

Presentation to Australian Business Limited Council Luncheon

Wollongong

"Dealing with Pricing in the Transition to the New Tax System"

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The Australian Competition & Consumer Commission

Introduction

The impact of the Trade Practices Act and the Australian Competition and Consumer Commission has increased significantly during the past decade.

The Commission has more powers and developed a much higher profile under its current Chairman Professor Allan Fels who was first appointed in 1991.

If anyone has not heard of Professor Allan Fels in the lead up to the introduction of GST and the New Tax System they must be operating without a radio or television.

In my discussion with you today, I would like to explain the role the ACCC is playing in encouraging compliance with the Trade Practices Act by emphasising how it can benefit business - especially small business – in terms of performance and profitability.

I will focus on two matters:

- Rights and responsibilities under the Act and how they can benefit small business.
- ACCC role in New Tax System price monitoring

Rights and Responsibilities Under the Act

The Commission has a dual role as:

- A provider of education and information for business and consumers in relation to compliance with the Act.
- A national enforcement agency.

It is this latter role that gains most publicity. But it is the information and support role especially to small business that is gaining momentum as the means of securing wider business understanding and acceptance of good Trade Practices compliance.

The Commission is involved currently in 55 cases before the courts, a record number. However the majority of the Commissions actions do not end up in court but result in

administrative settlements or most often, court enforceable undertakings being provided by the offending party or other forms of mediated settlement.

Two examples which have occurred just this month and which have indirectly assisted the conditions under which Australian businesses compete are:

- An undertaking by the Builders Labourers Federation and a union organiser to the ACCC in relation to secondary boycott against a mobile crane hire firm as a result of threats to various building contractors and sub contractors. The result not only assisted small business in the mobile crane industry in Queensland and those business wishing to use their services but it also demonstrates the ACCC's far reaching presence in regional Australia.
- A leading manufacturer and importer of electrical components HPM Industries has provided enforceable undertakings to the ACCC after misleading claims concerning the country of origin of fluorescent light starters. HPM have undertaken to cease distribution of the misleading packaging, provide corrective advertising and refunds and review business processors to ensure that such errors are detected.

Raising the Small Business Effort

The Commission over the past 18 months has upgraded the level and style of its dealing with small businesses over their rights and responsibilities under the *Trade Practices Act*. The ACCC program of outreach to small business resulted from the Government's decision in 1998 to strengthen the Act and provide resources to assist dealing with unconscionable behaviour by larger business dealing with small business.

The activities of the Small Business Unit in the ACCC and the appointment of a Commissioner responsible for small business, have also focussed on demonstrating to small businesses how to avoid or handle *TPA* related problems well before they require litigation.

The Small Business Unit has developed a considerable network of contacts for getting messages out to small business. The messages emphasise how understanding and compliance in relation to *TPA* matters reflects good management practice and hence assists business success and profitability. It is a pro business message and one which has good effect.

The reality is however is that the new unconscionable conduct provisions under s.51ac of the *TPA* have had to be tested and the Commission has already taken three court cases alleging unconscionable conduct.

I am please to report that only last week on 15 June the Federal Court of Australia granted a declaration against the landlord of Adelaide International Food Plaza finding that it had engaged in unconscionable conduct toward one of its tenants. This was the first such declaration under the new provision s.51ac which deals with unconscionable conduct in commercial transactions.

However many other breaches of the Act involving small business do not result in court proceedings and the ACCC has in various instances obtained undertakings and or compensation to the parties suffering detriment

While it is early days there is a clear indication that the unconscionable conduct provisions and the related provision underpinning the new Franchising Code of Conduct are being taken seriously by substantive larger businesses. For

Discussions with first tier property management have indicated a strong compliance commitment to ensure such behaviour does not occur in areas like retail tenancy. However there are indications that awareness among second and third tier landlords about their responsibilities under the Act is much lower. Two court cases in Western Australia may have significant impact on the unconscionable conduct issue even though those cases are being tried under provisions of the Act which applied prior to the new unconscionable conduct provisions .

It is notable also that over the past two quarters complaints to the ACCC in relation to unconscionable conduct and franchising problems have dropped off.

GST Price Monitoring

GST implementation is the biggest challenge facing small business.

With 1 July 2000 now staring us in the face, business and public attention has been focused heavily on tax related price changes.

