

Chapter 1

Introduction

1.1 On 24 June 2009, the Trade Practices Amendment (Guaranteed Lowest Prices—Blacktown Amendment) Bill was introduced into the parliament. The bill is co-sponsored by the Leader of the Nationals in the Senate, Senator Barnaby Joyce, and independent Senator Nick Xenophon. The Blacktown Amendment is designed to curb 'geographic price discrimination'. This occurs when a business charges different prices for the same product in two or more different locations.

1.2 Treasury explained the concept of geographic price discrimination in their submission to this inquiry:

Geographic price discrimination occurs when a business charges different prices for the same product in two or more different locations. This pricing flexibility is widely used by businesses in many different industries. There are various reasons why a business might use geographic price flexibility. These might be related to supply-side aspects, such as differentials in costs or the scope of operations between locations; or demand-side factors, including the size of the local population, and the nature of local competition. Each of these reasons, including competitive differences, is a legitimate reason for prices to vary among locations.¹

1.3 The Second Reading Speech of the bill explained that geographic price discrimination is 'widely recognised' as a tactic to diminish competition between independents and retail giants. Big businesses would charge a lower price where competition from independents exists in a given area, but charge higher prices in adjacent areas where there is no independent operator. The Second Reading Speech noted that:

Over time, geographic price discrimination will lead to the demise of competition and the independent operator, allowing the retail giant to then set prices without any competitive pressure from those independents. The inevitable result is that consumers pay more once the independents are driven from the market.²

1.4 However Treasury amongst other submitters to the inquiry, argue that the bill contradicts the object of the *Trade Practices Act* by prohibiting competitive behaviour and is contrary to trends overseas where similar provisions have been found to unnecessarily harm consumers.³

1 Treasury, *Submission 10*, p 2.

2 Second Reading Speech, *Senate Hansard*, 24 June 2009, p. 55.

3 Treasury, *Submission 10*, cover letter.

1.5 The bill would amend the existing predatory pricing provisions in section 46(1) of the *Trade Practices Act 1974* (TPA). This section prohibits businesses that have substantial market power from taking advantage of that power for the purpose of eliminating or substantially damaging a competitor.

1.6 The fundamental question raised by the bill is whether the same product sold in different locations should be considered and priced the same, or whether there are legitimate operational reasons—which do not disadvantage consumers—for corporations to vary their retail prices from one local outlet to another.

Conduct of the inquiry

1.7 The committee advertised the inquiry in *The Australian* newspaper and on the committee's website and wrote to stakeholders, inviting written submissions by Friday 11 September 2009. It received 13 submissions, which are listed at Appendix 1.

1.8 The committee held a public hearing in Sydney on 25 September 2009 where it took evidence from Treasury officials, among others. Appendix 2 lists those who appeared at this hearing. On 5 October in Melbourne, the committee took evidence from the Australian Competition and Consumer Commission.

1.9 The subject of geographic price discrimination also arose during the Senate Economics References Committee's inquiry into the federal government's planned GROCERYchoice website. Public hearings for that inquiry were held in Canberra on 18 September and 28 October, and in Melbourne on 6 October 2009. References are made to the relevant parts of these hearings in this report.

1.10 The committee thanks all who contributed to this inquiry.

Structure of the report

1.11 This report is divided into the following chapters:

- chapter 2 outlines the provisions of, and the rationale for, the bill;
- chapter 3 presents the evidence that geographic price discrimination exists in the retail grocery and petrol markets in Australia;
- chapter 4 looks at the TPA's current and past provisions outlawing predatory pricing and geographic price discrimination, as well as the international experience with price discrimination laws; and
- chapter 5 describes practical concerns and gives the committee's view of the bill.