COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT COMMITTEE ON THE RETAILING SECTOR

Reference: Industry concentration in the retailing sector

TUESDAY, 13 JULY 1999

CANBERRA

BY AUTHORITY OF THE PARLIAMENT

INTERNET

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: **http://www.aph.gov.au/hansard**

JOINT SELECT COMMITTEE ON THE RETAILING SECTOR

Tuesday, 13 July 1999

Members: Mr Baird *(Chair)*, Mr Jenkins *(Deputy Chair)*, Senators Boswell, Ferris, Forshaw, Murray and Schacht and Mrs Elson, Mr Fitzgibbon and Mr Nairn

Senators and members in attendance: Senators Ferris and Forshaw and Mr Baird, Mr Jenkins and Mr Nairn

Terms of reference for the inquiry:

To inquire into:

(a) the degree of industry concentration within the retailing sector in Australia, with particular reference to the impact of that industry concentration on the ability of small independent retailers to compete fairly in the retail sector;

(b) overseas developments with respect to this issue, highlighting approaches adopted in OECD economies; and

(c) possible revenue-neutral courses of action by the Federal Government (ie courses of action that do not involve taxation reform).

WITNESSES

ANDERSON, Mr Barry Thomas, Executive Director, Australasian Association of Convenience Stores Inc. 1180

DAVIDSON, Mr Kelly, Butcher, Blackall 1131

FELS, Professor Allan, Chairman, Australian Competition and Consumer Commission 1157

GRIMWADE, Mr Timothy Paul, Director, Mergers and Asset Sales, Australian Competition and Consumer Commission 1157

KEWLEY, Mr Brian, Chairman, Trade Practices Committee, Law Council of Australia 1142

McCOMAS, Mr Robert, Member, Trade Practices Committee, Law Council of

Australia 1142

O'NEILL, Mr Matthew, Senior Policy Officer, Australian Consumers Association 1119

SEYMOUR, Mrs Lyn, Store Owner, Blackall 1131

SEYMOUR, Mr Max, Store Owner, Blackall 1131

SMITH, Mrs Rhonda Lynette, Associate Commissioner, Australian Competition and Consumer Commission 1157

SPIER, Mr Hank, Chief Executive Officer, Australian Competition and Consumer Commission 1157

Committee met at 9.05 a.m.

O'NEILL, Mr Matthew, Senior Policy Officer, Australian Consumers Association

CHAIR—I declare open this public hearing of the Joint Select Committee on the Retailing Sector. I welcome all witnesses appearing before us today. Today's hearing in Canberra is the last public hearing of the committee's inquiry into industry concentration in the retail sector before the committee reports to parliament on 30 August.

I welcome Mr Matt O'Neill. As you are probably aware, the committee prefers all evidence to be given in public but if at some stage you prefer to go in camera, you can make a request and the committee will consider it. However, we give the warning that, at some stage, that evidence may be made public by decision of the Senate. We should also advise you that giving false or misleading evidence may constitute a contempt of the parliament. The committee has before it submission No. 245. Are there any alterations or additions that you wish to make to that submission at this stage?

Mr O'Neill—No, thank you.

CHAIR—We would like to invite you to make your opening statement, at the conclusion of which we will follow up with some questions.

Mr O'Neill—Thank you for the opportunity for the Consumers Association to give evidence this morning. There are two main parts to the opening statement that I would like to deal with: firstly, some of the consumer and price surveys we have done in the past for *Choice* magazine, a publication of the Consumers Association; and, secondly, the issue of divestiture provisions.

Firstly, in regard to the surveys, what we would like to say up front is that we firmly believe that this inquiry should be looking at what is benefiting or costing consumers, reflected by structures of retailing industry, not necessarily where they are small or large businesses. What is the consumer getting out of the current structure? Are they missing out on anything that they should have or in the future would they miss out on something? What mechanisms would have to be in place to ensure that they had every benefit available to them?

Looking at some of the surveys we have done, one was a comparison of 24-hour convenience stores versus supermarkets that were open late at night. We found from *Choice* magazine in April 1998 that the same basket of food in 30 local stores—it was an arbitrary basket; you could choose different foods—was 43 per cent higher in convenience stores. This might be an extreme comparison. If you are looking at particular stores, it tended to be service stations. They may charge a premium price. We would encourage the committee to do their own research or look into collecting that data in the future to see if that comparison still shows gaps there.

Of course, there are other factors that influence people's shopping habits. They may go to convenience stores because it is convenient: it is just down the corner; they do not want to go to the supermarket; they may know the people there—all those sorts of non-financial

issues. But the prices were in fact higher. So the bottom line for that basket was that you would pay more at a convenience store than the supermarket.

The second bit of data was the supermarket prices. We have found that since 1986 prices had fallen on average for baskets of foods and individual foods at supermarkets. Of course, there are some exceptions but, looking at major supermarkets in Australia, over the past decade or so, we have seen prices come down, not increase. There are pockets of Australia where prices may appear to be higher and this may be due to the lack of a competitive discounter in that area. We would certainly mark that for further investigation. But those prices show that they have come down over time.

Looking at supermarket price comparisons, there are obviously things that cause this: price sensitive consumer behaviour; improved transport agreements; economies of scale et cetera. There is also the issue of trading hours and consumer behaviour. A.C. Nielsen survey data that we presented in our submission showed that there was a shift in shopping habits from late in the week—Thursday, Friday—to Sunday trading hours. So the ability of supermarkets or other stores to open on a weekend certainly is something which consumers appear to welcome.

We encourage this committee to look at some of the survey data on consumer habits and what consumers want out of this. What are the benefits and costs for them? Is competition delivering this for consumers? What additional benefits may consumers get out of the current competitive environment? If you look at some of the niches that are being developed, you are looking at financial services and fuel and in the future we may see pharmaceutical products in chemists and large supermarkets. Of course, the checks and balances have to be on the way they are dispensed but those are pro-competitive outcomes for consumers.

The other part I would like to move on to just quickly is a very important issue: vestiture provisions. This provision prevents a business or a company from becoming too large and too dominant in the marketplace. I guess the best known example would be the Bell Telephone Company in the US where vestiture provisions were used to break up that company when it got too large and too dominant in the marketplace.

Another recent example would be Microsoft, if people claimed it was getting too large, too dominant and too much of a monopoly. We suspect that vestiture provisions may never have to be used in Australia and we hope they would not. We would see them as an airbag on a car: you would never want it to blow up in your face but the provisions would be very helpful and very safe if it happened. That would be an extreme provision that would be there as a check and balance in the market operation.

We would certainly encourage the ACCC to develop vestiture provisions and we would assume that there would be a period of public comment and consultation on those provisions to ensure that they not only fitted in with the ACCC but also with community and public desires. In the future they may sit there and never be used, but they would certainly be a check in that place.

We do not think that vestiture provisions would need to be enacted at present, so on balance we do not see a need to put a check, to put a cap on the marketplace, given the pro-

competitive outcomes for consumers and consumer desires. That is not to say it would not change in the future but we are encouraging a check on that—the airbag of vestiture provisions. Those are the two areas of our submission.

CHAIR—Thank you, Mr O'Neill. I do not know whether you have come down solidly to help us. I would just like to open the batting and say that the Consumers Association has been reasonably quiet on this issue. It would appear to us that consumers have been voting with their feet, deciding to frequent the supermarkets in terms of their range of products, convenience and extended shopping hours et cetera, but there are obviously some downsides in terms of their assuming market dominance. If you were sitting on this side of the table and looking at the situation, what would you be recommending us to do? You are the prime group responsible for speaking on behalf of consumers. What basically are you saying? I have heard your comments in terms of the airbag, which was interesting, in terms of divestiture that perhaps should be put in, the provisions for trade practices to be used in event of total dominance of a market. But beyond that, what would you be doing if it was reversed and you were sitting here with us?

Mr O'Neill—That is a most difficult question. I would suggest that monitoring is a key aspect of this procedure from now on and that the public should be educated on what competition means in the retail sector with large supermarkets and smaller players. I am sure that our small convenience store-supermarket comparison would be criticised as not being a fair representation, but that is a snapshot, looking at one aspect to highlight those issues. It shows consumers that this is the way you can shop and, over time, they will make that vote themselves.

CHAIR—It is not really the role of government to say this is what the prices show. I think that fits more into your bag to tell the consumer whether they are worse off or better off in terms of prices in various areas.

What can we do? What should we be doing? You know the scenario. You know that the majors have got a very significant share of the dry goods market. Should we be concerned? Should we be doing something? This is our last day and we are getting down to the wire. This afternoon we are going to be having discussions amongst ourselves.

Mr O'Neill—As you know, it is an emotionally charged issue. For any sector where there are small players and large players, it is difficult. This is not about companies and looking after companies of any size, it is for consumers, and on balance, at the moment, there seems to be benefits for consumers.

It would be difficult for this committee to say, 'There is too much dominance of the retail sector by large players and we need to peel that back.' Peeling that back may retard some of these new benefits that consumers are experiencing in the area of financial services, pharmacies and fuel. They are enjoying greater convenience and greater availability. They will always have the option to not patronise those services if they so choose.

CHAIR—Are you saying that the marketplace is alive and well, that there is a range of prices, a range of products, that prices are competitive and that there is convenience? Are you saying that?

Mr O'Neill—Maybe the key recommendation of this committee is going to be whether to put a cap on it or not. I am not sure about the finer details of what you could do other than that. The Consumers Association has not looked into it in detail. But on the issue of a cap, we do not think that putting that cap on would be justified.

Having said that, that may change in the future. If that dominance increased, those vestiture provisions would take care of that. There may be other submissions in this inquiry that suggest ways that the marketplace can be more friendly to all players in a way that makes consumers happy and delivers what they need.

Senator FORSHAW—If you do not support a cap at the moment—and it seems clear from your evidence that the price to consumers is an overriding factor at the moment—and if the level of concentration increases, the dominance increases, why should it be the case that in the future there might need to be a cap? In other words, let us assume that the three majors had 100 per cent of the market and there were no independents. On your scenario, as long as prices were still cheaper—you may not have anything to compare them with but you could assume that the three majors will still remain competitors—that would be okay.

In other words, if there is some reason other than price to look at concentration, why doesn't it cut in at 80 per cent? Why should it be something that might become relevant at 90 per cent or 95 per cent?

Mr O'Neill—Looking at a percentage cap, it may be more of a case of improper behaviour. If the large players are competing but there is improper behaviour and you see cheaper prices due to economies of scale but consumers were not getting a good deal, then that might suggest improper behaviour.

But looking at the social issues, I guess you would have to look to the community for an outcry and then assess whether the Australian public did not want that to happen. At the moment it seems the consumers are saying, 'We like flexible trading hours and these other services. We would like to see those continue for our convenience.'

Senator FORSHAW—Has your association looked at petrol retailing at any time?

Mr O'Neill—Not in any detail, no. I would not be able to comment on that.

Senator FORSHAW—I wondered whether you came to the same conclusion in respect of the retailing of petrol as you might for supermarkets, but—

Mr O'Neill—Being something that you just put in your car—as long as it does the job; it is hard to evaluate quality of fuel—the price of fuel is certainly very important for consumers. If you look at the imports of CDs into Australia, then you have an issue of the welfare of an industry versus consumers looking for the same quality, the same product, at a cheaper price. We know of retailers of CDs that have put imports out and have put CDs at the regular price out and have let their shoppers determine which ones they buy. The bin of imports, which have been two-thirds or half the price, has been empty. The original products, at the full price, did not stay there. That open market operating there delivers cheaper prices for consumers. Perhaps consumers were paying too much for their CDs for a long time. It

was the Consumers Association's position that we should let parallel imports come into Australia and that they be available, and consumers are voting.

Senator FORSHAW—Just on CDs, one of the interesting things I find—and I visit a lot of CD shops—is that the specialist music CD stores invariably have cheaper prices on the same CDs than you will get at, say, David Jones or Grace Bros, which is contrary to the concept that the bigger stores can deliver lower prices across the board.

Mr O'Neill—I could not comment on the specifics of that.

Senator FORSHAW—But CD prices are all over the place.

Mr O'Neill—That would illustrate a niche opportunity to market those at cheaper prices.

Senator FORSHAW—It is all about consumers too. At the end of the day they will gravitate to those stores, particularly younger people.

Mr NAIRN—Some of the prices that you have provided here are quite interesting. In fact, the limited information you have seems to suggest that, as there has been a greater concentration of market share, prices have just continued to fall. Are these figures that you have provided in the submission across majors, independents, capital cities and regional areas? Is there a mixture? How extensive is your research?

Mr O'Neill—It is data from past supermarket surveys in *Choice* magazine which have looked at supermarket prices in the major chains in major cities, so it does not include smaller retailers. It has shown that, from 1980 to 1994, on average those prices had fallen. That is not to say that in regions, where there may not be a discounter—

Mr NAIRN—What do you class as a discounter?

Mr O'Neill—An extra competitor that may have the perception of being a discounter in the consumer's eye, which therefore provides extra competition. We acknowledge that, and we certainly hope that there would be increased competition in those areas. Of course, if there were vestiture provisions which showed that in the regions there was improper conduct—and those details are to be worked out from here, we would say; I am certainly not the expert on what criteria would be there—then that is something that could be investigated and recommended by this committee.

Mr NAIRN—That is really the key to it, wouldn't you say? From the Consumers Association's point of view it is not so much the market share; it is the competition.

Mr O'Neill—It is looking at pro-competitive outcomes for consumers.

Mr NAIRN—But would you agree that the most important aspect is to have the competition, rather than necessarily who is earning the most from the sector on a national, state or regional basis; it is to have the competition in the area, irrespective of whether it is a country town, a suburb of Sydney or wherever?

Mr O'Neill—We would agree that the key is competition, because that delivers the innovation and the pro-competitive outcomes, and that is across any sector, whether it is large or small. Therefore—interests of the large sector or interests of the small sector—it looks at the outcomes for consumers.

CHAIR—Is there any evidence of collusion amongst the majors?

Mr O'Neill—I would have to say that I am not the expert in that area. We have not gone into that in detail, and we know of no evidence for that. But with vestiture provisions, I would imagine that they would be monitoring those things in the marketplace in any sector or industry.

Mr JENKINS—I note that within the comparisons the basket has changed notably. Is that just a reflection of different lines that consumers wish to purchase?

Mr O'Neill—The basket was an arbitrary basket of what you could expect a family of four to choose. That has changed over time due to the availability of products and, most recently, because we thought that companies may be aware that we are testing particular products and that those products may be discounted and, therefore, skew the accuracy of that data. So that basket will have to change from here on in as well.

Mr JENKINS—So you have made a conscious choice to change the basket to try to retain the integrity.

Mr O'Neill—Definitely, from here on in.

Mr JENKINS—Then how are you going to make the time line comparisons?

Mr O'Neill—It will be more difficult. It would be nice to be able to continue to make those comparisons, but the real risk is that prices may be a bit cheaper each year around the time that we look at our supermarket survey. If they were, then that would skew our data.

CHAIR—The majors told us—they gave us a figure—that prices are lower in real terms than they were in 1972. Do you recall that, Harry? From memory, that was quoted to us on the opening day. Do you remember that? One of the majors said that the prices that we now pay are less in real terms than they were in 1972.

Mr NAIRN—I think we have evidence from a couple of sources that prices have reduced by about 25 per cent in real terms in the last 25 years.

CHAIR—I was just wondering whether that fits with your knowledge. I know there are different time lines and different baskets, et cetera, but do you have anything that can give us—

Mr O'Neill—I could not comment on the accuracy of that data, but merely say that our data also suggests that prices have reduced over time.

Mr JENKINS—This may have been covered by Mr Nairn's questioning, but are you confident that consumers outside the metropolitan areas are actually getting the same access to the benefits that you outlined? Really, your association is portraying very much a 'metropolitan view' of consumer benefit.

Mr O'Neill—There would definitely be a lag period for adoption of, say, extra pro-competitive benefits, which may be financial services, fuel and pharmaceuticals. As with any other business, I would expect that the metropolitan area would be different, due to economies of scale and the number of people as well. We would hope that over time those benefits would be transferred to the bush. The committee may be able to set up a monitoring process to encourage those services to be available to the bush as soon as possible. That is an equity issue, of course, and we are encouraging it all the time.

Mr JENKINS—The question of pharmaceuticals has been at the periphery of this inquiry. What does ACA perceive as the benefit of pharmaceuticals going into supermarkets?

Mr O'Neill—The prime benefit for a consumer would be that when they go to the supermarket they could pick up anything they needed in the one-stop shop. I am sure that they would put up their hand and say, 'That would be easy for me.' The criterion that would have to be there, of course, is that they do not suffer any lack of advice about medical issues. It could never be the case of something just being dispensed or of rules being changed to do with therapeutic goods advertising or promotion, that they could pick up those goods; a pharmacist would still be required to be available to give advice. If there was any lack of service, due to volume of people coming through, and people were suffering—either missing advice or given poor advice—then we would be concerned as well. But it would come down to an accessibility and availability issue.

Mr JENKINS—Does the association have a view then that the professional service element of a pharmacist's role might have to be better remunerated? At the moment, we are getting the PBS on the cheap because the front-of-shop subsidises the back-of-shop professional aspects of pharmacy. In evidence yesterday, Coles Myer seemed to indicate that they have had a look at it and they are not sure that the sums are there just on the back-of-shop professional aspect.

Mr O'Neill—That may be the case. I would not know the details to comment on that accurately, but we could certainly leave it to retailers to decide whether this is marketable for them.

Mr JENKINS—For what it is worth, I think if we are having a one-stop shop with pharmacy, perhaps it should be attached more to medicos and other things to do with the health industry rather than supermarkets. But that is by the by and I apologise, Mr Chair.

CHAIR—No, I think it is an interesting area. Obviously, there are a lot of spin-offs from this inquiry and we could look at various aspects. Senator Ferris?

Senator FERRIS—I think most of my questions have already been covered, thanks.

CHAIR—I suppose it is really the question that competition is alive and well now. From my own anecdotal experience of living in the city, I basically do not hear complaints from people about the supermarkets per se. You go out to regional areas and you do get the direct impact on small stores. Obviously, there is evidence in the city as well, but it is more dramatic in regional areas.

I suppose the concern is that the market share of the majors just continues to climb. At what point do you say, 'Enough is enough. This is going to lead to concentration of the total market in just a few hands, and then there is a possibility that it will lead to higher prices, less choice, et cetera.' You are the prime body that has got that responsibility to look after the consumers' needs. To what extent are you concerned about that?