For the ACCC the task set by the government is to ensure that, in general, prices will rise by no more than necessary and that tax and cost reductions will also be passed through.

We have every reason to expect this will occur because of :

- the general economic climate and competitive forces
- responsible behaviour by most businesses
- consumer vigilance
- media scrutiny and
- a remarkably strong consumer price exploitation law.

Good results occurred last July 29. When taxes on videos, hi fis, cameras, watches and jewellery fell, ACCC surveys of many hundreds of stores show that they were passed on in full promptly.

All the Parliaments of Australia, Federal, State and Territory have enacted extremely strong laws to counter any possible consumer price exploitation associated with the introduction of the New Tax System.

Although business people are often concerned, even shocked by these laws, the main topic debated in all of these parliaments was whether the laws should be even stronger.

The ACCC is simply applying the law in the manner which Parliament has signalled it expects.

The ACCC has issued Pricing Guidelines. These were prepared in close collaboration with business.

The underlying guideline says that if business taxes and costs fall by a \$1.00 then prices should fall by that amount. If business taxes and costs rise by \$1.00 after taking account of all relevant cost savings, prices may rise by up to that amount. This rule protects consumers, is fair to business and is simple and clear.

The guidelines also provide that there is a limit of 10 per cent on any one price rise due to the new tax system.

Practical Preparations

Apart from developing the Price Exploitation Guidelines our approach has involved

- comprehensive information and education to assist understanding and compliance
- publicity and advertising
- regular surveys of prices since July last year
- Public Compliance Commitments with some of the larger corporates

Public Compliance Commitments

The objectives of the public compliance commitments are twofold:

- To provide the community with assurance that price exploitation will not occur; and
- To provide business with greater certainty as to the basis on which the Commission will review prices.

The public compliance commitments also provide the Commission with a base of information from which to assess margin movements to ensure compliance with the law. The consumer liaison group has indicated the high value they place on this process.

There has been a mixed response to the PCC from business. Those who have participated in discussions with the Commission and proceeded with their commitment have found the process to be effective and the Commission to be helpful. A number of firms received legal advice not to participate in the program. Others have indicated they have chosen not to participate for a number of reasons; resources, the CEO not being confident they can comply, the need for ongoing reporting.

The Public Compliance Commitments are signed by the CEO. This means they are considered at the highest level of the organisation. Most large companies have required sign off by the Board for the Commitment.

A public compliance commitment involves a clear statement of a corporation's intent to:

- comply with the Price Exploitation Guidelines;
- pass on to consumers any cost benefits realised as a result of the tax changes;
- advertise and display prices on a GST-inclusive basis in a manner which is not misleading or deceptive; and
- extend its trade practices compliance program to cover the New Tax System changes.
- The ACCC has examined the methodology used by the corporation to assess the impact of the New Tax System initiatives on costs and prices. Public Compliance Commitments are backed up by the provision of relevant information to the ACCC about the cost changes for the corporation arising from the New Tax System changes. This information would include data on cost savings that should be passed on to consumers, the extent to which cost savings are actually realised and, retrospectively, the extent to which they were actually passed on
- Commitments once accepted are placed on the ACCC's public register.

GST Price Line

The Commission launched its GST Price Line on 14 July last year. The number is 1300 302 502. The primary functions of the service are to provide information to consumers and business and to take complaints about price exploitation. We are also handling complaints and inquiries by e-mail through our website . Current level of calls is 2,000 per day.

Data gathered can help the Commission to quickly target those areas of the economy where problems may be occurring.

Dispelling Some Myths

There has been some controversy over the Commission's handling of the price monitoring role and I would like to correct some misleading impressions relating to:

- allegations of a "price freeze"
- the impact of the price indicators
- publicity connected with businesses under investigation
- treatment of inadvertent mistakes

The guidelines relate only to the effects of the New Tax System on prices. They do not say that business can not raise prices for other reasons, eg, suppliers' cost, supply and demand charges or other relevant matters.

They certainly do not say business prices or profits are frozen for two years. They make it clear the tax changes of themselves are not an opportunity to raise net profit margins, but they do not restrict normal price changes.

The Commission has encouraged businesses wherever possible to separate New Tax System related price changes from other price changes and to explain to customers

how they have adjusted their prices on account of the New Tax System. It recognises that some firms cannot easily separate the elements of price change, eg, some utilities by law have to change prices on July 1 because of other factors.

