

Mr John Hawkins
The Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

7 June 2010

Competition and Consumer Legislation Amendment Bill 2010

Dear Mr Hawkins

I would like to thank the Senate Economics Legislation Committee on behalf of the Australian Chamber of Commerce and Industry (ACCI), for providing us with the opportunity to submit the views of ACCI on the *Competition and Consumer Legislation Amendment Bill 2010* (the Bill).

ACCI represents through its membership over 350,000 businesses nationwide, including over 280,000 enterprises employing less than 20 people, over 55,000 enterprises employing between 20-100 people and the top 100 companies. Our employer network employs over 4 million people which makes ACCI the largest and most representative business organisation in Australia.

In relation to the Bill, we make the following points:

- It is our considered view that s.21 and s.22 of the proposed *Competition and Consumer Act 2010* (to replace s.51AA, 51AB and 51AC of the *Trade Practices Act 1974*) have operated over time in an effective manner. The statement of principles which will now operate through s.21 (4) of the *Competition and Consumer Act 2010* will greatly widen the ability of courts to interpret those sections relating to unconscionable conduct beyond the original intention which was to reasonably limit the misuse of market power while allowing for natural market forces.
- We would question the necessity of s.21 (4)(b) of the Bill, particularly given the new consumer protection provisions given to the ACCC through the *Trade Practices Amendment (Australian Consumer Law) Bill 2009* in the form of public warning powers. S.21 (4)(b) will apply 'whether or not a particular individual is identified as having been disadvantaged by the conduct or behaviour'. It is our

view that the ACCC would be able to overcome this pattern of behaviour through its new power to issue public warning notices rather than add to an already overly complex and excessively long act.

- The amendments to s.50 of the *Trade Practices act 1974* relating to creeping acquisitions will substantially expand the power of the ACCC to limit a process that the Regulation Impact Statement, attached to the Explanatory Memorandum to the Bill, states is "*important for the efficient functioning of the Australian economy.*" The fact that submissions in response to the Government's two discussion papers on the issue of creeping acquisitions indicated, "*that there was no clear consensus of support for any individual model, and views varied as to whether, in practice, there was a substantive problem to be addressed*", leads ACCI to question the need for these amendments at all.

Thank you again for the opportunity to provide comments on the *Competition and Consumer Legislation Amendment Bill 2010*.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Greg Evans', with a stylized flourish at the end.

Greg Evans
Director
Economics and Industry

* *Competition and Consumer Legislation Amendment Bill 2010*, Explanatory Memorandum, pp7