Mr O'Neill—There is always the potential for that. With the example given of the Bell Telephone Company in the US and Microsoft, there will be a trigger for that—if we have the criteria to know when that trigger might be, whether it is prices or choice. It could be a stagnation on the increase in choice; it could be a reduction in choice in any way. Going through an exercise, which would be to establish those vestiture provisions and have public comment on them, would then provide the answers in greater detail for something that I am sure we are struggling to pinpoint here to satisfy ourselves. So we would see this as the start of a process to do that which would then provide education to not only the retail sector but also the consumers as to when they may miss out, and that would be an excellent learning exercise.

CHAIR—I think there is some inherent attraction in saying, 'We might not use the big stick, but it is there in a situation in the future that may occur and it is putting everybody on notice.' Isn't there the danger, though, that you might have some of the larger firms say, 'Let's move part of our operations offshore so we don't go into that trigger area,' so you stop new investment? It puts a question mark over the viability of the very large companies which are often the driving force of much of what is happening in the economy.

Mr O'Neill—The details as to when they would trigger and when they might move offshore are beyond my expertise. But the risk of not having it is probably greater for the community as a whole, insofar as consumers having accessibility, availability, choice, price, et cetera. It would make sense to have that there. It is something that you may never use. In suggesting it be established, it is certainly not a case of saying, 'Let us bring it out straightaway and start using it and make sure everybody knows about it'; it is there, it educates people in the development of it, and it then may stay dormant for a long time.

Mr NAIRN—You mentioned monitoring before. Do you think that the pure fact that some form of across-the-board monitoring happens is a tool to ensure that unfair and other unscrupulous practices do not take place?

Mr O'Neill—If somebody knows they are being monitored and evaluated, then they may be wary and stay between the lines. I do not know which party would do this, but fitting together the data, which I am sure you have received—we have presented some data on what is happening; other parties have presented data too—there may be a pattern, but is there the potential to have some monitored data reported to the public? Wherever we are working these days, we are looking at people setting up web sites and being accountable and,

therefore, presenting data on what is happening in the marketplace or in complaints resolution, et cetera. Once again, I am not sure where it would fit, but something could be reported back to the public, so everybody can see, which would then reduce the potential for different bits of data being thrown in all the time.

Senator FORSHAW—We used to have the Prices Surveillance Authority—which, I have to say, was probably the most useless body that ever existed.

Mr NAIRN—It depends on how you use these things, I guess.

Senator FORSHAW—The problem in many cases was that the information would be supplied, but the next question was: what do you do with it? Applications for increases in prices in petrol—

Mr NAIRN—At the moment there is a body that monitors fuel prices in country areas, for instance. Monthly, they publish the average fuel price in a variety of towns all over Australia, which I think is good. I keep looking at that because there are two or three towns within my electorate where I am constantly told that the price of fuel has been at certain levels, and I have been able to say, 'Hang on a minute. This is what they actually have been.' The biggest problem is getting that information out. I am thinking along the same lines as far as supermarket prices are concerned. For instance, all of the majors tend to suggest that they have this constant pricing, no matter whether you are in an urban or a regional area, and there should only be slight differences because of freight and a few other minor things. That would be one way of ensuring that they kept honest in that respect.

Mr O'Neill—It would enable consumers to then decide whether they want to provide more feedback on the issue. *Choice* magazine does this all the time. Every couple of years when our supermarkets survey comes out, it gets an awful lot of attention. When the ACCC take people to court, it gets an awful lot of attention as well. That is somewhere in between. It is like a consumers association jumping up and down. It is like the ACCC taking action. Somebody reporting on data allows people to send a message back to the stores. Then stores can decide whether they put that price on at the risk that people may think, 'I am paying more than the other guy. Why is that the case?' Or would prices be absorbed and become an average price—

Senator FORSHAW—I am sorry to interrupt you. I do not disagree with all of that, but the flip side of this is that it also happens, for instance, in bank charges and bank fees. There is a big public uproar, so we go through this procedure of saying, 'Let's do an analysis.' At the end of the day, what happens? Nothing. I am being a cynic. I am not knocking the concept, but—

Mr NAIRN—That is not necessarily the case. Consumers probably shift banks and all sorts of things as a result of the publishing of that data. I think that consumers have become a lot more aware—

Senator FORSHAW—But the point often is—we can have this debate ourselves—if it is intended to somehow stop activity by companies, having artificially inflated prices or

trying to drive those prices lower, I just do not think that it works, because I do not think it has worked with the banks and I do not think it has worked with petrol.

CHAIR—Senator Ferris and I have been having a side discussion here about how best to monitor prices so that when this inquiry is over it does not disappear into the ether. How do you get control? Who does the ACCC report to here? Is it the Attorney-General?

Mr NAIRN—The ACCC reports to the Treasury.

Senator FORSHAW—It is an interesting question as to why you want the monitoring. A lot of monitoring can be done by ACA or by anybody you like. What is the purpose of the monitoring? Is it to gather information or is it supposed to lead to some consumer benefit? That is what I am trying to understand. Where this has happened under different models, generally the evidence has been that, at the end of the day, it is not a mechanism that leads to lower prices. People monitor what is Australian made and what is not Australian made, and that is all terrific, but what is the end benefit?

CHAIR—I think there is truth in that but, on the other hand, where in the parliament do you get an ongoing oversight of what is happening in the retail sector? Should we have one?

Senator FORSHAW—Contact the library! Seriously, the information can be often obtained. But what is the next thing beyond the monitoring?

Mr O'Neill—With the banking industry—and I know it is pure speculation—if consumers and consumer groups were not outraged, and we did not look at prices and tell people about it, would fees be introduced at a faster rate?

Senator FORSHAW—That is a benefit, yes. I appreciate that.

CHAIR—Would aberrations and so on occur? It is something for us to kick around when we get into deliberations this afternoon, and you have given us something else to think about. There are elements in what Senator Forshaw has raised. You can just imagine committees having reams of stats produced.

Senator FORSHAW—I think we would give more funds to the consumers to do this work.

CHAIR—That is right. Privatise it out; my word. We are moving in the right direction here. The whole of the consumer dimension is interesting in that consumers seem relatively satisfied at the moment but things can quickly change. We appreciate your input and your thoughts.

Mr O'Neill—Thank you very much.

CHAIR—Just before we finish: what do you think about the idea of having a retail ombudsman so that complaints can be referred to such an individual?

Mr O'Neill—A mechanism where consumers can voice their concerns would be welcomed. Whether that is an ombudsman at that level, and the image that creates, I would not know the answer to that one today.

Senator FERRIS—But you would see it as an independent operation within perhaps a wider sector of government where there could be rapid response to people who complain of, for example, what they believe to be unconscionable conduct or issues such as predatory pricing or some of the issues that were raised yesterday in relation to labelling and so on?

Mr O'Neill—With those issues you have mentioned, if criteria were worked out to be something that would trigger a lower level vestiture provision, which it would be when there is improper practice in the marketplace, there needs to be some system whereby data is collected so that we know whether that is happening. I think the collection of that data, combined with the vestiture provision, would be a disincentive for the—

Senator FERRIS—And a reporting mechanism to the parliament in some form or another.

Mr O'Neill—It would certainly provide a mechanism to discourage potential catastrophes in the marketplace down the track.

Senator FERRIS—It would also be a bit of a stick in the cupboard. When the reporting function took place to the parliament, I have no doubt that the majors would not want to have their name consistently appear as being accused of or found in some way responsible for unconscionable conduct of one form or another.

CHAIR—Or pricing information questions that appear in various markets. We are struggling with how this ombudsman works in the banking sector, where it has a fairly mixed record. The ACCC takes on the major issues, and once every couple of years they have a win but the benefits do not flow to the retailer who has been aggrieved. Often they have gone out of business and there is no ability to recompense them for it. How do we deal with a lot of the day-to-day stuff more quickly; that is what we are trying to grasp?

Mr O'Neill—We sense a general frustration on the part of consumers with those smaller issues in that the ACCC, like you said, deals with the bigger issues. Fair trade in each state tends to be very reactive in dealing with issues as they come up, but there is not necessarily a systematic collection of data, and then presentation back and accountability to the constituency, which is the public.

Senator FORSHAW—I make one other comment which relates back to our earlier discussion. Where I think this concept of monitoring and the sort of work that your organisation does is valuable is in testing, say, advertising. If a company advertises that its product does this and this—

Mr O'Neill—A grilled chicken burger?

Senator FORSHAW—That is right. It is exactly that—or that Franklins has the lowest basket of prices or that X store has the cheapest prices on such and such, that sort of task is

worthwhile, if only to keep honesty within the system. I think *Choice* does that sort of thing but more in terms of what the product is supposed to deliver as distinct from what it does.

Mr O'Neill—But if *Choice* were to come out in the future and they were the only voice on that then that would reflect on government as well. If people expect their government to have some mechanisms in place then there is—

Senator FORSHAW—I am not suggesting you should do it all but that concept is valuable. The grilled chicken burger is an excellent example.

CHAIR—We have got to start working through our recommendations but, if you want to respond to that, we invite you to do so as we would invite other groups that are here assembled to comment on such suggestions.

Mr O'Neill—We would certainly welcome the opportunity to do that.

CHAIR—Thank you.

[9.48 a.m.]

DAVIDSON, Mr Kelly, Butcher, Blackall

SEYMOUR, Mrs Lyn, Store Owner, Blackall

SEYMOUR, Mr Max, Store Owner, Blackall

CHAIR—Welcome to our witnesses who have joined us via teleconference. Do you have any comments to make on the capacity in which you appear?

Mrs Seymour—I am speaking on behalf of our business about the industry concentration for small independent retailers in remote areas and the impact that is going to have on us.

Mr Seymour—I am joint owner in the business my wife has just mentioned.

Mr Davidson—I am here to represent small business in general in the retail area.

CHAIR—The committee prefers all evidence to be given in public. The setting here in Canberra is that we do have an audience listening to you. We have representatives here from the major supermarket groups, from various grocery and small business organisations, and there are the committee members.

If at any time you prefer to go in camera, which means to have your comments made private, in confidence, you can ask the committee and we will close off the meeting, ask our audience to leave the room and then your comments would be made confidential. The only proviso I would make to you is that the Senate at some stage in the future may decide to make your comments public. That is reasonably rare but I should make that provision. It is also important to inform you that the giving of false or misleading evidence may constitute a contempt of the parliament. It is a formal parliamentary inquiry so all the normal rules associated with that apply. The committee has before it submission no. 298. I believe that is from you, Mrs Seymour?

Mrs Seymour—That is correct.

CHAIR—Are there any alterations or additions that you wish to make to the submission at this stage?

Mrs Seymour—No.

CHAIR—I now invite you to make an opening statement. At the conclusion of your remarks we shall proceed to questions. It is important that every time you speak you should state your name. For example, if I am going to make a comment, I will say 'Bruce Baird' and then I will proceed and make the comment. Could you also speak into the handset to make your voice clearer when making statements because the quality is not as good as it should be here.

Mrs Seymour—You have the upper hand on me here inasmuch as I do not know who else is there on the committee.

Mr JENKINS—We will introduce ourselves.

Mrs Seymour—That would be helpful.

Mr NAIRN—I am Gary Nairn. I am the federal member for Eden-Monaro, which is in south-east New South Wales.

Senator FERRIS—I am Senator Jeannie Ferris from South Australia.

CHAIR—I am Bruce Baird, the member for Cook, which is in southern Sydney.

Mr JENKINS—I am Harry Jenkins, the member for Scullin, which is the northern suburbs of Melbourne.

Senator FORSHAW—I am Senator Michael Forshaw from New South Wales.

Mrs Seymour—Thank you. What I would like to put forward today is what we as retailers in remote areas—in our case, Queensland—are facing and the impact that the introduction of large corporations and the pricing structures that they are about to embark upon is having on us.

Firstly, we live in an area that has approximately 2,000 people. It is an area of rural industry. Our business is not rural, we are a small business, a retail department store. There are approximately 140 small businesses in our town. That is everything from a mending service through to our retailing department store. It includes grocery shops, butchery shops and chemists. We have a reasonable cross-section of businesses here.

However, what we are experiencing in our store—and I know plenty of our colleagues in other towns of a similar size and in similar locations across the state and beyond the divide to some on the other side—is that the large corporations are not refusing to supply to us but are making it so difficult to supply to us that we are no longer able to maintain accounts with them. They are putting quotas on us by way of the number of units we need to purchase or by way of a monetary value—that is, you have to meet a certain amount each annual financial year and if you don’t meet that amount of money on your account they will either cut your account or they will sell to you—in the case of one company—at 10 per cent less than the retail market price, which means by the time we get it here and before we unpack the box to put it on our shelves we are running at a loss.

CHAIR—Can I interrupt you there. Which wholesaler do you deal with?

Mrs Seymour—I have approximately 400 companies that I deal with through my store.

CHAIR—So you do not deal with a wholesaler like Davids?

Mrs Seymour—No. Thanks for raising that in as much as we are very different from supermarkets. That needs to be understood because that has been a major confusion when I have raised it. Immediately everybody says, ‘Why don’t you join a buying group?’ That is supposed to solve all but it solves nothing.

We are part of a buying group called Frontline, but they do not act in the same capacity in our retailing sector as they do in the supermarket sector. For example, here in Queensland, if you have a supermarket, I know you can buy up holdings or an equivalent. In ours, Frontline simply is an administrative service that tries to encourage wholesale suppliers to become part of our buying group. In so doing, we get perhaps a 2½ per cent discount if we buy from them. That is our benefit as a retailer. Their benefit as a wholesaler is that they have access to many other customers such as ourselves, being retailers. That is the benefit of it, but there is no one large shed—holdings, for example—that we can go to where I could buy my dresses, my menswear, my saddlery, my luggage, my lingerie, my shoes, my giftware, my workwear, et cetera. There is no one holding. We have to deal independently with wholesalers. There is no such thing as going to one large shed.

That is where we differ very significantly from a supermarket. That is the problem we face. For example, some of those wholesalers have got to such a size that they do not need size any more, I guess, and they are imposing conditions to meet the criteria. So we no longer have an account. In dealing one on one, there is not much you can do about it. The effect of that on us is this: when people come to the store and cannot buy a certain brand of jeans, for example, they go elsewhere to get them—and rightly so. That is okay to a point, but while they are there to buy their jeans they also buy their underwear, their socks, their work shirts, perhaps their hats and their work boots—all the things that we supply and that they would normally buy from us quite happily. But because they want to get it all done in one hit, if we cannot provide those jeans, they will go where they can get it all.

What is happening is that the money is moving out of our community very quickly. It is happening more and more, so we have got less and less. Employment is dropping and our sales are dropping. It is not as though we can afford to carry on ourselves when the turnover rate is also dropping. The whole cycle is becoming very vicious.

CHAIR—Do you have any more to say at this stage, Mrs Seymour? Do Mr Seymour or Mr Davidson wish to make a statement?

Mr Seymour—In short, what we are very concerned about in our town is that the less we have, the more likely these small country towns will dry out.

CHAIR—We are having trouble hearing. Could you please get closer to the handset?

Mr Seymour—We are trying to trade in a small country town with what we consider to be unfair dealings. We believe that small country towns are going to lose the opportunity to have small businesses in them. If certain businesses close down in small country towns, then the towns are going to mail or email—

CHAIR—We are having trouble with the sound. The words are dropping out. Let us press on and see how it goes. It is not as good as it should be.

Mr Seymour—That is about as much as I have to say. I would like to emphasise that we are very concerned, as a small business, to provide a service for country towns—in other words, to provide the stock that we ensure having here today.

Mr Davidson—We are all on the same wavelength. If we lose business, it will be, as Max says, because of emails and that sort of thing, so that we cannot compete on the same rate. By the time you freight the gear out to here, it is getting very dear for us to sell. We are small businesses here; we create a fair bit of employment in regional towns like this, and these sorts of things are going to dry up unless we can keep our prices competitive, and that is where we are running into trouble. That is about as much as I have to say. Thank you.

CHAIR—I think we have the feeling, Mrs Seymour, Mr Seymour and Mr Davison. Senator Forshaw is an expert at shopping so I am sure he is going to ask the right questions.

Senator FORSHAW—Thank you for your written submission, Mrs Seymour. I found it excellent. The issues you have outlined are ones of concern. We have not had this sort of evidence as much as evidence on a lot of other issues. It was very welcome to get your submission.

As I understand it, one of the major problems you are having with the big manufacturers—you have mentioned R.M. Williams, Levi and Nike—is that they are not really interested in supplying goods to your store in a remote location because your orders are not big enough. You indicate that you deal with some 400 different companies. Is this a problem right across the goods that you are purchasing, or is it confined to particular companies such as the ones you have mentioned? I am trying to get an idea of the scale of the problem that you are facing.

Mrs Seymour—When we moved here four years ago, the first one we were faced with was Nike. They would not even open an account for us. There had been an account here in the store when we purchased the store. Their reason was that we were too little. We swallowed that and went elsewhere and found an equivalent product, but we did lose business over it because people liked Nike, I guess, and had been used to getting that product. Six months later Levi joined the bandwagon and in December 1996 we lost Levi. As late as this year it was R.M. Williams. The picture I am trying to paint here is that it was Nike and then Levi—and then R.M. Williams was the last straw for me. I also know that Adidas and Puma are refusing to open accounts for people as well. We have an account with them, but that is because they are preferred suppliers for Frontline and we had an account with them. If we were independent, we would not be able to get an account with Adidas or Puma. Adidas brought that in about 18 months, maybe two years, ago. I am not exactly sure about the date, but they were not opening any more accounts.

The pattern I am trying to create for you is that it is happening more and more frequently. At the end of the day, as the money keeps moving out, so do the people, because we cannot afford to employ people. It is not just us; it is other businesses as well. Our need to put things on ourselves is going to get less and less; therefore, our account is going to become smaller and smaller, but our problems are going to get bigger and bigger.

Senator FORSHAW—Thank you. It is interesting that the companies you have mentioned are all providing a similar product—jeans, shoes, sporting footwear. Are all the products you sell freighted in to Blackall or do you have to go and collect them from a warehouse or from a regional or city store?

The evidence was then disrupted because of poor transmission—

Mrs Seymour—With our system, the majority of places we deal with are based out of . . . followed by New South Wales and then a minority in Brisbane. Generally, what happens is that the majority of the companies we deal with, they do 'free in the store in capital city'—FISCC. You may or may not be familiar with that term. Then we have to pay the freight from Brisbane to here, which is approximately . . . kilometres out. The cheapest fee we can get for freight is $15 a box. We would probably average 30 boxes a day. I think the most we have paid is $90 for two boxes joined together. And, no, we cannot go and get them unless we are willing to drive 12 hours each way, and I am not willing to do that.

Senator FORSHAW—Thank you. I am not sure whether we got all of that.

CHAIR—I wonder whether you could turn your mobile on. The technician here at Parliament House would like to speak to you. Please do not let that interrupt the conversation and discussions with Senator Forshaw. If you just turn the mobile on, we will proceed.

Mrs Seymour—Which mobile are you talking about?

CHAIR—Your mobile.

