consumers have voted with their feet and dollars in regard to where they want to shop.

Consumers should be allowed to decide for themselves where they want to shop. NARGA, however, wants to shut down much of the retail network of the major grocery chains and force consumers to shop with their members during restricted shopping hours. With people working longer hours, not everybody is able to shop during the 9am-to-5pm hours advocated by NARGA. In April 1998, the community of Bendigo voted on the question of whether to abolish Sunday trading. Over 70 per cent voted to keep the shops open on Sundays.

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There have already been some short-term victories for the NARGA agenda. In 1996, the ACT Assembly legislated to restrict the trading hours of retailers in the larger shopping centres in order to protect small retailers in other shopping centres. In 1997, however, the legislation was repealed after it became clear that the restrictions did not provide a net public benefit.

NARGA has already won a major concession out of the Howard Government with a parliamentary inquiry into the retail dominance of the major supermarket chains. Given the comfort that the Howard Government has given to other small business vested interests, NARGA must be confident that it can have some of its policy agenda adopted as law.

It would be unfortunate if governments in this country confuse the creation of an environment conducive for doing business that will generate jobs and economic growth with the need to protect certain types of businesses.

Last year, the Howard Government engaged in a bitter battle with the Maritime Union of Australia. It accused the MUA of holding a monopoly on the supply of labour on Australia's docks that prevented more efficient and productive work practices. Genuine reform of Australia's docks was surely long overdue.

The Howard Government's attitude towards the newsagents and pharmacists, on the one hand, and to the nation's wharfies, on the other, is somewhat incongruent. Newsagents, pharmacists and wharfies have, however, exactly the same objective—to defend and preserve their privileged position and prevent competition in order to protect their incomes.

No-one likes or appreciates the chill winds of competition when it threatens their livelihood and income. Yet, without the driving force of competition, the benefits delivered by market economies evaporate. Without the incentive provided through competition and the constant need to strive, improve and innovate, our economy and standard of living would suffer from atrophy. Or in other words, our economy would resemble the state of Australia's wharves over the last 40 years. Before governments extinguish the torch of competition, they should very carefully consider the consequences.

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