If businesses link other price rises to tax related ones, there is a higher possibility of some public misunderstanding and a greater possibility of ACCC investigation. Indeed the ACCC may want to satisfy itself that a particular price rise is not just due to the New Tax System. In any event the reasons for and the sources of the changes should be explained.

There has also been some discussion about the Commission's publication of consumer price estimates. On the whole these have had a very good reaction from consumers – and from many businesses who want guidance and who appreciate that if their prices are within the estimates, they are less likely to be investigated.

The Commission has never suggested that the price estimates are the law, or binding on firms. It has simply said that if prices are outside the estimates, there is a greater likelihood of investigation. Prices set above the estimated range is not prima facie evidence of unlawful behaviour.

There has been some discussion about ACCC publicity of alleged offenders. It needs to be recognised that the consumer price exploitation laws contain a highly unusual provision. It explicitly provides that the ACCC may issue certain notices in the media about the process of business. This is but one signal that the Parliament expects the ACCC to apply the law in a public manner.

There have been some unjustified claims that the ACCC publicises outcomes without going to firms first to give them a chance to explain. This is not the case.

The ACCC practice, for many years, has been that when an issue arises, it goes to the firm seeking an explanation before letting the matter become public. Indeed, typically, if it receives a complaint, it does not make this known unless after a considered process it has decided to take legal action or to take some action under the statute, eg, the execution of an undertaking under section 87B or the issue of a price exploitation notice under section 75.

There is a very large number of private investigations that the ACCC has undertaken under the price exploitation laws and (others earlier under the Trade Practices Act competition provisions), where a firm has been cleared and no announcement has been made about these investigations.

What about honest mistakes by small business? The ACCC has been administering the TPA for over twenty five years and has vast experience of dealing with small, as well as large, business in an appropriate and balanced manner when breaches of the law occur.

If there has been a breach, the ACCC makes sure that the unlawful behaviour ceases immediately then it seeks a remedy for any consumer damaged by the unlawful actions. These are the priorities. If penalty is sought, it is generally for deliberate,

blatant breaches of the law and court penalties are usually proportionate to the size of the firm.

Education and awareness

The ACCC Small Business Unit has worked closely with the GST Price Monitoring Division to inform small business networks and provide feed back to the Commission on ways of making Price Exploitation Guidelines practical and user friendly. Our aim is to assist business to achieve maximum compliance and therefore avoid problems.

The Commission has also worked closely with the ATO and the GST Start Up Office in developing material and conducting seminars which will assist small businesses understand their obligations and more importantly how to estimate cost changes and hence net price movements once the GST is introduced.

Our comprehensive education strategy has included a new series of bulletins. 'News for Business' deals with emerging business issues and 'GST Talk' addresses consumer issues.

The Commission recognised the potential for some smaller businesses, in the face of no affordable alternative, to just add 10 per cent. To help prevent this undesirable and possibly illegal action, the Commission has a 'small business pricing kit' to help small business pass on cost savings as a result of the new tax system changes. The small business pricing kit contains:

- a compliance guide to avoid price exploitation under the New Tax System;
- a cost savings estimator; and
- a retail price adjustor.

The **Small Business Compliance Guide** explains in plain English what business must do to comply with the ACCC price exploitation guidelines. It provides many practical examples.

The **Cost Savings Estimator** is a user friendly software package that will enable small business to obtain an estimate of likely changes to its costs due to the New Tax System changes. The cost estimator will be freely available on the Commission's website (<http://gst.accc.gov.au>) or from the Commission's hotline (1300 302 503).

The **Retail Price Adjustor** assists small business to calculate the amount of wholesale sales tax in stock on hand and then adjust the retail price taking into account – cost savings in overheads, the removal of WST and adding a 10 per cent GST.

The Commission has most recently conducted a nationwide field campaign to get the message across to small business especially those in the regions that ACCC staff are available to give advice on GST re-pricing problems.

Conclusion

Sound businesses thrive on strong and vigorous competition and fair and informed markets. That is the ACCC goal.

We are aiming to maintain this approach as we deal with the significant transition to a totally new indirect tax system. Experience when similar tax systems were introduced elsewhere was that confusion and uncertainty lead to unnecessarily large price hikes.

It is in all our interest business, government and consumers alike that price inflation is kept to a justified minimum in the transition period. The smoother the change over, the less fuss businesses will have to address and the more rapid the diminution of the price monitoring role of the ACCC .