

Scott Rogers  
Competition and Consumer Policy Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Dear Mr Rogers

#### CREEPING ACQUISITIONS - DISCUSSION PAPER

The Small Business Development Corporation (SBDC) is a statutory authority established to assist and promote the growth and development of the small business sector in Western Australia. The SBDC has actively contributed to ongoing discussions regarding the effectiveness of protections for small business under the Trade Practices Act (TPA) in recent times and welcomes the progress that has been made towards addressing the impact of creeping acquisitions on small businesses through the release of the Discussion Paper.

The issue of creeping acquisitions is one that impacts significantly on small businesses, especially in industries such as groceries, fuel, hardware and liquor retailing. The competitiveness of, small businesses in these industries is under increasing pressure as larger market players gradually increase their market share over time. The adverse effects of this scenario are widely understood and can involve greater market concentration, a decline in the number of smaller operators, and a lessening of competition to the potential detriment of both small businesses and consumers.

The extent to which the TPA protects small businesses against a range of competition issues has been an area of concern for the national Small Business Ministerial Council (SBMC) for a number of years. In 2006, an SBMC Working Group of Officials commissioned Mr Hank Spier of Spier Consulting to prepare a report which examined the options to address small business competition issues, including creeping acquisitions.

The suggested approach arising from the Spier report to address creeping acquisitions involved amending the TPA "to provide that the Australian Competition and Consumer Commission (ACCC) when reviewing mergers is to

**look at the overall aggregation of market power where a party has been in the process of regular acquisition". This approach was favoured by the Spier report, as an alternative to options discussed as part of the 2004 Senate Economics References Committee Report on *The effectiveness of the TPA in protecting small business*, on the basis that it was less interventionist.**

**Subsequently, at the SBMC meeting in July 2007, the State and Territory Governments requested that "the Australian Government amend the TPA to require the ACCC and the courts to consider the cumulative effect of past mergers and acquisitions by an organisation over a period of not less than four years when considering whether a merger or acquisition may lead to a substantial lessening of competition in a market".**

**Broadly speaking, the SBDC supports the introduction of any measure to provide small businesses with better protections from larger competitors. In line with the recommendation put forward by the States and Territories at the SBMC meeting, however, the SBDC supports the concept of the aggregation model described in the Discussion Paper as a workable model for strengthening small business protections from creeping acquisitions.**

**In determining a suitable time period within which the combined effect of past acquisitions are to be assessed under the aggregation model, it will be necessary to ensure the specified period takes into account the amount of time taken for an organisation to complete an acquisition. As stated, the time period proposed by States and Territories at the SBMC in 2007 was four years. It should be noted that the former Australian Government did not agree to this proposal, citing the rapid changes in market conditions as a challenge in undertaking such a review, which may be another aspect to take into consideration.**

**The SBDC would be pleased to provide further clarification of the comments provided in this submission if required. Ms Jacky Finlayson, A\Director Policy, Planning and Stakeholder Relations at the SBDC can be contacted on (08) 9220 0204 or by email at [jacky.finlay](mailto:jacky.finlay@sbdc.wa.gov.au) on [sbdc.wa.gov.au](http://sbdc.wa.gov.au).**

Yours sincerely



**Stephen Moir**  
MANAGING DIRECTOR

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