

**Australian Labor Party**

National ALP

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ALP News Statements

Staying ahead in a competitive world economy means that the work of policy makers is never done. Globalisation makes economic reform an assignment without a completion date. In a world of economic change, reform has to be the natural order of things. Good government means having to continuously review and reform, and then repeat the exercise. The cost of abandoning reform is lower living standards over time.

No amount of rhetoric from Howard and Costello will convince me that the economic reform task is complete. The challenges are plentiful. We have challenges in the housing market. We have a tax system that discourages incentive and effort. We have a record Current Account Deficit. We have negative household savings. We have declining productivity levels. And we have markets that are reconcentrating. Reform is always a work in progress.

Labor believes in economic reform. Our agenda is about the future: ensuring that Australia is well placed for the next stage of change and development in the global economy.

Labor's Next Instalment of Competition Policy

Private sector competition has always been the Labor way. Trade practices law, reduced tariffs, financial sector reform, markets in energy and telcos, national competition policy – these are all Labor legacies. Conservatives talk about markets. Labor reforms them. Conservatives talk about competition. Labor ensures that it happens.

That's why we believe post-Hilmer, the nation needs a fresh competition agenda. Labor sees the need for a third wave of competition reform. The first brought us internationalisation, the second gave us public sector competition. Labor's third wave will deepen competition in the private sector, ensuring the nation's bounty is distributed according to effort and innovation, not by concentrated markets and protection.

Labor believes that equity and efficiency can coexist. Competitive pressure pushes along innovation, upgrades technology, secures new markets and lowers prices. It also squeezes management excesses and highlights poor quality and service. This is why I am unashamedly pro-competition. That's why I want to implement the next wave of competition policy reform.

Labor's Trade Practices Reform Agenda

Labor has already announced its first instalment of trade practices reform. These announcements include:

- Reforming Section 46 (abuse of market power) to specifically outlaw predatory pricing and to strengthen the purpose test.
- Introducing criminal sanctions for hard core cartels. Cartels are little more than a sophisticated form of theft, and the law should respond accordingly.
- Supporting collective bargaining provisions for small business.

These changes underscore Labor's pro-competition, pro-market agenda. But there is always more to do. As new information arises and new cases reveal themselves, other instalments of change become necessary.

To complement our first round of trade practices policy, we are now considering the following reforms:

- **The introduction of interim cease and desist orders that give immediate relief to small businesses and consumers from the abuse of market power.**

The evidence suggests that the time taken to bring on proceedings and provide relief to small business and consumers is excessive. Thus the case for interim administrative orders that provide immediate relief. It is important, however, to guarantee procedural fairness so that the orders are fair and equitable to all parties.

- **The introduction of a new remedy of divestiture in cases of repeated abuse of market power and in the dissolution of hard core cartels.**

The Trade Practices Act needs stronger powers to deal with collusion, anti-competitive behaviour and repeated abuse of market power. The additional remedy of divestiture would be an effective deterrent when all other remedies fail. Divestiture cases in the United States – dealing with steel, chemicals, oil and more recently, Microsoft - have highlighted the gaps in Australian practice. Labor is considering ways in which this deficiency can be overcome.

- **New measures to deal with creeping or cumulative acquisitions.**

Under the Howard Government, competitive markets are being replaced by duopolies. This is evident in the grocery sector, for instance, with Coles Myer and Woolworths now holding around 80 percent of the market. By comparison, in the United States the top five grocery retailers have one third of the market with Wal Mart, a huge company by international standards, having a market share of just 15 percent. Even in the United Kingdom, the top three retailers occupy no more than 55 per cent of the market.

Section 50 of the Trade Practices Act deals only with acquisitions (usually lumpy and large) that substantially lessen competition. The Act is silent when an entity with an already large market presence begins the process of accumulating small acquisitions which, in isolation, do not affect concentration but have the cumulative effect of lessening competition over time. In the grocery sector, Coles Myer and Woolworths have acquired 90 independent grocers since 1995.

The Trade Practices Act needs to address this problem. A number of options are available. One is to declare or deem a market as concentrated, with further acquisitions subjected to public interest tests and declarations. Another option is to issue a concentrated market notice by which further acquisitions are closed off. Labor is considering firm action against creeping acquisitions.

- **Additional powers for franchisees**

As a business model, franchising has been increasingly popular in recent years. It offers many advantages in terms of support, guidance and mutual benefit. It also helps to mitigate against risk and improve the chances of small business success. At the same time, however, franchising can result in a mismatch of power, with material damage to franchisees. I believe we need to rebalance the relationship by providing additional protection to franchisees.

The mandatory Franchising Code must be relevant to contemporary conditions. In particular, I want to see the code impose a duty of good faith on franchisors in their dealings with franchisees. We also need to consider extending the powers of the ACCC to allow the bundling of disparate but common complaints against franchise networks to be treated as a single complaint.

The ACCC also needs a quicker turnaround time to resolve complaints under the Code. A maximum complaints handling deadline of 12 months would seem appropriate.

- **Building a statutory review into the Trade Practices Act**

There is a strong case for a built-in statutory review of the Trade Practices Act, say every five years. The Howard Government has treated the Trade Practices Act and the ACCC like political footballs. While the public hold the ACCC in strong regard, the Government has been trying to undermine its effectiveness and independence.

Its recent review of the Act was too closely associated with the demands of sectional interest groups. To overcome this problem, a built-in statutory review could be incorporated into the Act. Common enough in other statutes, it is especially relevant in trade practices, where we need to ensure that the original intention of the parliament keeps pace with developments in case law.

- **Further instalments of reform**

The current Senate Inquiry into the Trade Practices Act and small business offers even more scope for change. The Senate Inquiry is scheduled to report in December and I will be closely examining the results of the inquiry, particularly any recommendations that emerge around Section 51 and unconscionable conduct. Labor is committed to protecting small business from unconscionable conduct and ensuring accessible justice for small businesses pursuing matters under Section 51.

Conclusion

Competition policy is not just an intellectual exercise. If we want productivity gains and improvements in living standards, we need the tools that build a dynamic and innovative economy. This is why trade practices reform is so important.

Competition is also a means of delivering fairness. There is nothing fairer than seeing a new entrant taking market share and gains from an established player. The new entrant profits, the consumer gains and the nation builds.

The Howard Government talks about small business and consumers, but it never improves their rights under the Trade Practices Act. Given a choice between big business and the needs of small business or a new entrant, the Coalition always favours the big end of town.

This is not the Labor way. Labor introduced and has always strengthened the Trade Practices Act. We will do so again. From where I sit, strong trade practices law is the bedrock of strong competition policy and a strong Australian economy.

Ends. Check Against Delivery

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