Mrs Seymour—We do not have mobiles out here.

CHAIR—That reminds us of the realities of country life.

Mrs Seymour—Yes. The reason I did not want a teleconference is that the health services out here are having difficulties right now.

CHAIR—That idea has been squashed, obviously. Let us proceed with Senator Forshaw.

Senator FORSHAW—I have no further questions. I think I understood you to say—and just say 'yes' after I have made this statement—that you pay the freight for the goods to be transported from Brisbane to Blackall and that it is too far for you to go and get them yourself.

Mrs Seymour—Yes.

Senator FORSHAW—Since you cannot supply these goods because the companies will not supply you, how far do the residents of the Blackall area have to travel to the nearest place to purchase these types of goods which you cannot now sell?

Mrs Seymour—The children may travel up to Longreach to the School of Distance Ed. That is about two to three hours, depending on how far out of town they live. It can be three or four hours there—or south, about six hours. Alternatively, they can walk to their phone, pick it up and ring whomever and get it posted out to them, which is what a lot of them do. With the advent of technology, some of them use email services.

Senator FORSHAW—Thank you for raising that issue, too. It is an issue of concern for a lot of businesses for the future, particularly small businesses in remote areas.

Mrs Seymour—Thank you.

Senator FERRIS—I have a couple of questions. The first relates to whether it would be possible for you to group together with another supplier in your region to enable you to purchase a greater quantity of the goods that we are talking about so that, without going through the buying group, you could form an informal buying group with perhaps one or two others in your region to satisfy the demands of these suppliers.

Mrs Seymour—In answer to that, I was not sure earlier whether I could use company names. I gather that I can. I will give R.M. Williams as an example. They have policies about this. I am not sure of the words here, but I know that Levi will not permit you to—to use the term that we use—'piggyback' the retailer. If a retailer is found to have done that for another retailer, they will lose their account because that is against their policy and they do not permit that. R.M. Williams's terms and conditions state a similar thing—not so blatantly but, reading between the lines, they are inferring that.

Senator FERRIS—Would you be satisfied with perhaps paying a little more of a service charge to these suppliers if they were able to continue to supply you with a smaller range or quantity of their goods? For example, we have had some evidence suggesting that there are two methods of billing a retailer depending on the quantity of goods that they buy. This was in the food sector. I am just wondering whether, in the case of goods such as we are talking about this morning, you as a retailer would be prepared to pay a small loading—either an accounting charge or some other cost line—to that manufacturer if they were prepared to supply you with a smaller amount of merchandise.

Mrs Seymour—We already do something similar to that in our manchester department. With a lot of the goods, for example, you have to buy 40 towels, a pack of 60 single sheets or whatever it might be and, of course, we do not need those quantities. We usually pay $1 per towel or $1 per sheet extra. It is just a packaging thing that the wholesalers require because they have to split a box and repack it. We are more than happy to do that—that is not a problem—and we would be equally happy to do that with clothing, but they would not have that same justification.

However, my concern is that I believe R.M. Williams already operates a similar system but they are suggesting 10 per cent below the retail cost of the goods. For example, a pair of R.M. Williams longhorn jeans—whether or not people down there are familiar with these I do not know; they are fairly commonly sold and worn down here—currently retail at R.M. Williams's recommended retail price of $79.95. I would be buying them at 10 per cent less than that, which is approximately $72, and then putting them on sale for $79.95. By the time

I have paid to get them here, made the phone call to do the order or faxed it down, and then they might have sat on my shelf for six weeks, eight weeks, three months, five months or six months, I am out of pocket well and truly.

Senator FERRIS—Yes, I certainly understand the point you are making. Have you spoken to anybody at the ACCC about this issue?

Mrs Seymour—I rang the ACCC very hesitantly because I had received advice from two other groups that that was an option for me but both times I had been warned that, if I contacted the ACCC and they acted on my behalf, the companies I was reporting on, if you like, might feel very uncomfortable about that. In fact, I was told that I might lose the accounts. This advice was not based on them having been told that that was how these companies would act, but I was told as a safeguard to be wary.

When I did ring the ACCC, I was given a lot of assistance by way of information, but my reaction was, 'No, please don't do a thing because I can't afford to lose the account.' They feared that the same might also happen, when I spoke to the gentleman at the ACCC.

Senator FERRIS—So, although they recognised your problem, they were not able to suggest anything that you could do without potentially damaging your relationship with the supplier?

Mrs Seymour—With the potential of that being there; yes, that is correct.

Senator FERRIS—Can I just turn to one other issue which I have a great interest in, that is, the opportunities for training and upskilling for young people in remote areas of Australia. I notice you have mentioned that in your report, but on the final page, under point 3—which goes across to your final page—I think there is a typographical error. You talk about the cost for somebody to have their employee attend from a remote area but, for the cost for an employee to attend from the south-east corner, you have simply got a whole series of noughts.

Mrs Seymour—That is correct.

Senator FERRIS—You are saying that it would cost nothing at all?

Mrs Seymour—I factored in the costs—the costs that I looked into—to that $4,000; I have not made those figures up. We wanted to send one of our employees down to do visual merchandising, which was window displaying, which is very important to our business. The course was offered on two days a week over a three-week period. We have got—and I travelled home last night on it—a 15½-hour bus trip one way to get there. We would carry that cost; I certainly do not expect the employee to pay that. Then there is the cost of food, accommodation and replacement staff. The only cost that I was not able to factor in that a south-east corner employee might have was the cost of the course. I have not factored that into my employee cost either. That was what it was going to cost for transport, travel, replacement staff and time away from work over a three-week period.

Senator FERRIS—So you are not actually saying that it would be subsidised; you are saying that it would be paid for totally?

Mrs Seymour—I do not understand your question.

Senator FERRIS—What you are suggesting, I think, is that people who live in remote areas who could benefit from upskilling like this should be able to have their total costs absorbed or paid for by another party.

Mrs Seymour—We would be greatly appreciative of a subsidy. For it to be paid for totally would be fabulous, but we are fairly realistic out here and we know that that is probably a pie in the sky notion. That is why we are asking for subsidised training packages. What we are trying to do is retain our young people out here and give them an equal opportunity to their peers in the south-east corner. As it stands at the moment, we cannot provide that for them. We do not have a hope in Hades of doing that for them. So what is happening is that they are moving down to the south-east corner because they, too, are concerned for their future careers.

They cannot get that training here, so they have to go down there to get a job to have access to those educational facilities which are not available here. They are not available in Longreach, which is two hours away, and they are certainly not available in Roma. As late as last weekend I spoke to the RAQ, the Retailers Association of Queensland, and asked them about training packages—what was available and whether there was any subsidy or way that they could help us; I got a 'no'. They said that, if I could rally enough interest from people in areas such as Longreach, Winton or wherever, they might consider going to Roma, but we would have to pay all costs. That was as close as I could get, but that was with no commitment.

Senator FERRIS—This is slightly outside the terms of reference for this inquiry, but it is certainly an issue that we as a committee could take up perhaps with the minister for education. It is very obvious that your young people are fundamentally disadvantaged in terms of upskilling.

Mrs Seymour—Exactly.

Senator FERRIS—I think that is very interesting evidence and it is certainly something that we could take up, but I do not have any other questions. Thank you for your evidence.

Mrs Seymour—Thank you very much.

Mr JENKINS—Mrs Seymour, you mentioned the Frontline buying group.

Mrs Seymour—Correct.

Mr JENKINS—You said that it gave you access to accounts, for instance, with Adidas and Puma. Does it give you access to better trading terms with those companies?

Mrs Seymour—It gives us access to better trading terms in that we can attract a discount from them. So, for example, on our whole bill we might get 2½ per cent discount and generally that little bit of discount can cover our freight. That is about it. Some of the other things that might come up are, for example, that sometimes they will run a Frontline special, but that generally happens in the manchester section. For example, they might run specials on doonas but, once again, if you want any of those specials, you have to buy large quantities. Puma, for example, run a socks special—pardon me for being so mundanely specific here—about twice a year and you have to buy, I think, 160 or 180 pairs of socks. That is a lot of sports socks for us, but we run the gauntlet and get them anyway. You get about $1 or $1.50 off a pair of socks at a wholesale price. We can then put them out as a special and that is something that will sell for us.

Mr JENKINS—I might have misunderstood your opening statement, but I thought that you gave some indication that there was a downside to the buying group.

Mrs Seymour—You may have misunderstood me and I am sorry if I have misled you. The only downside to the buying group is that it is different for the supermarket section. I know, for example, that the supermarket here places one order a week with one company. They might deal with two or three others if they are into specialty goods in the delicatessen area, but predominantly their one grocery order requires one phone call to stock their shelves—and that is through their buying group, Davids Holdings, or whomever. Whereas with our business, for every product that we want, we have to go to a different supplier. For example, we carry about six different lines of jeans and that is six different suppliers, whereas you can carry three or four different brands of baked beans but you will get them all through the same supplier.

Mr JENKINS—I understand now what you indicated to us earlier. With the three examples that you have given us, it is really the end of the story now, isn't it? There is no way that you can get access to those companies?

Mrs Seymour—We have not lost R.M. Williams yet—their cut-off date is 1 July 2000—and we are going to try to do some 'creative buying'—I think that was the expression used or suggested—so that we can increase our account with them. That is all very well for this year but, if a drought hits us out here next year, we will be down the gurgler, literally, with that account. I was speaking to colleagues on the weekend who, had that rule been applied last year, would have well and truly lost the R.M. Williams account. This last financial year they are fine. They have made the $5,000 mark and, if it is a good season this coming year, which they are hoping, they will manage to retain it for another 12 months. But if the rain does not fall where and how the growers would like it to fall—and the growers are their customers—they will not make the sales in that particular area of their shop and they will lose the R.M. Williams account, or they will have to buy the goods at 10 per cent less the retail price.

So it is as fickle as that. We are at the mercy of the gods here when it comes to that sort of stuff. When you get large corporations dictating rules like that or—and I heard the previous speaker, who was speaking on behalf of the consumer—putting everything under the one roof, it does not help or support the retailer, particularly in remote areas where we

have a lack of population and limited customer supply. That sort of thing will just absolutely cruel us.

Mr JENKINS—That is the end of my questions. Thank you, Mrs Seymour. It is very helpful for a representative from metropolitan Melbourne to get such a good expose of how difficult it is for you to trade in a remote area like Blackall.

Mrs Seymour—Thank you.

CHAIR—Just to finalise the questions from a metropolitan member in Sydney: you have set out in your paper the areas of government assistance. Do you want to just briefly review them with us? I know that you have already discussed one of them with Senator Ferris, in terms of subsidised training packages. In terms of the other items, do you want to briefly go through them as we conclude our session this morning?

Mrs Seymour—Certainly. I will speak to the first one, the changes to the Trade Practices Act. I guess that we are asking, and it was coming to my mind when I heard the previous speaker, that we make allowances for small business in remote communities. I can see merit in the rules that might apply to the bulk of the community in the south-east corner of Queensland, but out here they are a noose around our neck. I am asking for an exception to be made where you have got small businesses in remote communities—that those rules do not apply here. In our case, immediately, for our business, I am asking that those large corporations not be allowed to refuse to supply us. So long as we are paying the account, I do not see that it is legitimate, equitable or reasonable for those companies to say, 'No, we are not supplying you; your account is too small,' when we are happy to pay.

At this point in time, my brief understanding of the Trade Practices Act is—and I got this from the ACCC—that I should feel very grateful that they are supplying me at all because they do not have to. In this country, no company has to supply me. So, for that reason, I am asking for the Trade Practices Act to be changed such that they cannot refuse, unless it is based on something. For instance, if someone is not paying their account, then so be it—they should not be supplied. But, if you are operating legitimately, regardless of quantity, within the terms of that company—excluding quotas, be they financial or numerical—then we should be able to access supply from any company we wish so that we can provide services for our customers. As it is at the moment, we and our customers are being treated like second-rate citizens. Do you understand what I am asking for and why?

CHAIR—Yes, certainly. Is there anything further you would like to add in terms of the areas that you feel the committee could act on?

Mrs Seymour—In regard to the Trade Practices Act?

CHAIR—Yes.

Mrs Seymour—No. Basically, just that we should not be prejudiced against because of the smallness of our account and they should not have that dictatorial right, if you like, to be able to choose whom they wish to supply to.

CHAIR—We take that on board. Your second recommendation—the development of government infrastructure—is a wider issue. Senator Ferris has agreed to take up the training issue and we will raise that with the federal education and training minister. Your fourth recommendation reads as follows:

Encourage manufacturers, wholesalers, distributors to consider an 'indirect' cost to all items of produce to assist retailers and, of course customers, (statewide) with freight.

I suppose that is the other side of the issue that you were talking about in the initial part of consideration of your remote circumstances, and we take that on board. Another of your recommendations reads:

Encourage banking institutions to incorporate and consider "Small Business" in times of drought and other significant times of economic despair.

I think that has been part of banking inquiries in the past, and I think it is an interesting comment. Our focus is more directly related to the retail sector and the problems that exist within that sector. Then you mention the equal opportunity commission. Is there anything finally that you wish to add, Mrs Seymour, Mr Seymour or Mr Davidson? Would you like to summarise what you have been saying today?

Mrs Seymour—There is one other issue, if I may, which was raised earlier this morning by the previous group. It is a very important one for us, and for all small communities. The big three are putting in things like meat sections. Coles and Woolies have their own butchers, so that is fine, but we have smaller independent groups in regional areas, not remote areas, that are putting in meat sections, and pharmaceutical sections too if they get the go-ahead. What safeguards are put on them?

If I can just refer to the butchering sector, they have stringent criteria that must be met, and accreditation standards, before they can open their front door, yet we see small supermarkets joining buying groups and putting in the likes of meat sections, and now maybe pharmaceutical goods, but there are no safeguards over the selling of those products. What safeguards were going to be put in place? It is all very well in those large centres where people are readily available for inspections and monitoring, but out here we do not have them.

CHAIR—We will take that on board. Unless there are any further questions from committee members, we will move on. We are running over time. I would like to thank you, Mr and Mrs Seymour, and Mr Kelly Davidson, for your contribution. It is very useful, as Mr Jenkins has mentioned, for us to get an appreciation of the issues and the problems confronting you in remote Australia. I think it is very worthwhile that we hear of those problems. Thank you for your contribution. We really appreciate it.

Mrs Seymour—Thank you.

[10.37 a.m.]

KEWLEY, Mr Brian, Chairman, Trade Practices Committee, Law Council of Australia

McCOMAS, Mr Robert, Member, Trade Practices Committee, Law Council of Australia

CHAIR—Welcome, gentlemen. The committee prefers all evidence to be given in public. However, you may at any time request that your evidence, or part of your evidence, be given in private and the committee will consider any such request. I point out, however, that evidence taken in camera may subsequently be made public by order of the Senate. I also remind witnesses that the giving of false or misleading evidence may constitute a contempt of the parliament. The committee has before it submission No. 283. Are there any alterations or additions that you wish to make to that submission?

Mr McComas—In relation to the question of additions, there are no additions as such but in speaking to the submission we will make additional comments in clarification of the points made in there.

CHAIR—That is fine. We mean a written submission, Mr McComas. We now invite you to make an opening statement and we will follow that up with questions.

Mr Kewley—In view of Mr McComas's seniority I might leave it to Mr McComas to lead off.

Mr McComas—As is apparent from our representative position here, we are members of the trade practices committee of the Law Council of Australia, a body consisting almost entirely of professional practitioners expert in the area of trade practices law. I say 'expert' with due reservations since no-one can really claim to be an expert in an area of business law that is based on economic concepts that do not have any really settled meaning. But within that confine, as it were, we do practice very extensively in this area.

The committee's records will no doubt show that in the past the Law Council trade practices committee has made submissions to inquiries that have looked at the effectiveness and the possibility of change to the Trade Practices Act. In recent times they have been, particularly, the Griffiths committee and the Cooney committee. Our committee has also made submissions and recommendations whenever amendments to the Trade Practices Act have been contemplated. In the context of this inquiry we have looked at a number of submissions that have been made and we recognise that there are proposals for amendments to the Trade Practices Act. Our submission addresses those, and in speaking to those various points I would like to add one or two aspects that appear to me to be desirable by way of clarification and perhaps emphasis. I will briefly address each of the heads, leaving time for questions to bring out whatever additional points we wish to make.

The first point I will address is the issue that market shares of major Australian retailers be capped. We find great difficulty in understanding how that could possibly be implemented and, even if implemented, how it could be monitored. If one takes the Australian retailing industry and in particular the three major supermarkets, which are the sharp focus of this

committee, how does one go about it? Does one allocate a precise proportion of a particular market to be shared between those three and, if so, how is it to be shared? Is it to be the fact that they will cease to compete with one another once they reach their allotted share? This question of market capping is one that may have some superficial appeal, but on the face of it it seems to us to be an extraordinarily difficult one to monitor and to implement.

Furthermore, it does strike at the very question the Trade Practices Act seeks to answer, if you like, for the benefit of consumers and that is that markets ought to be competitive. If competition be expressed through large enterprises, one must look to see whether they have achieved that position by force of their competitiveness. One of the members of the High Court of Australia put it quite well, I think, in the Queensland Wire case, which no doubt has been mentioned to you before, when he said in relation to the section which seeks to control misuse of market power—section 46—that that section looks to a situation of a corporation that has availed itself of circumstances of having a position of power in the market and that to obtain monopoly power is not of itself a contravention of the section. There is no relevant misuse of market power unless a corporation has one of the purposes proscribed in the section.

In other words, if through hard and difficult—albeit ruthless—competitive endeavour you achieve a position of substantial market power, that of itself is not forbidden by the Trade Practices Act. Indeed, the very concept of competition, even as most recently enunciated in the results of the National Competition Policy Review Committee—the Hilmer committee—is that competition is to be assisted. In the first instance we ask: if there is to be a capping, what practical ill is it intended to serve and what steps might be taken to implement it? We say that would be an extremely difficult thing to do, but particularly would strike at the very thing that we seek to foster, and that is competition.

The next issue is that there should be a change to section 46 to introduce an effects test. This question of effect has been looked at numerous times. The committee will recall that section 46 at the moment precludes a company that has substantial market power from taking advantage of its power for particular purposes which are proscribed. If that is to be changed so that companies possessing substantial market power are to be precluded from engaging in conduct if their conduct has the effect of deterring competition or adversely affecting a competitor, that would have the very outcome of precluding what the corporation is supposed to do, and that is to compete. It seems to us that section 46 right now has provisions in it which come as close to measuring conduct according to its effect as is safe to have, and that is in subsection 7 which enables a court to look at all the surrounding circumstances in relation to a particular conduct, and if it is only by inference drawn from those circumstances that misuse of market power can be found, that is of itself enough. That seems to me to be very close to looking at the effect of conduct in order to determine whether it falls within section 46.

