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HOUSE OF REPRESENTATIVES

Federation Chamber

GRIEVANCE DEBATE

Competition Laws

SPEECH

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Questioner
Speaker Kelly, Craig, MP

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Mr CRAIG KELLY (Hughes) (21:17): I was hoping tonight to speak on the Competition and Consumer Amendment (Strengthening Rules About Misuse of Market Power) Bill 2013. However, it appears that there will be no serious attempt to debate this bill, which has been brought in at one minute to midnight in the dying days of this parliament, or to even bring it to a vote in the House. In the short time I am allowed tonight, therefore, I will raise a few problems with our competition laws, especially our provisions on the misuse of market power.

Our competition laws, and their interpretation by the courts, have simply encouraged duopoly and oligopoly. They have encouraged increased market concentration in just about every sector of the Australian economy. The first question to ask, therefore, is whether this increasing market concentration, spurred on by the legislative settings of our Trade Practices Act, now known as our Competition and Consumer Act, is in the best interests of the nation.

To answer that question, I start with what Justice McHugh of our High Court said in the infamous Boral case:

While the conduct must be examined by its effect on the competitive process, it is the flow on result that is the key—the effect on consumers.

Let us therefore have a look at the effect on consumers of having laws which reward bigness for bigness's sake and which have led to this drift towards increased market concentration.

I will start with our food retailing sector. Over the last 30 years we have seen a massive increase in market concentration in our supermarket sector. But, rather than benefiting the consumer, during this period the Australian consumer has been sluggish with the highest rates of food inflation in the developed world—not just for a short period of time but for almost any period that you pick over that 30 years, consumer prices for food in Australia have increased faster than almost anywhere else in the developed world. And today, any like-for-like comparison of food prices in supermarkets in Australia that you could make, with almost anywhere in the world, shows that Australian consumers are paying some of the highest prices for their groceries and their supermarket staples.

We have seen the illusion of this phoney price war between the supermarket duopoly, which is only undertaken on a handful of lines. We look at the other 5,000 lines in the supermarket and we see that they have been going up and up and up, faster than almost anywhere else in the world.

So where did we go wrong in our competition laws? It has been a complete delusion that you only need two or a few companies in a market for there to be adequate competition. Our laws and our history tell us that, if you reduce the number of competitors in a market, you reduce competition and the consumer is worse off. So this idea we have had of bigness for bigness sake is not an ideology of the free market; this is the same failed ideology that we see in central-planning economies—where a small group of all-knowing central-planners simply know what is best.

I believe it is simply the case that, the more concentrated the market becomes, the higher prices consumers pay—and that is exactly what we have been shown by the empirical evidence in our supermarket retail sector. I would like to give an example, from my experience before I came to this parliament, of how that happens. It was in New Zealand, when one of Australia's largest retailers was opening up many stores throughout New Zealand. They went to their New Zealand suppliers and told them that they would have to pay the rebates—around 10 per cent, which is money paid back to the retailer by the supplier—if they were to supply that Australian retailer. Of course, these New Zealand manufacturers and wholesalers said, 'We cannot afford to pay that 10 per cent rebate, because that is greater than our profit margin.' The response of the big Australian retailer was simply: 'Increase your wholesale price; we don't care.' And that is what happened: to pay those rebates, the wholesalers simply increased their wholesale price, which increased the retail price. So the more dominant we see our retailers, the more they are able to extract rebates out of their suppliers, and the higher the price the consumer will pay.

I will give just one example. Let us look at the price of that basic commodity Coca-Cola—which, in today's global society, is almost an international commodity. We have seen, under this Labor government, over five years, the 'everyday low price', as our supermarkets like to call it, for a two-litre bottle of Coke increase from \$2.97 to \$3.95. That is an increase of 33 per cent, almost double the rate of inflation, giving us the highest supermarket prices in the world for Coke. I was on a delegation late last year to Taiwan. In a small 7/11, in a store two hours out of the main city of Taipei, a two-litre bottle of Coke was retailing for the equivalent of one Australian dollar. And yet in Australian supermarkets we are paying four times that price.

Sadly, this Labor government have simply said there is no problem with our competition laws. The coalition believe otherwise, and we are giving a clear choice at this next election on competition policy. While the Labor Party say everything is fine, and they will do nothing, the coalition acknowledge there are many issues and we have committed, as part of our policy platform, to a full root-and-branch review of our competition laws.

In my remaining time I would like to suggest some of the things we should look at when we have that root-and-branch review, if the coalition is successful at the election. I would like to start with some of the history of our competition laws, or anti-trust laws as they are known in the US. Perhaps the best place to start is with a speech given by US President Teddy Roosevelt back in 1912. He spoke about the importance of American anti-trust laws. He said:

... we shall be most vigilant never to allow them to crystallize into a condition which shall make private initiative difficult.

It is of the utmost importance that in the future we shall keep the broad path of opportunity just as open and easy for our children as it was for our fathers during the period which has been the glory of America's industrial history—that it shall be not only possible but easy for an ambitious man, whose character has so impressed itself upon his neighbors that they are willing to give him capital and credit, to start in business for himself, and, if his superior efficiency deserves it, to triumph over the biggest organization that may happen to exist in his particular field.

Whatever practices upon the part of large combinations may threaten to discourage such a man, or deny to him that which in the judgment of the community is a square deal, should be specifically defined by the statutes as crimes.

... ..

In a word, then, our fundamental purpose must be to secure genuine equality of opportunity.

... ..

We stand for the rights of property, but we stand even more for the rights of man.

That is what our competition laws must be about: the enlargement of individual liberty. We must encourage an environment with our competition laws to ensure that the individual Australian, someone who wants to be an entrepreneur rather than a unionised employee, must not have his opportunities restricted by trade practices designed to eliminate him from the market. For, if we do this, it will also benefit consumers with lower consumer prices.

The first practice that we need to look at is anticompetitive price discrimination. 'Among unfair business practices, anticompetitive price discrimination most directly denies small business an equal opportunity to live and grow on the basis of efficiency. Such opportunity is the very essence of the competitive economic system which our antitrust laws seek to preserve, maintain and restore.' They are not my words. They are the words of a report submitted by the US Federal Trade Commission. Yet, 20 years ago, rather than strengthening our weak and ineffectual laws against price discrimination, this parliament abolished them. They were abolished under the theory that such conduct would be caught by section 46, the misuse of market power. Since then, a series of court cases has proved that as a complete furphy.

I am hopeful that the coalition will win the next election, for we need that root and branch review of our competition laws to restore equality of opportunity to the Australian entrepreneur.