



Clubs Australia

11 May 2007

Consumer Policy Inquiry
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Sir/Madam

On behalf of ClubsAustralia thank you for the opportunity to provide comment.

This submission provides a brief background on clubs and ClubsAustralia and highlights an inequity in the policy framework which acts to significantly shift the balance of market power in favour of the supplier and adversely impact on the millions of Australians who are members of clubs.

In our view this should be addressed by extending the scope of the Australian Competition and Consumer Commission (ACCC) to monitor prices and to modify the policy framework in a manner that more easily allows consumers to undertake collective boycott action in certain situations.

ClubsAustralia

Clubs are groups of people having a common interest who have bonded together to pursue or promote that interest. This common interest is often related to a particular sport but can also be on the basis of religion, political affiliation or occupation. By way of example the most common type of club in New South Wales is the bowling club followed by RSL and ex-services clubs.

Australian clubs are unique in that they conduct their businesses on a not for profit basis and are community based organisations. The motivating principles behind clubs are clearly distinguishable from other commercial entities, such as hotels, that are involved in similar activities, for example, gaming services.

ClubsAustralia is the coalition of all State and Territory club associations. It is an association incorporated in the ACT.

ClubsAustralia's membership through its states and territories represents approximately 3,000 Australian clubs that serve approximately 5 million members who are directly impacted by the consumer policy framework.

Review of Australia's Consumer Policy Framework

The Consumer Policy Framework Issues Paper (January 2007) outlines the scope of the inquiry and specifically requires the Productivity Commission to report on "any areas of consumer regulation which are unlikely to provide net benefits to Australia and which could be revised or repealed".

The overarching objective of the Trade Practices Act 1974 (TPA) is: "... to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection".

The discussion paper identifies Part IVA (unconscionable conduct) provisions of the TPA as one of a range of provisions aimed at protecting consumers. ClubsAustralia notes that the unconscionable conduct provisions apply not only to the supplier but also to the acquirer of goods and services.

This means that consumers are prevented from engaging in collective bargaining and boycott activity unless by way of application to ACCC, an exemption is granted.

While the above legislative framework may apply in a market situation where there are multiple suppliers of a product, it is our experience that it has deficiencies in markets where the supply of a service is most appropriately described as a monopoly.

The experience of ClubsNSW (a member of ClubsAustralia)

A particular concern for clubs relates to the arrangements available for acquisition of pay TV services. Foxtel is the sole pay TV supplier, supplying clubs in metropolitan areas and through an arrangement it has with Austar, a pay TV service is also made available to clubs in regional areas. In this respect it is relevant to note that Foxtel and through them, Austar, are the only suppliers of the pay TV service to registered clubs in Australia. That is, a club can only acquire this service, which in many cases is considered an essential component of the trading product mix, from a single supplier.

In early 2006 Austar began informing clubs of a new price schedule that increased the base price by over 100%, for example, a medium sized venue had its monthly subscription for the "Essential Sports Pack" increased from \$ 591 to \$1,345 (excluding GST).

Industry representatives met with Austar to discuss the increases however it was clear that there was no way that the reasons given for the increase by Austar for the proposed increase could be tested or verified, nor was there anyway of determining whether the increases are in all circumstances reasonable as opposed to being the result of anti competitive behaviour by Austar and/or Fox.

Clubs and others lodged a complaint with the ACCC. It was argued that given the strong position of Austar in the supply of digital pay TV services in country and regional areas of NSW Austar enjoys extensive market power. Clubs have very little choice but to accept the increases or cease to provide the digital TV service in their premise which will be to the detriment of their patrons and with possible adverse financial repercussions for those clubs.

In its response the ACCC noted that it has no jurisdiction to control or regulate prices for goods and services and accordingly, suppliers of goods and services are free to set their prices in the market place and as long as such prices are set independently and are not misleading consumers, there will be no issues raised under the TPA. In some restricted cases the ACCC can examine prices however this does not apply to pay TV services.

While the ACCC suggested that associations could apply for collective bargaining exemption, our view is that collective bargaining alone in situations such as the Fox/Austar monopoly would not address the inherent market power imbalance in favour of the supplier.

An important component that is necessary to at least improve the bargaining power of clubs in situations such as the one described above is the ability of consumers to collectively boycott.

However while application can be made to the TPA for an exemption to allow a collective boycott, such exemptions are in reality extremely difficult to obtain. It is understood that since the introduction of the TPA and the supporting processes (for example the appeal process) there has not been one successful collective boycott exemption application.

That is, the legislative framework and its interpretation by the various bodies administering it, is such that in practical terms collective boycott exemptions are virtually impossible to obtain.

While the risks of unfettered access to boycott exemptions are appreciated it would seem that there are bona fide cases where the consumer policy framework places consumers at a disadvantage and that this is an area where the regulation does not provide net benefits to the consumer which as outlined above are directly represented through the facilities and services clubs provide as not for profit community based organisations.

Conclusion

Consistent with the scope of this inquiry it is requested that recommendations be made to extend the power of the ACCC to monitor prices and amend the TPA to ensure that in certain cases, such as that described in this submission, access to collective boycott exemption is made readily available.

Thank you for the opportunity to provide comment and should you wish to discuss this submission or any of the matters raised please do not hesitate to contact this office.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'David Costello', is written over the typed name. The signature is fluid and cursive, with a long horizontal stroke extending to the left.

David Costello
Chief Executive