

A Policy Challenge

Managing issues such as single desk selling provides a challenge for any political creed, particularly one that values individual economic freedom. The task is made difficult by the lack of, and difficulty in interpreting, much of the evidence presented by both sides. But policy-makers should take heed of the clear benefits that have already emerged from the partial liberalisation of single desk selling in wheat. And they should beware of taking too narrow a view of democracy.

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Delivering Newsagents from Competition

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NEWAGENTS have a long history of successful lobbying against pro-competitive reforms. As the Australian federal election of March 1996 approached, the State-based newsagents' associations again sought support, especially from Liberal-National Coalition candidates, this time in the context of proposed review by the Australian Competition and Consumer Commission (ACCC) of the newsagency system. The review, which is now under way, focuses on the methods of distribution of newspapers and magazines in major States.

The Anti-Competitive Arrangements

Major newspaper publishers and publishers and distributors of magazines made applications for authorisation under the Trade Practices Act 1974 in respect of the system used to distribute their publications in New South Wales (NSW) and the Australian Capital Territory (ACT). A substantially similar system was in operation in Victoria.

In its Draft Determination on the NSW authorisation in 1979 (ATPR, 1979), the Trade Practices Commission (TPC) determined that the system was anti-competitive. Publishers granted newsagents territorial monopolies for the sale and distribution of newspapers and magazines. In return, newsagents allowed the publishers to control the conduct of their businesses. Newsagents were prevented from owning multiple businesses so as to stop any of them developing countervailing power against the publishers. Retailers other than authorised newsagents were generally prevented from acquiring newspapers on competitive terms, thus stifling new, more efficient retailing methods. The territorial monopoly also prevented newsagents from competing with one another for home delivery services and supply to subagents.

The newsagents and publishers claimed that the system provided public benefits that outweighed any anti-competitive effect and justified TPC authorisation of the system. The publishers claimed that limiting competition in distribution encouraged them to compete in more important areas (such as editorial content, advertising rates and cover prices) and that the system ensured that all of their publications were visually displayed side by side in shops, so facilitating consumer choice. The newsagents claimed that, in the absence of territorial monopoly, their home delivery service would be curtailed, and that its costs would rise (ATPR, 1979).

The alleged public benefits were few. For example, the publishers' claim that competition between publishers in terms of editorial, content, advertising, promotion and cover price depended on the anti-competitive arrangements seems implausible, since distribution methods would not appear to have any impact on such competition. Further, any newsagent wanting to maximise sales would be likely to display magazines side by side, regardless of distribution methods. And since the removal of the territorial monopoly would probably have increased the number of retail outlets, why would circulations be likely to fall if the territorial arrangements were not be authorised?

The TPC also rejected the newsagents' argument that the territorial monopoly was necessary to maintain home delivery of newspapers, on the grounds that the convenience of home delivery to the consumer would not be particularly affected by an increase in the number of sales outlets. The TPC further argued that newsagents' willingness to provide home deliveries did not depend on territorial monopoly. And if, as newsagents claimed, the cost of home delivery was greater than the fees charged for delivery, the efficient solution would be to raise delivery charges rather than to impose the losses from home delivery on other customers.

The TPC proposed to deny authorisation on the grounds that the agreements were anti-competitive and did not result in any benefit to the public. But following extensive lobbying by newsagents and publishers, the government made a submission to the TPC, whose 1980 Final Determination authorised the newsagency arrangements. The government stated that it considered

the widespread availability of newspapers and magazines and the availability of a prompt and low cost home delivery service as being the principal pub-

lic benefits arising from the system. Newspapers and magazines provide a great range and depth of information and comment. Widespread dissemination of information and of critical comment is regarded by the government as being of major importance in a democratic society such as Australia. (ATPR, 1980)

The TPC said that it placed considerable weight on the government submission that dissemination of news was important, deferring to 'the elected Government speaking as to matters of political and social judgement with regard to the community at large' (ATPR, 1980). In 1982, the TPC authorised arrangements between major Victorian newspaper publishers, using the NSW and ACT authorisation as a benchmark.

It would appear that in 1980 the TPC reluctantly abandoned its economic criteria in granting authorisation. The Draft Determination was highly critical of the arrangements, yet the Final Determination granted authorisation justifying such arrangements not on economic considerations but the 'social judgement' of the government.

The 1993 Determination

In 1988 the TPC embarked on another examination of the newsagency system in Australia and released an issues paper in 1990. Recognising the lobbying strength of newsagents and publishers, the TPC (1990) indicated that whereas it would consider revoking past authorisations if this would lead to desirable reform in the industry, it preferred to continue to encourage a cooperative approach in an attempt to get some agreed reform. Extensive consultation and negotiation was undertaken with newsagents, publishers, retailers, look-alikes (businesses identifiable as retailers specialising in selling a wide range of newspapers and magazines but essentially sub-agents of an authorised territory newsagent) and other interested parties.

