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The Retail Industry Inquiry
Productivity Commission
GPO Box 1428
Canberra
ACT 2601

The economic structure and performance of the Australian Retail Industry

This submission will be succinct.

I have wasted time effort energy making submissions to Productivity Commission enquiries. And nothing gets done. Others do the same. This is a wast of taxpayers money and our productive time to serve the bureaucracy whom we pay with our taxes.

Either the largest or second largest employment sector, the retail industry is dysfunctional. I have said it before, I say it again.

And you do nothing; your recommendations are worthless, they are meaningless. You in Canberra are out of touch with reality.

To illustrate what I am suggesting, the revenue office (Australian Taxation Office), the Treasury and Treasurer is all of a sudden surprised than there will be revenue short-falls!

That is because there are 10s of 1000s of businesses out there, now subjected to multipliers operating in reverse. Their businesses, who are important employers, and sources of tax revenue, have been operating very close to the wind.

And why? Massively disproportionate rental charges, onerous fitout requirements, profiteering from related companies and the monopolisation of large parts of the retail sector by Coles/Woolworths.

The ATO became the banker of last resort, after the shopping centre industry took their cut; disproportionate rents by the robber barons!

Independent Retail Property Advisors

- Expert witness
- Expert determinations
- Due Diligence
- Outgoings analyses / benchmarking
- Business analyses / benchmarking
- Ratio and sensitivity analyses
- Rent reviews
- Rent comparables
- Rent determinations



And this is after the countless professional and industry articles that myself and others have written and the submissions we have put forward, which the Productivity Commission chose to exclude/ignore (2008).

Since the Fair Trading Inquiry recommendations (1997), which I understand through intense lobbying by Shopping Centre Interests which would have prevented asset bubbles having developed in this sector in the 2000's, your office has ignored excellent recommendations particularly end of lease dispute resolution mechanisms. In favour of a fanatical renewal regime.

The asset bubble which subsequently developed, underpinned by debt, then saw the Australian Real Estate Investment Trust Sector ('A-REIT'), taking hard earned Australian Capital overseas to conquer the world's real estate markets.

And what happened. Ask GPT, Macquarie Countrywide, Centro, Westfield, and a few of the others? Aided and abetted by the tacit Australian Government who did nothing to address fundamental flaws in the malls. With the next crash in the making. Because you do nothing.

Areas of major interest concern

The areas of major interest and concern, which would have the most impact on/in making this a functional and competing industry are as follows:

1. The monopoly/oligopoly conglomerates of Coles/Woolworths;
2. The monopoly operation of retail shopping centre (and now the copycat behaviour into the wider community) space;
3. The downstream effect of liquor monopolisation/gambling and long trading hours in regional areas and damage to indigenous communities; and
4. Internet shopping.

It is baffling that you lot in Canberra get sucked into the lies and deception of big business. Every time.

The monopoly/oligopoly conglomerates

You are aware that Coles/Woolworths have the highest concentration of market share in the Western World. And that it is some 80c of every grocery dollar spent.

You are aware that their tentacles see some 45c or so of every retail dollar that is spent, and that money goes through their tills.

You are aware that fuel, liquor, and gambling, electrical, office supplies, department stores and of course grocery make up this content.

You are aware that the farm-gate price of many consumable items eg. Dairy product, beef, poultry, fruit and vegetables, bought by these companies often has not risen or is below what they were 10, 15 or 20 years ago and are sometimes below cost. However, we the consumer pay dearly for basic food.

You are aware that Coles/Woolworths go to the fruit and veg operator, the butcher, the fish merchant to compare prices. And then undercut them.

You are aware that the competition regulator under the ACCC has agreed to many surprising mergers and acquisitions eg. fuel.

What have you done about it? What are you going to do about it?

I spent last Sunday showing a very informed gentleman from the USA our city. We spoke about many things, including the points I have raised. He said "Why do you (the Australians) not just break up the monopolies?"

Attachment A is a summary of what they did in the USA, which I prepared in 2005, which has been in the public domain and in various articles I have written.

The monopoly operation of retail shopping centre (and other) space

The second point I am going to raise is about the monopoly operation of retail shopping centre space. I prepared several submissions to the Productivity Commission into the inquiry into Retail Leasing in 2008. My intellectual property was used in the following submissions:

1. Two for the then Queensland Retailers and Shop Keepers Association ('QRTSA' now called United Retail Federation);
2. One under my own business name
http://www.pc.gov.au/_data/assets/file/0005/66749/sub108.rtf ; and
3. One as part of a team of specialists for the Royal Institute of Chartered Surveyors.

Within 6 months of me raising my concerns, and accurately preparing and submitting suggested modelling to the Productivity Commission, the A-REIT sector weighted towards retail had collapsed. And exactly in line with my modelling/forecasts. I had not quantified what that amount would be (of those losses) which I did subsequently.

It crashed/collapsed wiping out -\$65.0 thousand million dollars (billion) of shareholders funds (or roughly -65% off shareholder value). What happened is that I said if the valuations were to decrease (or if income streams were more accurately assessed/the risk better quantified and capitalised into market value i.e. not engineered rents producing non-market engineered value) by 25% which

was a realistic assumption, a property investment model with 60% debt underpinning it, was worthless.

What occurred in 6 months of making my submissions is that the sub-prime crisis erupted overseas. Assets with high debt levels underpinning them saw share prices tumble; there was no asset backing but debt as the investment bubble burst. Centro was one A-REIT I had modelled at the time, with reported debt levels of some 62%.

The same happened to the rest of the rest of the market, whose debt levels were at some 38%; then on questionable valuations.

The rest is history. But has the behaviour of the shopping centre industry changed? No. Why not? Because the ingredients are in place for it all to happen again. Will the Productivity Commission ignore this submission this time?