Again I draw on Justice Toohey in the Queensland Wire case. He said, and the court found, that BHP had taken advantage of the power it possesses in the steel market for the purpose of preventing Queensland Wire from competing with it in the market for star pickets. He went on to say that the amendments of 1986 introduced to section 46(7) permit a finding that a corporation has taken advantage of its power for a proscribed purpose notwithstanding that, after all the evidence has been considered, the existence of the purposes

are ascertainable only by inference from the conduct of the corporation or from any other person or other relevant circumstances.

I would like to remind the committee that, in that BHP and Queensland Wire case, the brief fact was this: BHP said it did not want to supply Queensland Wire with star pickets or more particularly with wire bar because it wanted to keep that market to itself. The court held that that was a constructive refusal to supply. In other words, the conditions under which BHP was prepared to supply were at such a high level of cost that Queensland Wire could not compete if it were to pay those prices. It seems to me that that is very close to the court having said, 'Having regard to all the circumstances, we have come to the conclusion that even though there was not an obvious purpose in the sense of an outright statement by BHP, nevertheless we can infer it from the circumstance. The effect of its conduct was to deny supply—was to do competitive damage to Queensland Wire.'

I do ask that in the committee's consideration of this proposal to have an effects test that it bear in mind that there is this subsection in the section right now. It has not been pushed at all. Justice Toohey mentioned it but said, 'We do not really need it in this particular case, but it is there.' The fact that it is there demonstrates that use should be made of the act as it is, not make it easier to penalise companies which by their own efforts do achieve market power.

Senator FORSHAW—You have heard the evidence that we just had on the teleconference.

Mr McComas—I heard some of it, yes.

Senator FORSHAW—The basic problem there was that a retailer way out in the outback cannot order in big enough quantities from major manufacturers and therefore either cannot get supplied or will only be supplied at much higher prices. Therefore there is no margin for her to make a profit. Would that section that you have just referred to be able to be used to force those companies to supply to her? If so, who would be able to initiate the action?

Mr McComas—The action could be initiated, firstly, by the regulator—the ACCC—if it saw fit to do so and, secondly, by the person who has complained. I did hear that part of the evidence which suggested that the lady was not prepared to complain to the ACCC lest the fact of her doing so react to her disadvantage with the supplier. I am sure that is a fairly common perception, but in my professional practice I am not aware of any circumstance where a supplier has treated badly a person who has given evidence against it. Indeed, the very fact of the supplier treating such a person badly would be evidence of its misuse of market power, if that is what it has.

CHAIR—If it can be proved.

Mr McComas—Exactly.

CHAIR—So you think the provisions might assist in the evidence that has just been given?

Mr McComas—I think so. May I hasten to say that I have every sympathy for the small business person, and I have every sympathy for Mrs Seymour, but by the same token it is not with an emotive mind that one comes to look at these things; one looks at them objectively. And if the objectivity is that competition is good, why is it that people should be penalised if they achieve a certain position by force of their competitiveness?

CHAIR—You might want to return to your opening statement.

Mr McComas—Reversal of the onus of proof was another suggestion that was made. That is contrary to all our system of justice. It is not only contrary to our system of justice in criminal law contexts but also in civil law contexts. The Trade Practices Act can impose very heavy penalties of $10 million per offence on a corporation—it is not $10 million all up. So if there is repeated conduct, that can escalate into a fairly hefty figure. One has only to look at some of the penalties that the Australian Competition and Consumer Commission has exacted from some people—the concrete producers for one—to see that penalties can be very substantial.

Divestiture is another suggestion that has been made. Again, there is the difficulty of what do you divest? In cases where there is a degree of vertical integration in an enterprise, it might be that a determination is that some aspect of the vertically integrated organisation should be de-merged. But when you come to a corporation like any of the major supermarkets, how do you go about divestiture? Do you pick a certain number of stores in a particular locality, or a certain number of stores spread over a broad area? It is a very difficult thing from a practical point of view to seek to introduce. And as the Cooney committee did suggest, divestiture is essentially a structured remedy whereas misuse of market power is a matter of conduct. It is therefore a question of keeping matters in their perspective and looking at the particular purpose for which a remedy like divestiture is included in the act before spreading it too widely.

The one case in Australia where divestiture has been ordered was a merger case, Australia Meat Holdings, and it was shown to be an extremely difficult provision to monitor. The court ordered, in that case, that Australia Meat Holdings divest an abattoir. It did finally, but it took some years before it was able to do so because the court will not, in the ordinary course, order a company to divest at a substantial loss if a reasonably economic return can be experienced through the divestiture process. But principally we say that divestiture belongs in structure situations, not in conduct situations, and it therefore should be kept in place here.

Mr Kewley—It is available for breaching section 50 of the act dealing with mergers. It has only been exercised once as far as we know, but that power is there. If a company by acquisition substantially lessens competition, then that is a remedy available already under section 50.

Mr McComas—The next subheading deals with the question of predatory pricing. Again, the lady who spoke last did talk about circumstances where she would have contemplated, I imagine, that there was predatory pricing in the sense that she could only buy at high prices whereas her competitors could buy at low prices.

Her evidence, in a way, demonstrates the problem of what is being sought here to be corrected. If it is contemplated that one wants to correct a situation where major purchasers can buy well, what does one do? Does one require that purchaser to look around him and see what is the highest price that is being offered by a small enterprise that is seeking to compete with him and require him to increase his price to the level of the small business?

I would have thought that would be to deprive the consumer of a very decided benefit which it gains from being able to shop cheaply at an enterprise which has been able to buy well. It is a fact of life: if you buy in volume, you get a volume rebate. That is not peculiar to any particular industry but, in my experience, is a very widely acknowledged rule in business provision.

I should also point out that section 49 of the Trade Practices Act, which prohibited price discrimination, was found after many years to be unworkable and, in the last round of amendments, was repealed. Its purpose was to ensure equality of pricing, but it was rarely used. Indeed, there is only one case in the Federal Court records where it was used—noteworthily, the Australian Competition and Consumer Commission, or its predecessor, never took on a price discrimination case. We just amended the act to get rid of price discrimination, yet we are now looking to whether it should be reintroduced in a slightly different way. The Law Council's committee does not think that is a very good idea.

Mr Kewley—I will add also that the view of the commission, certainly in relation to section 49, was that it was anticompetitive to try to prevent companies from getting best price. That is the reason they encouraged and supported the abolition of it.

Mr McComas—Lest you think that the Trade Practices Committee is against everything, I would hasten to say that that is not the case.

Senator FERRIS—I was beginning to wonder.

Mr McComas—One of these suggestions is that the ACCC should be permitted to undertake representative actions on behalf of small business. We do think that is something that should be supported because it is acknowledged that, if a case becomes one of litigation, it is extraordinarily expensive, long running and indeed distractive. The committee does certainly think that that recommendation is one that could be given some support. We also support the concept of the introduction of further codes of conduct. There are already two codes of conduct which substantially fall within part 4B of the Trade Practices Act. One deals with franchising, and there is also the oil code. As the committee will be aware, the effect of the relevant sections is that, once a code is voluntarily or mandatorily adopted, its provisions must be recognised, lest a contravention occur.

The only reservation we would like to voice here is that, if industry codes are to be introduced on a more widespread basis, they should be drawn in a practical way to accommodate what is sought to be the level of performance and behaviour that is reasonably to be undertaken by the corporations concerned. We suggest, firstly, that conduct codes should be drawn with clarity so that there is little room for debate about what they are meant to achieve; and, secondly, that the industry concerned have an involvement in the drafting of that code.

There was only one other heading in our submission that I have not addressed, and that is the subject of creeping acquisitions and whether there should be mandatory prenotification of mergers. That is another subject that has been widely discussed and debated over many years. Although, to a certain extent, the principle was agreed in the course of discussion of the last round of amendments, it was not made the subject of any particular amendment because it was altogether too difficult to find what the appropriate level might be.

From a practical point of view—and both Mr Kewley and I do a lot of merger work—the commission is not left unaware of mergers of any note. Indeed, it is a rare thing for mergers of any kind to take place without the commission being told about it, because the commission can, and does, interfere with proposals to undertake mergers. No-one wants to get into that difficult position without knowing exactly what he is facing. No need has been shown for merger prenotification. In other countries where it has been undertaken, it has not achieved any particular benefit. They are the opening remarks I wish to make. Mr Kewley might wish to comment on some of them.

Mr Kewley—There is just one brief quote that I would like to make. Pardon me if this has already been referred to—it is a very well-known passage from the Queensland Wire Industries case heard by Justices Mason and Wilson. This is relevant to the question of the effects test. They said:

> . . . the object of s. 46 is to protect the interests of consumers, the operation of the section being predicated on the assumption that competition is a means to that end. Competition by its very nature is deliberate and ruthless. Competitors jockey for sales, the more effective competitors injuring the less effective by taking sales away. Competitors almost always try to "injure" each other in this way. This competition has never been a tort . . . and these injuries are the inevitable consequence of the competition s. 46 is designed to foster.

I do not wish to add anything further.

CHAIR—Before we begin the questions, could I ask you this: I know that you are here representing the Law Council, but are either of you involved in any major law practice?

Mr McComas—I am a senior partner of Clayton Utz, which is a national law practice.

CHAIR—May I ask both of you whether you have been involved in representing the major supermarket chains or whether your company has been?

Mr McComas—Yes. My firm does act for Woolworths, and it is currently defending Safeway, a Woolworths subsidiary chain in Victoria, in a case which has been brought against Safeway by the Australian Competition and Consumer Commission. I personally have not acted for any supermarket, and I am not aware of any detail of the case now being undertaken, nor do I have any knowledge of any of the submissions which, I understand, Woolworths has made to this committee. I thank you for the opportunity to clarify this point.

CHAIR—Mr Kewley?

Mr Kewley—I am now a consultant, previously a partner, with Freehill Hollingdale and Page in Melbourne. Our firm does some work for Coles—they now spread their work pretty widely. We have certainly had nothing to do with this inquiry on behalf of Coles. I would

like to stress that our committee represents some 80 or 90 lawyers throughout Australia and also some leading economists. This submission is a submission of the whole of the committee, which has been endorsed by the whole of the committee, the great majority of which would have no contact at all with either of the major supermarkets.

CHAIR—We understand the difficulty of having a totally independent witness because you need someone who is familiar with the ramifications of the marketplace; albeit it would be nice to have a representative who appeared on behalf of small business. But we do not, so we thank you for appearing today. Are there any questions from my colleagues?

Mr JENKINS—There is a great risk when a science graduate starts questions on matters to do with the legal world, but as a legislator that is my lot, isn't it? Can I first of all say that, in that context, I was at least able to read and predominantly understand the submission. That must mean that the submission was well put together, and I thank you.

I have asked questions about what might be the result of changing the purpose test to an effects test of section 46, because it was a matter that first came to my attention when I was a member of the Reid inquiry. Your submission puts a view about the merit of that, but then also picks up on what can be, in shorthand, called a 'reverse rebuttal', or 'onus of proof' in section 46. As I understand it, that would require a set of well-understood triggers of behaviour that the ACCC—or whatever the body—might use to then bring forward a case, and then ask the corporation to put reasons why they would not believe that their behaviour had been anticompetitive or had involved a misuse of market powers. Am I correct in understanding that that is the way in which a reverse rebuttal or reverse onus of proof would work?

Mr Kewley—In effect, that is correct. Instead of the applicant having to prove its case, the onus is then thrown on to the defendant or respondent to show that it is not guilty, as it were. We think this is contrary to the whole tradition of our law and is most unreasonable.

Mr JENKINS—My concern about section 46, as it is, is that—again in the context of my knowledge of the law—it appears there are not as many cases brought forward as I would expect and also the cases that are brought forward are predominantly unsuccessful. If we are to believe a lot of the evidence that we have received before the committee, there are a number of practices which we might, as legislators, believe are put forward in the intent of section 46 to have them outlawed, but it does not seem to be the case that they come forward and are decided in that way. I do not quite understand why not as many cases are brought forward. Is it because those that do not have the market power also do not have the power and access to the legal system? Is it because the tests that are set by section 46 are too stringent?

Mr McComas—Surprisingly, there are a lot of section 46 cases—surprisingly perhaps to you. They certainly do not make the headlines or very rarely but they are, nevertheless, there. I have in front of me a sheet of paper which must list—I have not counted them—at least a dozen section 46 cases that have been brought before the Federal Court since the Queensland Wire case in 1989. Some of them are successful and some of them are brought by small businessmen or small businesses.

I will refer you to one, which was a Queensland case a few years ago where a petrol reseller, O'Keefe nominees, took section 46 proceedings against BP Australia—which, by any measure, is a very substantial corporation—for refusing refinery access to petroleum. It also took the action because it suggested that the product sold to it was at a different price from that charged to the other major companies. O'Keefe was successful in obtaining an interlocutory injunction—that is an interim restraint—upon BP Australia ordering it to supply him. That is a case of a small business taking on a very large corporation and using section 46 effectively.

Senator FERRIS—How would you suspect that a small business in a remote area like Blackall, Queensland would be able to do that? I was interested in the quite optimistic view you had of the potential likelihood of Mrs Seymour running a successful case. But can you imagine the difficulties for a family business in an isolated area like that running a case such as you have just described?

Mr McComas—Yes, I can.

CHAIR—It is classic because I think Mr Jenkins's question really hits at the nub of what we have seen. I think that, with due respect, you guys are at the top end of town. We have just been through regional Australia and have heard consistently the comment that this was very difficult to prove anyway because they might have their price lowered for six weeks for the majors and then it will go up. Can you imagine Mrs Seymour taking on Nike, R.M. Williams or Levi? I do not know how big the company was that you referred to—

Mr McComas—O'Keefe is quite small.

CHAIR—The consistent theme we have had is that it is just beyond their capacity.

Mr NAIRN—In that particular case, would the small business person be refunded their costs? You probably do not have that detail, but if they won that injunction presumably they would have the right to have their costs paid.

Mr McComas—They would have an order for costs. That is correct.

Mr NAIRN—But they would have to go through that. Would that just be a normal part of it or would that be an additional legal process?

Mr McComas—Our system works on the basis that the loser pays the cost of the winner. But I have to say that, in the majority of cases, not all the costs are recovered. There is always a factor decreasing the amount expended to something lower, and I am afraid that is part of the system that reacts adversely whichever side you happen to be on at the time.

CHAIR—We have had evidence in camera of the type of costs that are involved in taking on issues, so isn't that a real detriment, though? While it is possible, and you have pointed out a few cases where it has happened, it is pretty difficult really.

Mr McComas—Chairman, I am the first person to acknowledge that litigation is an extremely difficult and expensive thing to undertake. I do a lot of litigating myself. I know

what the costs are and I know what the disruption is to the conduct of business. My principle is to avoid it at all costs. It cannot always be avoided, however. The only suggestion I can make for the lady in Blackall is that that is one reason why one might support the ACCC undertaking representative actions on behalf of small business. I do not think it is right to judge what should be done in the Trade Practices Act by the difficulty which a person in a remote country town experiences—

CHAIR—This is not just one. We have had this around Australia for a couple of weeks.

Mr McComas—or which a small business experiences in taking on a major corporation. The ACCC, right now, can assist a small business in this sense. If the small business satisfies the commission that there is a section 46 case, the commission is quite at liberty to undertake that case if it feels that it is an appropriate one to undertake. I would suggest that the commission be asked why it does not do this.

CHAIR—We will. I am glad to see Professor Fels arrive behind you; we will be asking some of those questions. Without wishing to interrupt further, do you see that there is some other mechanism by which some of these issues could be solved without going to the whole process of litigation? Have you thought that through in terms of your own members?

Mr McComas—The alternative is a mediation process. This is very commonly undertaken albeit not necessarily under that particular name. Again, I think it will be found that, in the majority of cases, a major attempt is made to resolve differences, whether they be between the ACCC and a particular corporation or between two private litigants before getting to the stage of—

CHAIR—It is difficult when one is a multibillion dollar company and the other one is a small fruit and vegetable shop in Kingaroy, or wherever.

Mr Kewley—But if a complaint is made to the ACCC and the ACCC believes there is at least a reasonable argument that this is a breach, in many cases, the ACCC would be able to talk to the person who has allegedly breached the act and may well arrive at a satisfactory solution without resort to litigation. That, in fact, often happens.

Mr McComas—And the record does show cases where the commission has taken over from a small litigant and run a major case.

Mr Kewley—Just to add one thing in relation to the success rates of these actions, I have not done an update but, in a submission in 1991 when similar issues arose, we said that, where section 46 was pleaded as a primary basis for relief, five of the cases were successful out of nine. That is obviously out of date now; it is quite a long while ago. But it is some indication that it is not true to say that there are not many cases and they all fail.

Mr JENKINS—In the same law journal, volume 72, January 1998, in a review of what has happened post the Queensland Wire and BHP case, it says that there have been 24 losses and five wins since Queensland Wire Industries v. BHP—a success rate of 20 per cent.

The article went on to compare it with other legislatures: 65 per cent of the cases were brought under the New Zealand equivalent of section 46—that is, section 36 of their commerce act. It gives the figure here of approximately 80 per cent for section 50 of the Trade Practices Act between 1989 and 1997. So what this article was querying was whether post the Queensland Wire case, greater access had really been given to section 46.

Mr Kewley—I was not aware of that. It does surprise me.

Mr JENKINS—Also the article makes the interesting observation that private parties seem to have greater difficulties than the ACCC. That is probably something that the committee is coming to grips with. That may be a resourcing question and we might try to have an expectation that the ACCC take more of the action, if they were properly resourced.

CHAIR—More resources for the ACCC; now there is an idea!

Mr McComas—The ACCC is a very well-resourced organisation. It does not lack for money from where I see it coming.

Mr NAIRN—That is good to hear, as well. Mr McComas, you made some comments regarding creeping acquisitions, but then you spoke in terms of mergers. When does an acquisition become a merger in a legal sense? Is there a difference?

Mr McComas—No. We use the word 'merger' very loosely as a convenient umbrella, if you like, to cover takeovers and any agreement between the enterprises whereby one buys something from another—if it is buying assets or shares.

Mr NAIRN—So, a Coles, a Woolworths or a Franklins buying an independent supermarket in a country town—

Mr McComas—It comes within my classification of a merger.

Mr NAIRN—You have sort of indicated that these things are well known. But, really, that type of transaction probably would not be known until it is completed.

Mr Kewley—I think it would be very unlikely that any of the major chains would make an acquisition of any size at all without notifying the commission. I am sure the commission is watching them very closely and they would be concerned. They would look very closely at every acquisition.

Mr NAIRN—But I think there has been probably quite a number of those types of acquisitions over the last five years that—

CHAIR—Cannons, for example.