The systems which the TPC had authorised in the early 1980s suffered from a wide range of problems. They included:

- inflexible commission rates between publishers and newsagents and between newsagents and sub-agents;
- exclusive marketing territories;
- the lack of consumer choice in home delivery of newspapers;
- lack of flexibility and responsiveness to changes in demand for newspapers and changes in retailing generally;
- the variable quality of delivery to sub-agents and consumers;
- the influence of the system on publishers outside the authorisation who 'piggy-back' on the system and enhance the anti-competitive aspects of the conduct;
- the prohibition on the entry of delivery-only newsagents.

In 1992 the two major Victorian newspaper publishers, David Syme and Co. Ltd and the Herald and Weekly Times Ltd, along with the Victorian newsagents'

associations, lodged applications for authorisation of new agreements designed to overcome some of the anti-competitive aspects of the previous arrangements authorised in 1982. They proposed some liberalisation of supply arrangements with look-alikes, and allowing newsagents to dispose of delivery rounds and own a group of newsagencies. But as the territorial monopolies of newsagents were left largely intact, the anti-competitive detriment prevailed and the applicants were required to show public benefit. As they had a decade before, the publishers and newsagents claimed that the major benefits of the territorial monopoly agreements were the availability of a low-cost, efficient home delivery service and the availability of a wide range of publications in numerous outlets and at convenient times. They also claimed that the system operating in Victoria for the distribution of newspapers and magazines was the cheapest and most efficient in Australia, if not the world (ATPR, 1994).

The TPC's 1993 Draft Determination proposed to authorise the new arrangements, on the grounds that they would

- provide for a low-cost, efficient home delivery system for newspapers and publications;
- allow the development of specialist delivery agents who would gain efficiencies by aggregating delivery routes;
- loosen the restraints imposed on sub-agents with respect to direct supply from publishers;
- have no impact on sub-agents with respect to direct supply from publishers;
- have no impact on the availability of a full range of magazines at specialist newsagents;
- encourage competition in the industry by the separation of delivery and retail functions of newsagents (TPC, 1993).

Review by the Tribunal

However, the authorisation of the new arrangements in July 1993 was referred to the Trade Practices Tribunal (the Tribunal) by three parties, none of whom was a party to the actual authorisation.

The Queensland Newsagents Federation (QNF), 7-Eleven Stores Pty Ltd (7-Eleven) and the Australasian Association of Convenience Stores Incorporated (AACS) applied for a review of the authorisation, though for substantially different reasons. QNF opposed any change to the existing system and feared that the proposed changes may be introduced in Queensland. 7-Eleven and AACS claimed that the proposed changes did not go far enough and were particularly concerned to ensure that any changes freed convenience stores from the requirement to source supplies from their local newsagent (ATPR, 1994)

QNF argued that enforcing the 1993 authorisation would reduce competition for circulation sales of newspapers and magazines and diminish the public benefit associated with an efficient low-cost home delivery service and a broad range of titles. It asserted the exclusive monopoly system was necessary to support the 'cross

subsidy' of uneconomic home delivery by shop sales of newsagents and sub-agents. 7-Eleven and AACCS, meanwhile, argued that the exclusive tying arrangements, which required sub-agents to purchase only from the designated newsagent in their territory, were the crucial anti-competitive aspect of the proposed authorisation, and should be immediately removed.

In the Tribunal's hearing, the publishers and newsagents shifted their ground. They backed away from the claim that home delivery was cross-subsidised by shop sales. Evidence submitted by the newsagents themselves indicated that while there was an element of averaging whereby some lower-cost delivery customers may 'cross subsidise' other higher cost delivery customers, there was no significant cross-subsidy of home delivery in shop sales (ATPR, 1994).

The newsagents introduced three new issues at the hearing (ATPR, 1994). Publishers claimed that a breakdown of the territorial system would reduce their ability to target particular geographic and demographic groups and thereby reduce insert advertising, raising the prospect of higher newspaper cover prices and higher delivery costs. But the Tribunal judged that any increases in advertising revenue stemming from anti-competitive restrictions should not be seen as a public benefit.

Second, newsagents argued that the goodwill value of a newsagency was closely linked to the distribution system and that a change would affect newsagency values. In recognition of this, the TPC's Draft Determination had recommended a gradual change in the system and a method of compensation for newsagents. But the goodwill argument amounts to no more than a plea to maintain the territorial monopoly in order to protect the value of newsagents' investments in their businesses. This is a poor argument, particularly as it has been clear for a number of years that reform of the system was likely.