I was also informed that the report was virtually written by the Shopping Centre Council, and if you read it. It is believable.

Another thing that is currently happening in this industry, driven by a few fanatical individuals, is that short-term high-risk income streams are still being capitalised into purported "market value" in breach of the IVSC guidelines i.e. engineered rents produce engineered valuations. The multiplier for the so-called blue chip stocks is around 18 times.

Now that is not the point of this submission. I put forward a blueprint of the framework of what would be/could be the best principles to adopt for the best shopping centre/tenancy law in the world that would:

1. Stop the current behaviour in the malls dead in its tracks;
2. Be self-regulating i.e. require limited Government interference;
3. Deflate/prevent asset bubbles in the property industry.

That blueprint is downloadable off the second QRTSA submission into the Productivity Commission's inquiry into retail leases, signed by Ian Baldock, the then executive officer. In short, the shopping centre robber barons are simply conning Australians aided and abetted by apathetic governments.

Something must be done about it; the recommendations of the Fair Trading Inquiry were ignored. For the protection of the shopping centre industry from its own behaviour.

Government ignored them. But that did not stop the crash than was postponed until late 2007/08.

The downstream effect of liquor monopolisation/gambling and long trading hours

It is simply inconceivable that long after apartheid fell in South Africa that the indigenous people of Australia are indirectly abused without appropriate government interference. Stop it, cut these ridiculous trading hours in regional and rural Australia. And more sinister, the opening of liquor outlets by Coles/Woolworths close to lower socio-economic areas.

Internet shopping

Internet shopping is the reality of the/a dysfunctional market in operation and or government inaction.

People know that the price-points of many, most, almost all retail products from a cup of coffee, to a tennis racquet, shirt, golf balls, tin of paint, a hammer, litre of milk, restaurant meal, etc. are all overpriced.

The key ingredients are:

- Minimum wages, penalty rates, etc.
- Ratchet rents; non flexible leases; no end of lease dispute resolution mechanisms; ridiculous fitout requirements; insufficient tenure to amortise set-up costs, loss of derogation of grant as a major issue in the malls; etc.
- Bureaucracy at all levels; both as direct inputs into the retail industry and the rest of the community.

The movement towards internet shopping is a symptom of the dysfunctional market.

Conclusions

We do not want long, ridiculous, impractical bureaucratic reports from the Productivity Commission, which last time I paged through and threw away.

It was more of the same. Rubbish. It cost an arm and a leg of my taxpayer funded income. It did nothing. It made fools of those who participated in it.

I suggest, obtain independent expert advice and assistance. And use it.

In regard to monopolies and oligopolies of the retail supermarkets, you already have blueprints from the USA. Do something about it. Break them up. Force the chains to divest to 25% market share by selling to bona fide Australian owned small business interests at market value in 3 years; force same into liquor, fuel, etc.

Insofar as the retail shopping centre monopolies are concerned, you have the blueprints in our previous submissions. Start putting the mechanisms in place, make representations for Uniform State Tenancy Law, as in the Commercial Arbitrations Acts, and implement them within six months, even via Federal Legislation if required.

The blueprint for failing to address these issues in 2008 is in your previous report, and as evidenced by increasing shareholder dissatisfaction and falling share prices. There will be ongoing corrections to these share prices.

But the behaviour in the industry continues; aided and abetted by your soft approach and dealings with the shopping centre industry.

As far liquor/gambling/drinking etc. in regional and rural communities and poorer socio-economic areas are concerned. Fix it!

Get the courts to pin down and link community accidents, street brawls and fighting to these liquor licences. And enjoy punitive fines of 10's of millions of dollars. Or bankrupt them.

Internet shopping and high price points are a function of the dysfunctional market operating.

My address and contact details will change at least twice over the next 6 to 12 months. My webpage will be updated to allow anyone to contact me.

Whilst I am being direct, if not somewhat arrogant, I hope this is of use.

Yours sincerely

DE Gilbert

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Attachment A

Attachment A – Antimonopoly/procompetition laws: Federal Trade Commission USA

Act	Reason for legislation	Explanation
Sherman Act (1890) - monopoly or conspiracy in restraint of trade	Prevent monopoly or conspiracy to control product or distribution channels or prices	Aimed at monopolists to restrain trade
Clayton Act (1914)	Prevent tying of contracts viz forcing sale of a product or products with others, exclusive dealing limiting buyer's sources and price discrimination by manufacturers (for example by location)	Aimed at preventing the substantial lessening of competition
Federal Trade Commission Act (1914)	To prevent unfair policies, deceptive advertising and pricing	Aimed at preventing unfair methods of competition
Robinson-Patman Act (1936)	Prohibits paying allowances to "direct" buyers in lieu of middlemen costs (brokerage charges), "fake" advertising allowances or discrimination in help offered and price discrimination on goods of a "like grade and quality" without cost or quantity justification	To prevent excessive price discounts causing injury to small middlemen (from large-chain middlemen) and to prevent injury to "competitors" especially small retailers. Aimed at preventing injury to "competition".
Wheeler-Lea Amendment (1938)	Seeks to deceptive branding & packaging, advertising & selling and pricing.	Seeks to protect the consumer, not just competition, particularly unscrupulous advertisers - "cease and desist" orders.
Antimerger Act (1950)	Seeks to reduce buying of competitors, producers and distributors.	Amendment to Clayton Act to enable FTC to regulate mergers which would substantially lessen competition, including firms reducing competition by buying out supply and distribution channels.
Magnuson-Moss Act (1975)	To prevent unreasonable practices eg false fraudulent product warranties.	FTC gained substantial powers to prevent unfair or deceptive practices. FTC gained powers to make rules easily enforceable including rules about consumer product warranties. Enabled FTC to bring class action suits.