Mr NAIRN—No. That was certainly notified with the ACCC. But I think there would be a number of others that were not necessarily notified to the ACCC before they took place.

CHAIR—Part of the problem with this creeping acquisition is that it is a one-by-one acquisition and you do not need to notify. As you know, it is on a voluntary basis. So the committee needs to look at whether that should be made mandatory.

Mr McComas—It has been debated at great length and rejected by successive committees, by the Attorney-General's Department and by the government in proposing amendments. The real fact is, in my experience, it just does not happen. If a takeover or merger is proposed—whatever you like to call it—the commission is told about it because you cannot afford to have your commercial plans interrupted by commission action. The commission is very active in investigating all merger matters. I am sorry, you must forgive me for using that term. I use it automatically.

Mr NAIRN—That is okay.

Mr McComas—The real problem is: why should there be an extra layer of regulation in place when it does not appear to be needed? I do not know what the commission's view is on this, I must say. But on previous occasions, it has not been overtly—at any rate—in favour of mergers.

Mr NAIRN—We might find out about that circumstance—whether there has been a case.

Mr Kewley—To give an example, quite a few years ago, I was acting for Coles Myer when they acquired a smallish chain of grocery retailers in the Newcastle area. The commission was notified. Discussions were held. They made inquiries and they said, 'We'll only agree to this if you divest yourself of about half of the actual shops you are buying'—where it may have affected competition in the area. So the acquisition did proceed on the basis that quite a few of these outlets were divested elsewhere.

CHAIR—We had the NARGA people here and they were using certain figures. As I recall, from about 1991 to the current date, about 900 small supermarkets have gone out of business. So whether there has been the odd intervention by the ACCC saying, 'These ones can't be included,' or, 'Divest yourself,' it has not been a bad effort if 900-odd stores have gone out of business during that time.

Mr NAIRN—But I was not talking about taking over a chain of independents; I am talking about possibly just buying one independent somewhere and then another independent somewhere else. We have certainly had some evidence in relation to a possible purchase by one of the majors of a one-off independent which ultimately did not proceed. It would be interesting to know whether there was any notification to the ACCC of the potential of that particular purchase. I guess that would be some sort of test as to whether that is working as well as it could.

Mr McComas—It is pretty hard to generalise on those matters, but one must remember that the test of whether a particular acquisition is going to breach the act is whether competition is substantially lessened. One must acknowledge that, sooner or later, with the creeping type of acquisition the border might be crossed.

CHAIR—The question for us is: have we crossed that border? From now on, should the ACCC be formally notified for every acquisition—even if it is a small supermarket—in order to determine whether we have reached the point where we say, 'That's it, guys,' within an area such as Cooma, for example, where we have two Woolworths stores?

Senator FERRIS—And no-one else.

CHAIR—And no-one else. Is that appropriate, even though it is maybe only one store?

Mr McComas—One might well, with respect, put that question to the consumer who finds that, by going to one store, he or she can with convenience buy all of her requirements at reasonable prices.

CHAIR—We spoke to the consumer council this morning, so we know its views.

Mr McComas—That is assuming the consumer council is representative.

Senator FERRIS—With respect, Mr McComas, that is not really the point of this in the sense that Cooma is a relatively isolated area and there are two Woolworths shops now in Cooma and no others. There used to be a Cannons and a Woolworths, and Woolworths bought the Cannons chain out. The point I think the chair was trying to make—and we have certainly taken evidence on this in Cooma—is that it is not just convenience. The fact is there are two Woolworths stores and no other options. It is not a matter of buying from one store or another for convenience; it is a question of whether the consumer is best served by having two Woolworths stores and no others.

Mr McComas—I certainly take that point.

Mr NAIRN—Could I ask a question on divestiture. If I have understood your comments correctly, you were saying that divestiture almost retrospectively is a very difficult thing to put in place—in other words, somebody saying that the market share is too great so therefore you should divest yourself of some part. Which part and where from—a city or a regional area? That is the difficulty you were highlighting. Whereas if it is part of a purchase—and let us still be topical and talk about the Woolworths takeover of Cannons—under the current act, all the powers that are necessary are there now to ask for divestiture. For instance, the ACCC could have said to Woolworths, 'Well, if you're taking over Cannons, that's fine, but you must sell that store in Cooma, because you're going to end up with two stores in the one place and nothing else.' Were you saying that the current act is appropriate for those circumstances but not for the other circumstance?

Mr McComas—Yes, I think so. I do not want to appear to be stubborn about this, but I would like to give you another example. The Australian Competition and Consumer Commission is not required to make up its mind at the point of acquisition whether there has been a contravention of the act. It is given a period of years within which it can take action in relation to what it believes might be a contravention. To take Cooma—and I do not know when the Cannons acquisition took place—if the acquisition took place within the last six years—

Mr NAIRN—It took place two to three years ago.

Mr McComas—and it is now evident that that acquisition resulted in a substantial lessening of competition in whatever the appropriate market is held to be, the commission is quite empowered by the Trade Practices Act, in its current form, to proceed against the acquirer—that is, Woolworths—over that particular acquisition. If it finds that the acquisition did, with the benefit of what has happened in the meantime, substantially lessen competition, it can seek divestiture.

All I am trying to put is that we do have an act that has tools in it, if they are to be used. It is easy to say that it is difficult, and perhaps it is, but it should be made the subject of a certain standard of proof before people are required to de-merge or divest what they have acquired or to refrain from engaging in certain conduct. The balance is not bad from a practical point of view, as we practitioners find it, in any event.

Mr Kewley—I should perhaps add that the courts have not had any great difficulty in enforcing section 46. They have not complained that it is incomprehensible.

Senator FERRIS—On that point, Mr McComas, would you see that review taking place as a result of a consumer complaint or would you suggest that the ACCC's role would be one of reviewing acquisitions on a triennial basis or something like that? I take the point that the provision is there, but how is it activated?

Mr McComas—The commission, in my experience, does act particularly on complaint, if the complaint is of sufficient substance. Indeed, I think the commission would acknowledge that most of the cases it undertakes for breach of the act really flow from some complaint having been made to it in the first instance.

Senator FERRIS—That perhaps gives the good residents of Cooma the opportunity to take that up if they wish. My other question is related to a mention you made earlier in your oral presentation about the development of a code of conduct. Could you expand on that a little and tell us how you would see the code operating in the sense that, in my experience, codes operate best when they are provided with an arbitral body that someone can go to if they believe there has been a breach of the code. Who would you see as being the arbitral body for the code and how would you see the code working in terms of its elements?

Mr McComas—The question of who might be the arbitrator, or what body might be the arbitrator, could well be encompassed within the code itself, and it could have a built-in mechanism for complaint handling.

Senator FERRIS—Would you have a view on who it might be, though?

Mr McComas—It could be an ombudsman for a particular industry. For example, there is a banking ombudsman—I think there is; there was and I think there still is.

Senator FERRIS—Yes, there is.

Mr McComas—And of course there is a publicly available Commonwealth Ombudsman and most of the states have their own. So you could have the built-in process of dispute resolution, if you like—whether you called it arbitration, mediation or simply complaint handling.

In the case of a serious breach of a code, the ACCC would be the obvious person to intervene and do something about it. I suppose one could liken it a little to the commission's enforcement of part V of the Trade Practices Act—that is, the consumer protection part of it. The commission is very proactive in this area and, as the press regularly reports, takes action which frequently results in the person accused, or the offender, if you like, giving undertakings to behave in a particular way.

So, coming back to the code question, if there is a serious breach of the code the commission would be the appropriate person to intervene to seek appropriate undertakings or assurances that the code would be observed thereafter and to award appropriate compensation to the person whose affairs have been disrupted. To the extent that the compensation would be of any major proportion, I think one might well have to have some other mechanism built in, and that could be, for example, the act itself imposing monetary penalties for infringements of codes.

Senator FERRIS—Evidence we have received, particularly from small business during our visits to regional Australia, suggests that one of the difficulties of making a complaint is the time factor. For example, we did have some evidence in Dubbo that on the face of it would suggest that one of the majors acted in a way which was certainly contrary to a small business. Within three weeks that business had lost $47,000 and had gone out of business. I know from experience that I have had with constituents that appeals to ombudsmen are often very effective but they often take a long time. In this particular retailing environment, time is of the essence. I was very interested in your answer. I just think one of the areas that small business consistently have asked us to take up on their behalf has been the question of a rapid response to issues such as breaches of pricing, leasing and other such things. I guess that is a question for us to take up with the ACCC.

Mr McComas—It is a problem. An accusation should be investigated so that one can be satisfied it is a proper one and not one just simply motivated by emotional wish for revenge or something of that kind, so a certain amount of time does have to elapse. On the other hand, the commission is able to act fairly quickly. For example, if a particular takeover is announced today, it has a lot of information in its records—after all, it has been in existence for 25 years. It can very quickly get a message to the acquiring corporation saying, 'We are concerned about this. Give us your undertaking not to proceed by a certain time or else' and it does that. It does not take much for the commission to get an interlocutory injunction out of the Federal Court if they can show they have got a prima facie case—that is, if the facts they are able to present sufficiently indicate that there is a serious question to be tried. Beyond that, unfortunately, time is necessary to satisfy whoever the investigator is that the complaint is justified.

Senator FERRIS—It just seems to me there is a role here for some of the small business lobby groups as well to make sure their members are well informed about the opportunities that are provided because it seems that many of them are very unaware and

they are, as you have already said, in quite an emotional state when the problem occurs. If they do not have a good understanding of their rights—and they are in Blackall or Dubbo or Bundaberg—it is even more difficult for them to know what to do.

Mr McComas—The small business association, called COSBOA, under the executive leadership of Mr Bastian, is a most efficient organisation. He is indeed a most efficient man and a very capable man.

Senator FERRIS—We did take evidence from them yesterday.

Mr McComas—There is some means there but, again, his resources would be limited as well.

Senator FERRIS—Thank you for your advice.

CHAIR—Thank you, gentlemen. We are out of time. We have the ACCC behind you and clearly we want to make sure we have got maximum time to exploit the opportunities. We might have to call on you further in this very critical time in the lead-up to the report. We appreciate the legal advice that we have had from you. It was most useful.

Mr McComas—Thank you. I came across some time ago a very short quotation from an eminent United States economist whose name was Scherer. He said this:

> To postulate a one to one relationship between monopoly power and absolute size is like confusing pregnancy with obesity. Some superficial manifestations may be similar but the underlying phenomena could hardly differ more.

CHAIR—Thank you for that contribution. We will note it.

Proceedings suspended from 11.34 a.m. to 11.44 a.m.

FELS, Professor Allan, Chairman, Australian Competition and Consumer Commission

SMITH, Mrs Rhonda Lynette, Associate Commissioner, Australian Competition and Consumer Commission

SPIER, Mr Hank, Chief Executive Officer, Australian Competition and Consumer Commission

GRIMWADE, Mr Timothy Paul, Director, Mergers and Asset Sales, Australian Competition and Consumer Commission

CHAIR—Welcome. I apologise, Professor Fels, that we have got a couple of our people missing in action but I would like to emphasise that we regard your contribution as critical and the most significant, without a doubt, of all the contributions that we have had. We want to let you know how significant it is for us. As you know, the committee prefers all evidence to be given in public, but obviously you can approach us, under the ground rules you know so well, to have the evidence taken in camera—with the reminder that at some future stage the Senate may require that to be made public. I also remind witnesses that the giving of false or misleading evidence may constitute a contempt of the parliament. The committee has before it submission No. 191. Are there any additions or alterations that you wish to make to the submission at this stage?

Prof. Fels—No.

CHAIR—I understand that you would like to make some initial comments in camera. Is that right?

Prof. Fels—We want to cover a case in camera at some point, either before or after, as suits the committee. We would be happy to do it after, if you wish.

CHAIR—It might be useful to do it after, as we are going on to a working lunch with the Northern Territory select committee. I think it is probably easiest then.

Prof. Fels—Okay. It would be pretty brief.

CHAIR—It might also be useful—and I put it to the committee—for the Northern Territory select committee to be here for that as well. They might find it interesting.

Prof. Fels—Yes.

CHAIR—Professor Fels, I know you would prefer to take on board our questions rather than to make a statement, but I will leave it open to you.

Prof. Fels—Thank you, Mr Chair and members of the committee. We had noticed vigorous questioning by the committee of previous witnesses, so we could see that there were a large number of issues on your mind, particularly about the policy options. So we would be happy to face some of those questions. We have a little list of points here that, if by any chance we did not cover them—and you seem to have thought of most things—we

could raise at the end. The only thing I would say on policy options is that, regarding quite a number of the matters before you, some of them require large value judgments by the parliament. We are very happy to do our very best to help you gain an impression of our views of the advantages and disadvantages of various options. There are some of them where we think it is probably ultimately a question for parliament and we may not express preferences. That would be our view on one or two of the big questions. But we will do our best to assist you.

CHAIR—Fine. I think the members of the committee here are the ones that have been all the way through: the Deputy Chair, myself, Senator Ferris and Mr Nairn. Senator Forshaw is returning at some stage. Unfortunately, Senator Boswell, who has been following it closely, is involved in his new role with Minister Anderson. Can I take it from the top and go through the issues? The committee has deep sympathy with your role in life, having had to contend with just a small slice of it and thus realising the difficulties. We will take it from the top, in terms of the recommendations that have been made to us by various groups and others that we have come up with. I ask the committee members if you would leap in and ask questions as I set the topic, as you see it appropriate. What are your views on the cap?

Prof. Fels—The commission is not keen on the cap. We have quite a bit of hesitation in supporting the cap. It is, firstly, not likely to be beneficial for consumers. In at least some cases, some areas or some product markets, it does mean that they may be condemned to supply by inefficient, high cost operators. Also, it is not even necessarily good for independents. On the face of it, it sounds good for independents because it frees them from the shackles of competition by major players who may be entering their market. On the other hand, there is certainly a group of independent people who feel that, at some stage of their business career, they would like to be able to sell out to a major buyer.

There are also some fairly significant mechanical problems about a market cap idea. There are problems about defining it. There are problems about policing it. There are problems about what happens if there is a strong case for the expansion by an established player into a particular area. Does that mean that they could only do so if they sold off some other part of their business, which might not be good for the area they are withdrawing from? It could also affect their incentives. In other words, if in going into an area you knew that you would have to give up something, then that might reduce the likelihood that you would enter a market that it would normally make a lot of sense to enter into. We also think that is the sort of law people spend a lot of time trying to think up ways around, often inefficient and artificial means of getting around the law. It would also tie up some government resources, whether with us or someone else, on an activity that might not be very productive.

CHAIR—On the other hand, Senator Boswell—not wishing to verbal him—says that if we do not do something Franklins may not survive and in a few years time we will have only two major players in the market, the rest will have gone. Don’t you think that is a possibility? Shouldn’t we be concerned? How else should we avoid a market duopoly?

Prof. Fels—I think there are grounds for concern about the possible future evolution of the retail industry. There has been an increase in the market share of the top two players, a sharp reduction in the market share of independents and it is likely to continue. Whatever

one thinks of the present situation, it certainly could get worse. It could get to the point where one would be quite concerned about the heavy concentration in such an important area of the economy and about the emergence of near duopoly conditions if Franklins were to go, as Senator Boswell said, or maybe triopoly conditions if Franklins stayed.

I should qualify that a little. I would not want to sound in any way complacent about the commission's views of the future, but we have to qualify it a little. There is always the possibility of a re-invigoration of the present state of competition from Franklins and the independents. There is no doubt that the independents have had a bit of a setback with the problems that Davids had for a time.

There is also the possibility that there could be new entrants into the market. I note that in the UK, for example, there have been some new entrants recently. There is also the possibility of technological developments. They may or may not take a procompetitive effect but on some scenarios they could. So the future is unknown but there are some grounds for concern that we could get tighter concentration and with that reduced competition in one of the most important consumer markets.

So the question really is about whether any substantial policy steps should be taken at the present time in anticipation of such problems. The question is whether the cure is going to be worse than the potential illness. I think our concerns would tend to focus on what sort of policy steps there should be, rather than disputing that there may well be a problem that is worse than now in coming years in terms of concentration. It is then a matter of looking at each of these options. I do not think the commission would be inclined to throw up its hands in despair and just say, 'Well, there is nothing else for it but to apply a market cap.' There are some other matters I am sure you are looking at that also require some consideration.

Mr NAIRN—Professor Fels, have you had an opportunity to see suggested amendments to the Trade Practices Act put forward by NARGA dealing with a cap?

Prof. Fels—Yes, I am generally aware of what they are proposing.

Mr NAIRN—They have given some specific proposals in relation to a cap provision—to cap the retail grocery market per entity at 25 per cent and suggested drafting of insertions into the Trade Practices Act.

Mr Spier—We really have not had a chance to look at those, but I think the principles that the chairman is saying apply to that draft, of course. I have had a quick look at it.

Prof. Fels—Twenty-five per cent would imply a fairly big cut for, say, Woolworths.

Mr NAIRN—Yes, I pointed out yesterday that it would mean that one-third of their business would have to go.

CHAIR—It depends on which day you ask them. As we said to the committee, when he is talking to us, then the definition is the whole of mouth, which gives them a 20 per cent market; when he is talking to his shareholders, it is 36 per cent. So it certainly would involve a cut for Woolworths.

Mr JENKINS—Senator Murray is not here and, whilst he is a member of the prevailing coalition at the moment, I am quite happy to ask questions on his behalf, and I hope do him justice. He has come up with the notion of what he describes as a reverse cap. There have been concerns about whether the cap, as suggested by NARGA, would actually protect independents because other players might take up the slack. I think Senator Murray has a suggestion that protects a portion of the market for independents or non-corporations, as however defined. He also, I think, has suggested development where it is not by market share but more by site. I take it that you might have a similar concern about the reverse cap on the proportion side of it, but this notion of market share and sites changes it a little bit.

Prof. Fels—For example, supposing that the supermarkets wanted to move into an area which they are not present in, then you would have a look at that site or there would be designated sites where their shares are too high or something like that. Is that the idea?

Mr JENKINS—Yes, I think that is the concept.

CHAIR—I think that is the concept, yes. Certainly in regional areas that is of interest.

Prof. Fels—One of the issues there, which we can merely lay on the table as a difficult one, is that some of the expansion of the big chains has been into areas where they are not represented, and sometimes the effect of its immediate entry is to bring down prices, to offer a wider range of choice to consumers and so on. They are somewhat more careful about entering areas where they are already—not totally, I am afraid. I would perhaps distinguish between areas in which they are currently represented and areas in which they are not represented.

Mr Spier—Apart from the points made by our chairman, I am not sure how that would be done—I presume by local government planning laws. You almost have to have the state governments regulate planning arrangements, saying that those sites are for supermarkets, and that is a Coles, that is a Woolworths and that is perhaps something else. I am not sure whether the federal parliament could actually do that.