Third, the newsagents stressed the efficiency of the newsagency system. But the system has remained largely unchanged over many years, while in other retail markets convenience stores and late-night shopping have emerged. Convenience stores are forced to rely on inflexible sub-agency arrangements for supply, while newsagents typically close around 6pm, ignoring changes in consumer shopping habits.

The distribution system is, at best, convenient for publishers and newsagents, not consumers. It forces newsagents to provide three methods of distribution — home delivery, sales to sub-agents, and direct newsagency retailing — even though it would probably be efficient to separate these functions. The system prevents the realisation of scale economies in distribution through the consolidation of distribution territories. In other countries, publishers arrange their own distribution methods; and the *Cauberra Times* offers home delivery in competition with newsagents.

The Tribunal concluded that the TPC's 1993 determination would lead to very little change in the newsagency system. It would remain a joint distribution system; and the standard distribution arrangements between publishers, newsagents and sub-agents would be maintained. Sub-agents would still be required to purchase from their territorial agent. The Tribunal decided to set aside the 1993 Determination, noting that it

purports to be directed to providing for the future, but a confirmation of its terms would serve to entrench a system that is increasingly anachronistic. . . The proposals for variation of the system would have the effect of patching up a system that is ripe for fundamental change. (ATPR, 1994)

The 1982 determination remains in force unless and until revoked by the TPC.

The Latest News

Following the Tribunal's decision, the TPC set about considering the need to formally review its newsagency authorisations. The TPC's successor, the ACCC, is now examining the newsagency system in NSW/ACT, Victoria and Queensland.

The Tribunal's tough line in the Victorian case is likely to encourage the ACCC to take a stronger stand against the industry's anti-competitive practices than it had in its 1993 Victorian determination. The TPC's failure in the 1980s to open up the system had perhaps led it to take a less confrontationist approach than would otherwise have been the case. Such a strategy now appears to have been a mistake. Certainly the Tribunal was far more critical of the arrangements than was the TPC.

In its notice announcing the current reviews, the TPC noted that

In general terms the community's attitude to competition policy now (as opposed to 1980) embraces a philosophy premised on deregulation. Competition is expected to apply to all business activity. Competition is identified with efficiency in the context of the provision of the best products and services at the cheapest price. (TPC, 1990)

In response to the TPC's actions, the Victorian and Queensland Newsagency Councils have made new submissions. Although individual members have made submissions, the NSW/ACT Newsagency Council has not responded, perhaps preferring to put its case for the maintenance of the authorisation through indirect means such as political lobbying.

During the election campaign, the then Opposition industry spokesman (and now Minister for Industry), John Moore, acknowledged that newsagents had lobbied Coalition politicians for support against competition reform in their industry, and that they had had some degree of success. He suggested that there was a national interest in maintaining the status quo for newsagents (Megalogenis & Stevens, 1996). The Labor government also offered support to newsagents. The Assistant Treasurer, Mr George Gear, wrote to the ACCC indicating support for a regime which provided reliable and efficient home delivery of newspapers (Gear, 1996). The letter also acknowledged that the existing authorisations increased the value of newsagencies (through their monopoly rights) and urged the ACCC to take account of newsagents' investments when considering the authorisations.

Immediately before the election, John Howard requested that the ACCC not complete its review without allowing an incoming Coalition government the oppor-

tunity to further advise the ACCC of its intentions to fulfil commitments given to particular groups.

Concluding Comments

Newsagents' arguments for exemption from the competitive pressures faced by most other businesses rely on very doubtful public-benefit arguments. In particular, the claim that an anti-competitive monopoly distribution system is needed to ensure efficient home delivery has been proven false.

The newsagents' case rests on the assumption that newsagencies are a unique and valuable form of small business that should be preserved. Support from Liberal-National Coalition politicians is expressed in such terms. Yet many of the sub-agents that are denied opportunities to expand their range of products by the news-agency system are also small businesses. Moreover, the notion that newsagents are among the few remaining examples of independent small businesses is undermined by the restrictions that the agreements place on newsagents' behaviour. As the Tribunal pointed out, newsagents have little opportunity to determine their own hours; they are prevented from expanding by restrictions on the number of newsagencies that can be owned; and they have little choice over the goods they sell and the way such goods are promoted. The system reduces them to little more than employees of the publishers.

If newsagents succeed in obtaining special exemption from the principles of competition policy, other industries will be quick to campaign for similar benefits. A number of organisations, including rural marketing groups, State electricity suppliers, and various small business groups are actively seeking such exemption, and will be watching the government's handling of the newsagents' claims with considerable interest. Should the government deliver for newsagents, the entire competition reform process would be seriously jeopardised.

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