Prof. Fels—We also have been a little wary of the use of local councils to restrict entry. For example, in the somewhat contentious matter of Woolworths's entry into petrol markets—which on the whole we have seen are pro-competitive; they are entering and competing against big oil companies—they have run into planning objections which have slowed down their entry fairly substantially. It is my impression also that one or two other bigger independents have also encountered planning problems. So one is wary about giving local councils excessive power to determine who enters into markets, because the process can be grabbed hold of and controlled by local people who just want to restrict competition.

Mr JENKINS—Just on that point, I accept your concern about perhaps local government identifying who is doing what. But, in the overall sense of supply of retail space, a number of inquiries have always come to the conclusion that we should go beyond just the land use planning nature of town planning and look at social and economic impacts of increased retail space. One could come to a conclusion that it does have an effect on the competitive dynamic of the way in which retail is carried out. I seek your comment on that aspect of it.

Prof. Fels—The arguments could go either way, I suppose. Obviously, the concern—which you have already, I think, identified yourself—is that it protects incumbents against new entry and competition which often brings something new and better for consumers. So often, those sorts of laws, designed for seemingly public interest purposes, have been twisted to serve the anti-competitive interests of people who are already in the market and who will use of all of the means at their disposal to use planing to stop developments that are good for consumers. This is not some doctrinaire thing that I am saying; I think there is actually a fair bit of experience of the use of planning for this purpose. Cinemas have had a mention.

CHAIR—Could we move for the moment off the cap and talk about the effects proposal, rather than purpose, under section 46.

Prof. Fels—There is an effect test now in regard to telecommunications in part 11B of the act. That was put in by the parliament because it considered that Telstra had such huge market power—it is an incumbent; it started off with a huge market share; it controls a network facility; it is vertically integrated; it has a big established customer base. We have an effects test there, but not elsewhere. Going to section 46, as you know, we have a purpose test. There is some help in the test, in terms of provisions that the parliament has put in, to infer purpose from effect, but at the end of the day there has to be a purpose; the court has to be satisfied that there is a purpose. Parliament has made it a little easier for it to conclude there is a purpose by putting in the explicit comment about inferring it.

The argument for the effects test is that it would be a more logical test in some respects. Our concern, on the whole, in competition policy is with the effects of actions. If actions are taken which have the effect of substantially lessening competition, then, on the whole, we think that is an undesirable development in our economy. Of course, it is true that we sometimes authorise those things. But, putting that to one side, there is a presumption in the law that if something has an anticompetitive effect, then it is undesirable. So that law would go further than the somewhat constrained section 46 that we had, with the hurdle, as it were, that purpose must be proved. So some people are sufficiently concerned about the problems of market power and of big players in the economy. They are concerned about the increase in concentration in some areas that has grown up over the years and would want to see a stronger effects test.

There is also another advantage: that it would put beyond doubt, once and for all, that section 46 is about protecting competition, not competitors, if it replaced 46 rather than were additional to it, because 46 does talk about competitors, although it is also true that the High Court in the Queensland Wire Industries case made it pretty clear that the test is really largely about the effect on competition. Another advantage is that it would reduce problems of proof in court. There are problems in finding proof of evidence. One comes across anticompetitive conduct, and that is only part of the story. One has to be able to find evidence. In the BHP case it turned out that there was quite a lot of evidence, after a search of company documentation and so on, about anticompetitive purpose.

An effects test might have to be linked with some kind of authorisation provision, because there are some forms of behaviour that are anticompetitive but which might be authorisable. At the moment there is no authorisation available under the section 46 test. Possibly one would limit it by saying, 'This is a new, rather powerful, law. Maybe only the

ACCC should be allowed to apply it,' and we would see how things would go for a few years. I will come back to the question of private litigation in a moment, in the case against this. There are some people who say, 'We are getting into deep water. Let us just apply it to specified areas—telcos and maybe one or two other areas.' It tends then to make who is declared and who is not declared a bit of a political business, and all sorts of factors start creeping into who does or who does not get declared.

Some points against an effects tests are that it is a considerable strengthening of section 46 and it would be too intrusive and too interventionist for many tastes. Over the years there is no doubt that parliament and governments of all persuasions have not wanted to take that step of putting an effects test into the act, because they have just felt it would go too far. The purpose test, with all of its imperfections, is a way of making sure that section 46 is not carried too far. There are dangers in taking section 46 too far, because one always has the problem that it can deter genuinely procompetitive behaviour. Just take the famous price cutting matter. There is always an issue as to whether price cutting is good for consumers. On the face of it, one would think so. But an effects test could take the edge off the incentive for firms to compete keenly on price and other dimensions.

It is also likely to create greater uncertainty for business. That is compounded by the fact that section 46 in its present form, because it has a purpose test, is far less likely to catch unintended behaviour. In other words, a firm may innocently be competing and unknowingly breaching a section 46 effects test. So firms may unintendedly do anti-competitive things—the big fish wags its tail and, without knowing it, wipes a small player and, in doing so, breaches the law. So there is that kind of consideration.

Another matter is that under section 46 there is the right of private action. So, every time section 46 is strengthened you get a double effect. You get more vigorous enforcement action, because if the commission did not act—and there a number of reasons why we do not act—then you may get more private actions. If you are, so to speak, a hawk on this matter, you will be delighted at the prospect that there would be a lot of private action under section 46. But it is also possible that actions under section 46 can be used for tactical and anti-competitive reasons to stop competition. So there are some concerns about the private uses that can be made of section 46 if taken too far.

There are a few opening points on it. As I said, there are further questions as to whether this is to add on a new provision or to replace a provision—I guess it would be to add on—and also whether it would be limited to public action, whether there would be authorisation and, possibly, no penalties, maybe to see how things go. Because the intent may not be there—it may be the accidental result of behaviour by businesses—the arguments for penalty may not be so great.

Mr JENKINS—The Law Council mentioned that the Cooney inquiry suggested a change to section 46. Back at the time of the Cooney inquiry it was the TPC. In determining whether or not an offence had occurred, the commission had established that the corporation would have to bring forward evidence to show that it did not have a prescribed purpose. So, as I understand it, this might be termed a reverse rebuttal or an onus of proof type argument. What are your comments about a suggestion like that?

Prof. Fels—There may be scope for some further strengthening of section 46 in terms of that kind of thing; that, if the effect can be shown, then there is a reverse onus of proof on purpose. That would still keep it essentially to purpose. There is a problem at the moment with the test, in that the commission or private litigants have to embark on a cops and robbers type search for purpose in particular cases. They are just not going to succeed in that, even though one has a fair idea that the purpose is anti-competitive. So there is a case for reversing the onus without departing from the underlying notion that, in the end, it would be a purpose test.

CHAIR—Wouldn't reversing the onus lead to extensive claims against the majors happening?

Prof. Fels—It could, yes. There is a calculus that people apply in these cases—less so in the case of private actions because, if you run a case and you are unsuccessful, you pay the costs. In section 46 cases, costs tend to be really high.

CHAIR—Even with reversing the onus, it is still the same?

Prof. Fels—Yes. It is possible that it would lead the commission to take a few more cases. I could think of cases where it would have swung on whether we would have run some 46s.

Mr JENKINS—I took it that the suggestion was that the commission would be required to have satisfied itself of certain things before it would take place. I do not know whether we were suggesting it would be open slather on the onus of proof.

Prof. Fels—I see. Perhaps the commission gets the benefit of that change, but not the private litigant.

Mr JENKINS—Yes, there would be tests that might be put in place that the commission would have to satisfy itself about. Then it would be the trigger for the next step.

Prof. Fels—The one thing I want to just point out about that is that it would probably not be a very good idea to suggest that the commission is thrown into private cases to give a clearance on that point and then the private cases proceed. That would effectively involve us in cases. A lot of 46 cases represent actions by big business against big business. The most notable one in recent times was the Super League case with PBL and News Ltd. The commission does not like to spend public resources on a matter where two people can look after themselves.

There has been—and I think there still is on foot—a massive section 46 case by Optus against Telstra, where there is a similar thing. They have their armies of lawyers and others working on this and covering every point. I am not suggesting that you are suggesting this, but I just want to make it clear: if you had before you the inference of purpose from effect, even in a private case, and the commission had to give it a tick that would involve it being involved in these massive cases.

CHAIR—I will move on to the next point of divestiture, which is really related to the cap. There has been an argument put forward by several people. The consumer council, in coming before us, said that they saw it as being an airbag—that we should have the possibility of divestiture of provisions being there so that it could be a threat without necessarily being activated. What are your views on that?

Prof. Fels—Once again, this is one where the commission is not making a recommendation. In fact, the issues raised for parliament are quite large on this question of the value judgments about how far you take the law, but I will give you some points for and against. The US has had divestiture. If I may, I will just talk a little about divestiture generally, although I note your point about it being a kind of threat or backup to the law. Arguably—and it has certainly been argued by some experts—US divestiture on the whole has worked well. Look at the major cases—oil, cigarettes, AT&T and DuPont chemical back in 1910-11 and a little bit after.

Incidentally, we have a very interesting situation coming up with the Microsoft case. It is rather obvious that, if Microsoft is found guilty, fines are not likely to be the answer on Mr Gates. In any case, quite apart from the fact that they may not be the answer, the problems in Microsoft, if you think they are there, are probably not resolvable by fines or behavioural restrictions. In the US, as you may recall, the Department of Justice tried to deal with Microsoft initially by reaching a deal with Mr Gates on his behaviour. That certainly did not satisfy the Department of Justice. Now they have had to go for the full doctor on it.

The US experience on divestiture, arguably, has not been that bad. The oil divestiture, which occurred in about 1911, was interesting because it broke up the Standard Oil monopoly into competing units spread around the country but for a number of years afterwards there did not seem to be any great effect. It took something like 20 years before, under the pressure of the Depression, there was an outbreak of competition. Ultimately, the divestiture did have a significant effect on competition within the US and, ultimately, globally.

Cigarettes were the same, DuPont was the same, and AT&T, despite some faults, has generally been seen as a success story in terms of a divestiture case. Indeed, in the US, a further element of the AT&T case was that no-one looked as if they were going to do anything serious about the AT&T problem. The Federal Communications Commission was not interested in moving on it. It was much less hostile to the monopolists, and no-one else was going to act. In the end the independent Department of Justice took the strong steps, the court supported it, and it set the scene for quite a lot of good reform in the US.

Also, to reinforce that point, you could look at some of the divestiture cases that have failed. The IBM and the steel cases are basket cases in the US where the divestiture process did not work.

There is also a contrary view that divestiture has not really worked so well. I am reporting, frankly, the views of Professor F.M. Scherer of the Harvard School of Economics who has written about this. In Chicago, they were more sceptical about the whole thing. Professor Posner, for example, was sceptical about the lengthy delays, the impracticalities, the difficulties of finding buyers and so on. The literature is a bit divided on this.

I would like to make almost a digression to mention the fact that at the present time we have a great deal of divestiture going on in Australia, but it is in the public utility area. To take electricity in Victoria as an example, we have had horizontal and vertical divestiture on a massive scale. We have had rather dry commissions like the Productivity Commission recommend massive divestiture, but in the public utility area.

You might respond to that and say, 'All they have done is recommend that governments should do that with their own bodies,' bodies which have been subject to very artificial ownership arrangements over the years, if your standard is what would have happened in a market as opposed to what happened under a government.

I should just note that there is a limited divestiture power in the Trade Practices Act at the present time. I should note it more for the record and for clarification. For the first three years after a merger it is possible for anyone, the commission or a private party, to seek divestiture.

Mr NAIRN—Three years, and not six years?

Mr Spier—It is three years for divestiture and six years is the penalty.

Mr NAIRN—Thank you.

Prof. Fels—I think I know the question that is coming on this!

Mr Spier—Cannons in early 1996.

Senator FERRIS—Did it go through Cooma?

CHAIR—Declare an interest, Mr Nairn!

Mr NAIRN—Everybody knows my vested interest.

Prof. Fels—So there is a power under section 50. We have used it, but most often we use it where someone has not notified us in advance about a merger. Once the commission has had a look at a merger and decided not to oppose it, then it is not so easy for us, anyway, to get a divestiture in court. But theoretically it is open, and in the Gillette-Wilkinson Sword case the commission was successful in getting a divestiture.

Mr NAIRN—And AMH.

Prof. Fels—And AMH. Also in the Gillette-Wilkinson Sword case the Federal Court had no constitutional problems with the divestiture. That is not a terribly high authority on the constitutionality of divestiture, but it is a pointer. The court took the view, essentially, that it was a penalty; that it was just an aspect of the penalties and remedies under the Trade Practices Act and so it raised no profound constitutional questions. But that was tied to a particular anticompetitive behaviour.

Those are one or two points leaning towards divestiture. The other point, which you have averted to, is the argument that, while one would hardly use this power, it is nevertheless an option that should be available under the law; that it would strengthen the hand of the commission and, if it were available to private litigants, it would strengthen their hand under section 46.

Senator FERRIS—Could you explain to us how that can be activated? For example, do you regularly review mergers? I am not trying to take over Mr Nairn's questions here, because I know he is interested to know too. How often would you go back and look at something that occurred 2½ years ago, and could it be activated by a consumer group or a local government group?

Prof. Fels—The greatest relevance, of course—and I know you understand this—is to cases that have happened before we have heard about them. There is no pre-notification requirement in Australia, unlike in most other countries. With regard to the cases we have had a look at, which I am sure are the ones your question is about, I cannot say that the commission, as a matter of course or very frequently, reviews the outcomes of mergers in the next three years. It would be desirable if we did more evaluation; however, the commission has simply not had the resources. It has been a bit too busy, usually with current pressing merger questions.

The House of Representatives committee that reviews us has been saying that we should do more evaluation, and we are stepping it up a little. I would not want to unfortunately leave the impression that there is massive scope for us to do that, and I also fear that if there were a grant of additional resources evaluation would not be the top priority.

CHAIR—What committee monitors the ACCC?

Mr Spier—The House of Representatives Standing Committee on Economics, Finance and Public Administration, chaired by Mr Hawker.

Senator FERRIS—With regard to the other side of my question about who can activate the review, can you get an application from a third party?

Prof. Fels—Yes. First of all, they can complain about it. There have been a couple of mergers where we have looked into complaints about what happened afterwards. One of them was the Amcor-APPM merger, which was a very close call. In the end the commission decided not to oppose it, subject to a fairly important condition about the role of Spicers remaining independent. We keep an eye on any conditions we impose. They are definitely looked at.

There were a lot of complaints for a while afterwards. On the whole, we attributed the problems not to the merger but to another phenomenon. There was a worldwide shortage of paper. A couple of years later prices escalated and supply availability became a severe problem. On the whole, we thought the problem was the worldwide situation, and the complaints died down after the shortage disappeared.

If individuals come to us and complain, we can have another look. In terms of going to court, we obviously start behind the eight ball if we have already decided not to oppose the merger, even if it is a very qualified decision about the merger. There would be a few cases where we have written to firms and said, 'We're not opposing the merger at this time,' and we have left it at that. The firms have clearly understood they run some risk of us taking an action in the following three years, but we have never been to court on a case we have signed off on.

Private individuals, apart from coming to us, can launch their own divestiture case. However, this has never happened and it is full of traps. One of them, I think, is that they have to give an undertaking as to damages if they run the case and lose it and their firm incurs losses as a result of this action.

To give a couple of points against the divestiture—because we have a neutral attitude; we feel this is such a big issue it is really for the parliament to decide—it is very interventionist. It would represent a considerable stepping up of the Trade Practices Act if you had a full-blooded, full-scale divestiture law introduced where the commission and/or anyone else could simply go to court and argue that an industry should be broken up or even that there should be a divestiture because of unlawful behaviour. It is true that under the present law, the remedies in the act do not explicitly mention divestiture but they are a little more widely written than is commonly recognised. I do not think you would find many commentaries suggesting that there is a divestiture power in the act, but there is some scope for broader orders in some instances of breaches of the act under section 80.

CHAIR—Are there any questions on divestiture?

Senator FORSHAW—This question is related to divestiture but it also probably relates to capping and a range of other things; it is really a general question. How important in all of this is the position of shareholders? In other words, we have been looking at the issue of the concentration of the big three supermarkets and their impact upon independents in regional areas and so on, but when you start talking about imposing capping and imposing divestiture for companies which have hundreds of thousands of shareholders, one could argue that, just as we have the interests of consumers and small business to consider, we also have the interests of hundreds of thousands of shareholders. How does that factor into your considerations about competition?

Prof. Fels—To address that question, I will start with an overgeneralisation that the lore, l-o-r-e, of competition policy over the years has been that the promotion of competition comes first. To that extent, competition lore is fairly largely based on the proposition that the law is applied and the fallout for shareholders is a secondary consideration as is the fallout even for property rights, because the whole of competition lore is challenging established property rights and the interests of owners, shareholders, producers and so on.

However, clearly parliament here and overseas has had in mind some kind of balance because it is in itself a pretty dramatic policy judgment to put competition first, ahead of these other things in the broad. If one takes the law beyond the established boundaries of competition to start writing in extra rules that go beyond it—market caps might be an example—then one is starting to intrude beyond some of the established limits of

competition policy. Some people would say, ‘We have passed a strong law on competition and we in parliament are prepared to have that pushed.’ If you cannot show that something would breach the laws about substantial lessening of competition and so on, then we would start to be more hesitant about playing around with shareholder rights.

CHAIR—Before we move on, Mr Nairn has a question on divestiture.

Mr NAIRN—The Cannons example has come up again in evidence this morning and you have commented about review. Has there been any view of the ACCC to relook at that merger?

Mr Spier—Not really. Apart from you raising it with us at the very first meeting we had, it has not really been raised with us. That is not to say that we could not have a look at it, but I think time might be a little bit problematical.

Mr NAIRN—After looking at your submission, apparently that merger started in early 1996, so I do not know when it was actually completed.

Mr Spier—I would have to check when it actually happened. I seem to recall that they were in an awful hurry to complete it—I do remember that.

Mr NAIRN—The committee has conflicting evidence—

Mr Spier—So I gather.

Mr NAIRN—whereby the evidence provided by the Cooma-Monaro shire suggested some quite high increases in prices, whereas Woolworths gave quite the reverse evidence that, in fact, they had come down from what was charged when it was a Cannons store.

CHAIR—That may be something that may be looked at.

Mr Spier—We can certainly have a look at it.

Mr NAIRN—But your comment that nobody has raised it with you tends to suggest that you really are going to review these things only when somebody has a complaint.

Mr Spier—That is, of course, quite natural. In terms of resources, firstly, you cannot go and look at every merger because it is quite intrusive; and, secondly, one of the stark things, which I am sure you realise, is that once a merger happens, any cooperation you had from the parties before the merger vanishes pretty fast.

Mr NAIRN—Yes. I would have thought that particular merger had a little bit of controversy about it, particularly in the ACT, because of the reasonable presence of Cannons in the ACT and it was connected to wholesaling.

Mr Spier—There was a little bit of local controversy, but there was not that much. It coincided with Woolworths buying a big site in the Tuggeranong valley, what is now the Lanyon development, and that caused a bit of concern that there would be an increase in

Woolworths' power. There was some but, having said that, we got little out of the marketplace.

CHAIR—We are glad to hear that you are looking at it.

Prof. Fels—I can see that you want to move from divestiture. I will just make two or three quick points on divesture if you want to polish it off.

CHAIR—Yes.

Prof. Fels—I had not really done justice to the case against divestiture, apart from saying that it gives a very powerful weapon to the courts, and one might be concerned about that. Sometimes it means the sacrifice of economies of scale or scope by breaking up a big unit into smaller ones. There are severe problems often in finding buyers in these cases. The remedy may not turn out to be so good if you cannot get a good buyer for the assets. It would create quite a lot of business uncertainty.

There is also the possibility of making fairly big mistakes in this area. There are profound policy questions. If there is bad behaviour going on, do you adopt a structural solution, break them up, or do you try to control the behaviour by having a section 46? There are arguments for and against both points of view. If someone steals, if someone strongarms, do you cut their fingers off or try and improve their behaviour, et cetera?

CHAIR—Get them to be good corporate citizens. Concerning creeping acquisition, we mentioned that with you before. I suppose the question is voluntary or mandatory notification.

Prof. Fels—We see some merit in having notification. A voluntary notification can happen at the present time, but it may not. So it is a question of whether one would want to make it mandatory, whether one is sufficiently concerned about this issue that it is at least looked at in advance by the ACCC.

CHAIR—The problems that were raised with me by the majors indicate that they clearly do not want it. They said there were the long delays they would encounter on the takeover of an individual store, and often the store holder might want to get out to do other things anyhow. That was their reason.

Prof. Fels—It is tending to happen to a fair degree with Coles Myer at the present time.

Mr Spier—We are not sure if Coles Myer has notified us of every single acquisition but, as a matter of course, they will come to us. We have not taken a long time with most of them.

Prof. Fels—Typically, most mergers are ones which are planned for for days, weeks and months. In the case of the particular acquisitions you have in mind, they are not done that rapidly. There are periods of negotiation, hitting a price, and all the other conditions. That usually takes quite a lot of time. They do not rush down there in the morning and buy half a

dozen supermarkets that are being sold off around Australia. I would be sceptical on that time factor.

Our commission keeps statistics. We get through easy mergers in two weeks or less, and with the more complex ones we do not take more than six weeks unless we get held up by the parties.

CHAIR—What about an individual store at, say, Forbes in the country? What are the chances of it being knocked back?

Prof. Fels—They are not that high. On the other hand, firms have been a little careful. The most typical scenarios that have come to us is that majors buy up stores in areas where they are not represented. So the immediate anticompetitive effect is not there.

If they are buying up where they are already represented, that is something that we would look at. We would probably appreciate looking harder at that. The question then is: under the Trade Practices Act, how would the courts end up viewing competition in a single town? It is not that clear that they would regard that as a breach of the law.

CHAIR—We had an interesting situation in Bundaberg where there were six supermarkets—

Mr NAIRN—The sixth one was under construction.

CHAIR—Everyone was saying, including the council, 'We can't stop it,' but why do they need it? Woolworths were already in one or two locations and were putting in another one. That is also of concern. That is not creeping acquisition; we already have a sizeable representation. Maybe it is a different issue—I do not want to compound the problem.

Mr Spier—It is interesting, of course. I know some of those stores in Bundaberg quite well. One of them is an ex-Jewel store which Coles bought because Davids had its problems. Franklins bought the Giant supermarket, and that is why you have got the two Franklins in town. Some of the acquisitions have meant that there are probably more supermarkets than you would expect. I query whether all those will stay open; I am not too sure.

CHAIR—What you are saying is that mandatory requirements may throw that up.

Mr Spier—In the Jewel one, for instance, Coles actually came to us about their acquisition of the Jewel store in Bundaberg. I do not recall Franklins coming to us about the Giant supermarket, for instance.

CHAIR—Anything further on creeping acquisition?

Mr NAIRN—We asked some questions of the Law Council about this. They seemed to be very adamant that there is always notification. I queried them on that, particularly over the one-off store. What is your understanding of what has occurred in recent years? When the stores do notify you, are they notifying you at the commencement of negotiations on the purchase or after they have done a deal?

Mr Spier—The Law Council gave you a two pronged answer: firstly, they thought in most cases that there was notification; but secondly, in many cases there was no likelihood of a breach, in their view, so there was no need for notification. A fair few notifications come to us—I mentioned that Coles Myer seemed to come to us on most of those purchases, but others do not. There was mention of 900 stores, and I assure you that we have not had 900 stores notified, by any means. Those that do come to us normally come fairly early in the piece but often they are urgent.

CHAIR—There being nothing further on creeping acquisition, we might talk about strengthening of the Trade Practices Act—representative action under part 4 of section 46, by empowering the ACCC to undertake representative actions and to seek damages on behalf of individuals.

Mr Spier—That is an issue that has been around for a long time. We have been on record as strongly supporting moving from a fairly odd situation, where we can get representative action for some of the act, especially part 5, but not for the competition provisions. We can use witnesses in court for a price fix or a misuse of market power case. We can say, 'Thank you very much for helping us. As to damages, you have to take your own action.' Telling people that is not easy and it is not very efficient. We think strongly that there should be an amendment. It went to parliament last year, by the way.

CHAIR—Can we move on to this whole question of new issues that have emerged, and try to solve it. It seems to us, in going around, that people have said that there is a problem in terms of access to ACCC. There are comments such as, 'They say it's very difficult to prove'; 'go away'—in short terms; I am sure they did not do this—'it's very expensive'. There were attractions in having some other unit that could take on board issues. There are myriad anecdotal stories: proof in individual locations of lowering price against a particular retailer; the egg war; the Franklins case; forcing the owner of the supermarket, so it is claimed, to provide space and then they move into new areas, such as fresh fruit. Lo and behold, the existing fruit and vegetable retailer goes out of business; they thought that they had an agreement that there was going to be no other fruit and vegetable retailer. These types of things have been mentioned—day to day stuff. We have heard hours and hours of this.

It seems to us that there should be some smaller unit that can resolve those effectively with the authority of a Professor Fels. Obviously he has got a much bigger unit to look after, but we envisage a retail unit in some form where he can pick up the phone to Dennis Eck and say, 'What the heck are you guys doing in Kingaroy'—or over in Western Australia—'trying to blitz the small guy out of business? We have got some evidence here.' From what I heard, especially from Dennis Eck, they want to be good corporate citizens. If this is the intention—not just a spin for this committee, which is always possible—what ability is there to speed up the process? There have been suggestions in various forms—an ombudsman, a tribunal, a section within the ACCC. How do we deal with this? I am sure that the majors would rather not have any of it but, on the other hand, obviously the concept of an ombudsman which they would pay for is, I am sure, more attractive to them. On the other hand, if it has the track record of the Banking Ombudsman, there is some view that that has not been all that impressive.

Senator FERRIS—Time would be of the essence in the response to this.

CHAIR—That, as I see it, is what we have been struggling with. We would like your views on that.

Prof. Fels—To start off on a couple of basics, it is important to distinguish between issues that affect competition and other sorts of issues. This has been very important in the oil code, for example. The commission itself sponsored the whole idea of having an oil code, and it has generally worked pretty well for dealing with these numerous areas of tension and difficulty between oil companies and service stations. We have had to make it really clear, however, that this forum is not to be used for anticompetitive purposes. There have been a lot of pressures on governments of both sides, over the years, to let the code negotiations go on to questions about price. We are certain that would have led to price increases, and it has been resisted.

So far as all of these things are concerned, in the end we would be worried about some aspects of negotiations if they got into arrangements that limited competition. For example, we always have worries about sorts of horizontal arrangements between competitors at the same level when they get together. So on the question, say, of supermarkets entering new areas of business to compete against established players, our first concern there would be not to come up with arrangements that would stop competition in that dimension.

Most of the problems turn out to be at the so-called vertical level, between people at different levels—farmers to manufacturers, manufacturers to supermarkets, et cetera. There is often scope for codes there.

CHAIR—Code of conduct is really part of this. This is one of the items that have come forward to the committee.

Prof. Fels—Yes. They can, to a degree, be sort of self-administering. Of course, I am talking about before the act was changed to cover codes, as you know. There are a lot of industries with codes. Typically, they have to get them authorised under the Trade Practices Act if they contain some anticompetitive element—which they very often do. Now we have new provisions in the act about codes which could be utilised in any case.

We by no means rule out solutions along the lines that you have in mind. Tribunals generally require legislation, which is something one would want to make sure of—although not always, as I suppose you could have some kind of voluntary arrangement with a tribunal. Yes, you have tribunals not backed by a statute. Again, our main warning is to make sure they do not have an anticompetitive effect. In the oil matter, there is no doubt that codes had a pretty good effect. The lack of understanding, the many disputes and so on between players have often been resolved relatively well.

Mr Spier—And cheaply.

Prof. Fels—And cheaply and fast sometimes.

Senator FERRIS—Can I just pick up the point that you are making, although it is a slightly wider point in the press release that you put out, interestingly enough, only a couple of days ago. You say yourself that, in the first six months of this year, you had 552 inquiries or complaints, including allegations of unconscionable conduct under section 51AC. Surely that is an indication of this widespread confusion, particularly in regional and more remote parts of Australia, about people's rights and the opportunities that they have to take action. Sometimes that action needs to be taken pretty quickly. In Dubbo, we had some evidence that showed that, within three weeks of an action taking place, a small-business man lost $47,000 and was out of business. The ombudsmen do a very good job, but I worry about the length of time that would necessarily be taken to resolve something like this.

It seems to me that in your press release—which is quite fascinatingly entitled, 'Fair game or fair go?', which is, I suppose, what we are trying to grapple with also—you almost show by your own statements there that there is a problem in terms of people knowing where they can go and what they can do. You make the point here that, of the 552 inquiries or complaints, 161 have received further action and some are now with legal counsel. We are trying, if you like, to set up some mechanism by which people can feel that they can get some attention and maybe advice and resolution—which may or may not be within the ACCC in the end; it may be within a small business unit in some other entity. But it does seem to us that this is very much required and, from your media release, it seems that you agree.

Prof. Fels—Just to answer that a little slowly for a minute, since the strengthening of the unconscionable conduct laws, the government has given us additional resources and we now have a small business unit. It is liaising a lot more actively with small businesses, and that is one of the reasons why more complaints are coming forward. We are making it clearer to people what their rights are. However, as you can see from the fact that there are a large number of complaints and then the fact that only a third of them have been looked into, the basic issue is that many of the complaints do not raise Trade Practices Act issues, and we do not take them further. So the strength or weakness of the ACCC is that it will only really deal with illegal behaviour.

As I have said, we certainly saw in the oil case that there was this case for a code and other things, and it probably would not be a great thing if the ACCC were turned into an agency which dealt with complaints of all kinds which did not raise Trade Practices Act issues. Of the ones that do raise Trade Practices Act issues, most of them are sufficiently complicated that they take time before you get into court on them. The commission will act fast on clear breaches. For example, since that release, we have put out one about a tax scam. We acted on that in just two or three days.

There are a lot of points on which we will act fast because the law is clear. In fact, we are relatively quick moving by regulatory enforcement agency standards. But the reason for the delay is, first and foremost, that the law is somewhat complicated. Typically, you are dealing with big business represented by such excellent people as those we heard from the Law Council today, who usually can think up a few reasons why anything is lawful. We then have to bring in heavier guns.

Senator FERRIS—What happens to the figures you give here? Of the 552 inquiries or complaints, 161 have got further action. Presumably, the rest of them simply talk to one of your officers and, on the face of it, they are told that there seems little that they can do.

Prof. Fels—Yes.

Senator FERRIS—Is there any other advice that you can give them? Do you say, 'You can take action under this particular act'?

Mr Spier—It depends on what it is. We obviously get lots of complaints about lots of things. We may refer them to someone else. It may be a tax issue. It may be a trading hours issue, which is not an usual one. We refer them to the relevant authorities. With those 500 complaints, everyone says, 'My situation is unconscionable.' The fact that Woolworths is open long hours, that is unconscionable—those sorts of issues. But they are not for us.

Senator FERRIS—So you are already acting as a sort of referral centre.

Mr Spier—Yes, of course—that is because we exist. We get lots of complaints.

CHAIR—And so an ombudsman, a tribunal—

Mr Spier—Or trade associations could deal with some of that.

CHAIR—or a retail section within the ACCC?

Senator FERRIS—A small business section.

Mr Spier—We have a small business section now. We would have to expand it if we were to handle all complaints. There are small business advisory bodies around the place—state and territory ones. There are a lot of small business advisory processes.

Senator FERRIS—You are almost reinforcing my argument of how complicated it is for someone in an isolated area who does not understand their rights or responsibilities or those of the bigger competitors.

Mr Spier—Of course.

CHAIR—Could I go back to Professor Fels to get his view on this, seeing as it is important.

Prof. Fels—I think we might even write to you about a couple of details of it. There is also an issue in my mind about what is the best use of the ACCC for the public. Should it stick to competition and Trade Practices Act issues, or should it be a sort of small business complaints bureau—putting two extreme views?

Senator FERRIS—Or should it be both?

Prof. Fels—Yes.

Mr Spier—Except that a lot of the complaints are about competition.

Mr NAIRN—But isn't there the potential for duplication with the state departments of fair trading, for instance?

Prof. Fels—They tend to do consumer issues, not small business issues. But there are other agencies in state governments—lots of offices of small business. In the Commonwealth, there are offices of small business and so on. Complaints sometimes go to them and they may get referred on to us.

One reason I have slightly ducked giving absolutely definitive answers to the chairman on the spot is that, from time to time, there is a surge of general problems in an area. Then people wonder whether or not they should all be given to the commission. We have had this in the financial services area with consumer protection problems. We have always, up until recent changes, anyway, been concerned with the standard breaches of the act—that is, misleading and deceptive conduct. We are the experts; we know what to do there.

There are a lot of other things in financial services that are genuine consumer problems—questions about training, licensing and accreditation of agents. If we had taken over all of that, not only would we have needed a lot more staff, but we would have found a fairly large part of our organisation becoming concerned with playing another role from its traditional, focused approach to the enforcement of the Trade Practices Act.

CHAIR—So you might want to take that on notice and write to us.

Prof. Fels—Yes.

CHAIR—Obviously, we are very interested in that in terms of how we deal with all these issues. This inquiry has shown just how widespread the concern, interest and complaints are. How do we deal with those? It may be that you have a separate group—like an ombudsman or whatever—that can deal with these issues, but with the ability to refer the anticompetition issues back to your small business. Maybe that needs strengthening as well. I do not know. Is there anything on that issue?

Mr JENKINS—It goes to resources and the way in which the ACCC is able to allocate and position them. For instance, in the price monitoring post GST, you have a unit of about 40?

Prof. Fels—Yes.

Mr JENKINS—Are they going to be based in the capital cities? What form of outreach is there?

Prof. Fels—There will be a few in Canberra, but they will basically be spread around Australia in our offices, which are in capital cities plus Tamworth and Townsville.

Mr Spier—We are highly decentralised in terms of our operations.

CHAIR—Yes, we have seen them around at our inquiries.

Mr JENKINS—So it will reflect the same decentralisation?

Mr Spier—Exactly the same.

Mr JENKINS—As an aside, your man was in Bundaberg in the morning and he bobbed up in Kingaroy somehow in the afternoon.

Mr Spier—He did not get booked for speeding either.

CHAIR—No, it was well done.

Mr JENKINS—You talk about additional resources for providing small enterprises information. How big is that unit?

Mr Spier—It has about 14 staff.

Mr JENKINS—Are they spread around the network?

Mr Spier—Yes, very much so.

CHAIR—We might want to take on board questions of resources. Our committee is supposed to be making recommendations that do not impact on additional costs to the government, and we will consider that within the committee. The other aspect in terms of 51AC is the transactions being limited to $1 million. Do you have a view that that should be increased? We have had that represented.

Prof. Fels—Yes, there is some merit in it. It is a practical problem. Government did think about it before and decided on—

Mr Spier—The mechanism is there to change it too. It can be changed. It is fairly easy.

CHAIR—Why don't we open it up to further issues? Obviously, we now have a time constraint. By the way, Professor Fels has offered to meet informally with the committee in the future to discuss some of these issues. That is of great assistance too.

Senator FERRIS—I wanted to raise a couple of issues that Senator Murray has raised during the inquiry. He is not here. I race to say that I am not raising them on his request but simply that he sent us a note. He has very strong concerns about shopping hours. While I know that shopping hours are not an issue that we can necessarily look at, I just wanted to read you one of what he calls 'possible recommendations' in his note to us to get your response to it. He says that the right to vary the general principles about shopping hours should vest in local councils, who must consult the local community and all interested parties fully if they decide to grant extended trading hours. He says that, if a publicly funded referendum is to be part of this process, the yes case should be funded equally to the no case.

Do you have any comment on the issue of this particular matter here, but also any broader comment on shopping hours? It became clear to us as we went around that shopping hours were a key factor in competition, particularly in Western Australia where shopping hours are still restricted. While I know it is not part of your general area, it does have an effect on competition. I would just be grateful if you could make a comment.

Prof. Fels—I certainly accept that they do have an effect on competition. Perhaps one might even say that the relatively big size of the independent sector in WA is perhaps connected with the shopping hours restrictions that they have had there. There is probably room for two views on the impact on competition of the shop trading hours. There is an issue there.

Another point is that, for many parts of Australia, shopping hours have been settled. So, if the matter were put in the hands of local councils, there might not be much action. However, in the areas where there are restricted shopping hours, I suppose it is predictable that, for better or worse, that would slow down the spread of liberalised shopping hours.

CHAIR—Is there anything of a burning nature that you wish to raise at the moment? I know that you wish to raise something in camera. Is there something else?

Prof. Fels—There is one minor thing—or not exactly minor. I am afraid I have not got a very good point to make, but I thought I would make it anyway. About this other question of the benefits of deregulation not being passed on by retailers, I am afraid we do not have any happy solutions, other than that we think there could be some merit in calling for more transparency about retail behaviour in these situations. If a government—federal, state or territory—is going to deregulate some basic product in the interests ultimately of getting a better deal for consumers, then there is a concern about the passing on to consumers of the benefits. Certainly, in our position, we would not wish to say that we think it is always passed on. The policy solutions are difficult, but there should perhaps be more transparency required of retailers in these situations as to what they are doing. For example, if milk is cut by 10c to farmers, there should be greater transparency about what happens from then on, especially at retail level.

CHAIR—What about the broader issue of transparency? The growers have argued about the need for transparency. The National Farmers in South Australia argued for that.

Prof. Fels—We can see why they are concerned, because different ones get different deals and so on. However, there is a more obvious concern about possible anticompetitive effects. You might well say the same about what I have said myself about passing on the benefits: if the retailers have to publish what they are doing about the pass on, they may not, just because they—

CHAIR—Pass it on?

Prof. Fels—Yes. So I am caught in my own trap there. The issue is that, supposing we are talking about farmers selling to supermarkets and supermarkets have to publish their prices, would that have some anticompetitive effects or would it facilitate collusion? Would it mean they would be less likely to extract benefits? The real issue is that we would like to

have final markets so that at least the benefits are passed on. The question is whether they are passed on adequately.

Senator FORSHAW—Can I follow that up? It has been mentioned already, and I have mentioned a couple of times that there is another inquiry going on in the Senate into the dairy industry and deregulation, and that resumes next week. It is being put that the deregulation of dairying is an integral part of competition policy—that this is something that ultimately has to happen in order to have greater competition across the state borders, for instance, in the milk market. We are hearing that the consumers will not benefit. They have not benefited so far from the deregulation that has occurred. A lot of the farmers are saying they will not benefit. In fact, it is proposed there will be a substantial fund of the order of $1.25 billion in order to assist farmers as a result of the abolition of the quotas and so on. Yet what is hanging over all of this, as the umbrella, is that this is what COAG is all about; this is what competition policy is all about.

Prof. Fels—It is an issue. You will not find—

Senator FORSHAW—I am not asking so much for you to agree or disagree, but that is the very message that we are hearing. We will be going to some of the same places next week that we have been on this tour.

Prof. Fels—The commission would not give an unequivocal assurance that the benefits would be fully passed on at retail. We see some merits in deregulation in these situations, so about the only even remotely practical suggestion we have is that there be some pressure on greater transparency about the retail pass on.

Senator FORSHAW—I suppose the one additional factor that we have not had to focus on so much in this inquiry is the role of the export sector and the manufacturing processors' interests versus the farmers and consumers. They are added complications. We are looking at a broader market, an international market, as well as a domestic market, unlike retailing.

CHAIR—I think that takes us out of the formal part of it. We have got a small section in in camera now. We do have the ability to raise issues with you again if we would like to, especially as we get down to the fine details of our proposals.

Prof. Fels—Yes.

CHAIR—I would invite the members of the Northern Territory Standing Commission to stay for the in camera session.

Senator FERRIS—Is Professor Fels happy with that?

CHAIR—Are you happy with that, Professor Fels—for the Northern Territory and the staff of the Northern Territory to stay?

Prof. Fels—Yes.

CHAIR—Do I have the approval of the committee to go into in camera?

Senator FORSHAW—Yes.

Evidence was then taken in camera, but later resumed in public—

[2.04 p.m.]

ANDERSON, Mr Barry Thomas, Executive Director, Australasian Association of Convenience Stores Inc.

CHAIR—I welcome Mr Anderson. The committee prefers all evidence to be given in public, but if you wish at some stage to have your evidence heard in camera you can make a request to the committee and we will consider it with the proviso that at some point in time the Senate may make it public. It is also important to remind you that giving false or misleading evidence may constitute a contempt of the parliament. The committee has before it submission No. 197. Are there any additions or deletions that you wish to make to that submission?

Mr Anderson—We do have some other verbal material to add to that submission, if we may?

CHAIR—That is fine. I invite you to make an opening statement, and we will follow that with questions.

Mr Anderson—Thank you. From the submission we have already made, you would probably be familiar with the fact that we are a relatively new retailer in Australia. We have some 930-odd stores around Australia nationally.

CHAIR—Nine hundred and thirty—that is big.

Mr Anderson—Our sales are around $4.5 billion per annum. Being a relatively new organisation, we are probably a modern style of small store, small business. We have very advanced technology. We have very expensive facilities and we are—I suppose you could say—today's corner grocer, corner supermarket, general store in the country. That is fundamentally what our operation is. We are expanding at the rate of about 11 per cent per annum. We have a long way to go in that sense.

CHAIR—Is it a cooperative or are they individually owned stores?

Mr Anderson—No. They are all corporations or independents privately owned.

CHAIR—Right.

Mr Anderson—I preface the additional remarks I am making by pointing out that supermarkets, by and large, are our most aggressive and most sophisticated competitors. I would qualify that and perhaps explain a little by saying that when our industry really started to move back in the early 1980s one of our marketing advantages was that we were 24-hour traders. By and large, but not necessarily, our members also tend to sell petroleum as a convenience product. That situation has gone on for quite some time and has held us in very good stead.

For those of you who are in the marketplace—and I guess that is most people—you would know now that in most states of the Commonwealth supermarkets have 24-hour

trading. They also have access in most states to liquor, which is a standard convenience store item anywhere in the world except Australia, and they have moved recently into marketing petroleum. If you look at it from a marketer's point of view, what has happened is that the benefits or the advantages we have have tended to be diminished by the onslaught of the supermarkets.

Taking that in its stead, our committee when it heard about this particular select committee decided to make a policy as to what we would do. Out of those deliberations we came out very strongly, as our submission supports, to favour no regulations of supermarkets or for that matter no regulations of retailers at all. There were probably two reasons for that. When this industry started as a relatively new industry a few years ago, we had terrible trouble—and I heard it mentioned this morning during the ACCC presentation—getting local government to approve our stores to operate. In fact, it was only the middle of last year that we were given state government approval in Queensland to operate. We have been denied access to the Queensland market for 10 years.

Local government was pretty much influenced by whom? The existing small business. What would happen is that we would put in an application to council and we would get knocked back. We would take it to the land and environment court or the court of appeal or whatever and we would win it. It was just standard. It was a political situation that existed at the grassroots. That is fine and that is the democratic society in which we exist, but it occurred to us—and as we looked through the submissions that have been made and some of the statements that have been reported in the press—that it is pretty much the same people, by and large, who opposed us who are now talking about doing something about the supermarkets.

We certainly do not believe that is the correct way to go if for no other reason than one of the arguments some years ago against us was that, first, the consumers did not want us; secondly, that we give nothing to society; and, thirdly, that we would be unfair competition for them because we wanted to trade 24 hours, we wanted to do things—we wanted to have scanning and technology and computers. Those people who opposed us in those days have been proven, much to their embarrassment, very, very wrong. Our stores are exceptionally supported by the community. Each store averages about 1,000 customers a day. We are expanding at a great rate. We have tremendous support. It has just proven the fact that retailing, if it is dynamic and if it appeals to the consumer needs and if it researches consumer needs, can fulfil those needs and be successful.

The second reason is that fundamentally some of the submissions made here talk about the need for the existing retailers to survive, the existing retailers to continue. They talk about unfair competition—what that is I am not too sure. We do not see in many places anyone talking about the consumer. Our industry is focused specifically on the consumers' needs. That is why we are successful. If, as it is said—and I have no reason to know whether it is right or wrong—supermarkets have 65 per cent, 75 per cent or 80 per cent of the business, because many consumers in little towns and big towns have elected of their own free choice to go do business with the supermarkets, we have no argument with that.

Because of the consumer reaction to the needs as society changes, community changes, communication changes, we think it would be a dreadful thing to do anything to the

supermarkets. It is not so much regulating the supermarket; what these folk—perhaps with the very best of intentions—are saying is: 'Let's regulate the consumer. The consumer does not have any right to shop at this store. The consumer does not have any right go there at 1 o'clock in the morning if he wants to. The consumer does not have any right to enjoy all the benefits—the merchandising, et cetera.' We say that is diametrically opposed to the way we operate. It is certainly diametrically opposed to free enterprise. Quite frankly, we do not know of a situation where in the rub of normal commercial activity those involved of their own free choice should come running to some authority to protect them.

There may be—and we have no knowledge of it and, quite frankly, we have had a fair amount of difficulty with supermarkets who have gone on to our patch or close to our members—occasions where supermarkets are supposed to have done certain things and maybe they have. We have no evidence of it. We have certainly taken instances to the ACCC for advice and counsel and accepted what they have found. We have just competed with them. We think that is the way it should work in this society. Retailing is very dynamic. Retailing changes about every five or six years. If you cannot or will not face up to the reality of that, keeping in mind that the consumer and community needs change equally as fast, then you do not stay in the business.

We have had difficulties with other regulatory processes for the same reason. It is basically protecting the market. We would ask you to think about this. It is not about regulating supermarkets or, as happened some years ago, trying to regulate us or trying to stop our industry from even starting; it is about denying the consumer his rights.

You can pontificate and theorise and extrapolate about what might happen five years down the track. An awful lot can happen five years down the track. There is a very strong argument around the United States at the moment that there may not be supermarkets five or 10 years down the track. You would well know that the Internet is replacing a lot of retailing at the moment and that is going ahead at a huge rate of knots. To get too focused on what may or may not happen five or 10 years down the track I think is probably a good exercise, but we do not believe it is relevant to this particular debate.

There is one other point we would like to touch on. It is the question of the ability of the supermarket industry to control so much of the market share. As we have said, if they control so much of the market share, obviously there are some people going shopping in their shops: consumers, the community in general—your electors, I suppose.

You hear a lot about things being different in the United States; Professor Fels said a few words about divestiture and some of the activities that go on over there. To compare the United States with here is not necessarily as valid a comparison as one could make. For instance, the US has 240 million people, Australia maybe 20 million. The US has only three major national retailers: Sears Roebuck, Wal-Mart and perhaps K Mart. What the US has—and they do not appear in any of the submissions I have read—is some extremely big, powerful and competitive supermarket chains, but they are all regional. They operate over about two or three states. Senator Forshaw is shaking his head there—he has probably seen them.

Furr's up in Santa Fe, New Mexico, practically dominates that whole New Mexico area—Santa Fe is the capital of New Mexico. In Albuquerque there is the Smiths chain out of Salt Lake City, Utah—they are big marketers. There is Bashes over in Phoenix. Those groups in their regions—which might only be two, three or four states—would have 40, 50 or 60 per cent of the market, I imagine, no risk. They are big efficient operators and there is a lot of competition. Marshes up in Illinios have about 150 supermarkets, about 100 convenience stores like ours and their own distribution, and they are extremely competitive. When people talk about the share here—25 per cent per player or 75 per cent for the group or whatever—we believe it would be appropriate to put that in its true context: that sort of market share in supermarkets in a country not dissimilar to Australia—not the same, but not dissimilar—is pretty much standard fare.

As I mentioned earlier in the deliberations—and you have obviously had a considerable number of submissions on varying points and with different philosophies—from our point of view as a modern retailer who finds the supermarkets extremely aggressive and competitive, we would ask you, on behalf of retailers like us and others who embrace the free enterprise system, to try somewhere in the deliberations to give a little more emphasis to what the consumer wants and how the consumer has already voted. The consumer has already voted for the supermarkets and people like us. That is basically all I wanted to add.

CHAIR—Thank you very much, Mr Anderson. It is interesting to have a change of approach. Can I ask the obvious question, which we have asked most of our major presenters: has your organisation got any association with the majors at all?

Mr Anderson—The major what?

CHAIR—Woolworths, Coles or Franklins.

Mr Anderson—Heavens, no.

CHAIR—With Davids?

Mr Anderson—No. Some of them draw off Davids. They mostly draw off MCI Australia, and I think that has just been taken over by Davids, so that will stop that. If I may comment, it is an interesting thing to see a small distributor also getting involved. One wonders whether it is entirely altruistic, or maybe there are other motives for wanting to corral a couple of competitors. I would leave it up to them to make that judgment.

Senator FORSHAW—The reason I was shaking my head when I was listening to you, Mr Anderson, is an issue that I raised at the outset: I am not so sure that the comparison of three major chains with supposedly 80 per cent of the market in Australia as against—I think we were told—20 major chains in the US with no more than 40 per cent of the market is a proper comparison, given their regional nature and also the size of the population. A lot of it might have more to do with the critical mass needed to sustain a major supermarket chain.

Mr JENKINS—But you were aware of some of those stores as well?

Senator FORSHAW—No, I was not. I was aware of some of the states.

CHAIR—Shopping there?

Senator FORSHAW—For a couple of them I had heard the names. If they were on Broadway or Fifth Avenue, maybe. Could I ask what might seem like a dumb question. Could you describe what you mean by a 'convenience store'? I think I know but I am trying to distinguish between your membership and some of the stores that would be members of NARGA.

Mr Anderson—Probably the best way to describe that would be by specification. Of those 900-odd stores, 850 of them would not be any bigger than 200 square metres.

Senator FERRIS—They are in petrol stations, are they not?

Mr Anderson—No. They nearly all sell petrol; that is true. To answer the question that I am sure is lurking in the back of someone's mind—it always is: of that 930-odd stores, some 450 would be constructed on property owned or leased by oil companies. Of that 450-odd, 350 would be franchised to individual franchisees, under the old Petroleum Retail Marketing Franchise Act, which is a very good franchise act for the franchisee. I believe that is in a state of change at the moment, but that is another issue. There is nothing wrong with that particular scenario. If you go into franchising, whether you are McDonald's, Pizza Hut, Captain Snooze or whoever—the man who runs around cutting grass—you need a franchisor who can, in this particular instance, give you an investment that you could not afford yourself: property, facilities, a trademark or a logo—7-Eleven, Apco and this sort of thing. So I would suggest that there is nothing derogatory about the fact that nearly half of them happen to be on land owned by oil companies. It may be emotional for some people who do not like oil companies. On the other hand, the other 450 or 500 are all independents. And again, in many instances, they are involved in petroleum. Petroleum is the most convenient product we sell. Absolutely.

Mr NAIRN—That is the drawcard, really, isn't it?

Mr Anderson—It is a bit like toilet paper. You have to have it. You do not like buying it. But, when it started off, we were the only ones there. Years ago, you might remember, Queensland and Western Australia had a roster system. I use Melbourne as an example of the arguments put to us that many years ago; I am sure they will not mind. It was argued against us in various forums that no-one needed a store of our type—small, not as big as half the size of this room, open after 11 o'clock at night—because everybody had gone to bed. I am sorry, but even in country towns there are a lot of people wandering around at midnight, 1 o'clock, 2 o'clock in the morning: hospital people, police people, fire people, tourists.

CHAIR—Politicians.

Mr Anderson—Politicians, certainly. I was talking to one the other day who thought we were a great idea because we were the only place he could buy anything at 1 o'clock in the morning. This was a Queensland politician in Queensland, I might add. They have different ideas on some things than we have. I was hoping Senator Boswell would be here.

Senator FORSHAW—A nocturnal one.

Mr Anderson—We are about that size. We are not very big. We are a mirror image of a supermarket. We carry everything a supermarket does except alcohol. But we only carry one or two. If you want a packet of breakfast cereal in the morning, going home from the theatre or the Senate or somewhere, you would be lucky to get two different choices in our shop. If you go to the supermarket, you would have a room this big. That is the difference. Our average sale is only $5. People will not come to us—we are too expensive—but they will come to us for convenience.

CHAIR—So you do not have problems in terms of the pricing regimes of your suppliers?

Mr Anderson—In terms of our suppliers—not particularly. We negotiate like anybody else does with suppliers. If you have the advantage of a franchisor, then they can negotiate in some instances on your behalf.

Senator FORSHAW—I now have a better picture. When you were talking about convenience I was thinking about the stores that I know of with petrol stations. You made the comment that you are here to serve in a residential area. You are also focusing on stores away from the suburban shopping centre and not necessarily located on a main street. This is quite common in some parts of Sydney.

Mr Anderson—One of the basic tenets is to be in a residential area of some 5,000 to 6,000 homes. It does not necessarily have to be there; it can be two or three miles down the road on the way home, but it needs to be on a reasonably well trafficked road. Some of them perchance are on highways, although that is not deliberately. You do not go to highways sites.

Normally what happens if there is a facility on the highway and you can see that this type of retailing is desirable, they will take it on. But, they are essentially residential bound. You will not find that many stuck out in the middle of nowhere. We have quite a few in country towns, and that is interesting, because they are about the only thing in town that is open at one o'clock, two o'clock or three o'clock in the morning.

One of the things about those supermarkets—and I would commend it also for consideration when you hear some of the negatives—is that the three supermarkets that I have visited in the last few years have a video store and a manned bank with four or five people.

CHAIR—Where is this?

Mr Anderson—Those would be the three I mentioned in the States. They have a restaurant, a takeaway and a 24-hour, seven-day a week pharmacy. For anyone who has brought up kids, it would be nice to know there is a 24-hour pharmacy in town which is not so far away by car. They are very modern. They have become the social centre. That is where the people go. Santa Fe is a town of only 40,000 people. It is not a big deal. If there

is any criticism of the supermarkets it is that in our opinion they are not moving fast enough in that direction.

CHAIR—That is very interesting.

Mr Anderson—But maybe they are in some places.

CHAIR—We should sign you up for the modest members group.

Mr Anderson—In fact, we have been accused of being pompous.

CHAIR—No.

Mr Anderson—Not by you folks, but they have said, 'Goddamn. You are small business. What are you doing supporting the supermarkets?' It is self-serving, I suppose. The consumer is our customer and they come to us by choice. We think everybody should play by the same rules. If there are other independents—who are also our competitors—they can compete with the customer, just as we do in the supermarkets.

In fact, if I could finish off, I noticed that the Law Society quoted something a little while ago. Perhaps I might quote something which may give members a clearer picture of this. Thomas George, the new National Party MP for Lismore, in his maiden speech made a statement relating to the rural sector. He said:

> A farmer's strife began in 1966 when they changed pounds to dollars and his overdraft doubled. They then introduced kilograms to pounds and his wool clip dropped by half. They changed rain measurements to millimetres and he is not had an inch of rain since. When degrees celsius came in, the temperature never got over 40 degrees. They converted acres to hectares and he ended up with half the land he originally had, and when he decided to sell out, just about the same time they changed miles to kilometres, and the property station agent told him it was too far out of town.

We would suggest to you that a lot of these independents—and I have read some of their submissions—are pretty much in the same boat as the mile and the kilometres. Nothing has changed. Yes, the standard may have changed and society has changed, but they have to realise that the consumer is out there and he has not changed. If you cannot satisfy the consumer, you cannot satisfy anybody. That might clarify it a little bit.

CHAIR—Thank you very much. We ought to have you as a guest speaker at the modest members' night. That is the group of economic dries within the parliament.

Senator FORSHAW—There was another first speech given in the New South Wales parliament by another member that you might have been interested to read, too. I think you know the one I am talking about.

Mr Anderson—Yes.

CHAIR—Thank you very much. We appreciate your coming. I declare the public hearings adjourned.

Committee adjourned at 2.30 p.m.