SDA Submission - Supplementary

Competition Policy Review

Ian Blandthorn

National Assistant Secretary
National Office
6th Floor
53 Queen Street
Melbourne 3000

PH: (03) 8611 7000
Email: ian@sda.org.au

COMPETITION POLICY REVIEW

SDA SUPPLEMENTARY SUBMISSION

Introduction

1. This submission is made by the Shop, Distributive and Allied Employees' Association (SDA). This submission is supplementary to the previous submission by the SDA.

2. The focus of this submission is on the comments by the Review Panel on retail trading hours in its draft report[1], in particular draft recommendation 51.

3. This submission draws on the arguments made by Dr Gordon Menzies in his submission to the review panel on the 'Economic Consideration Regarding Removal of Public Holidays'.

Trading Hours Regulation

4. The SDA reiterates its opposition to further deregulation of trading hours.

5. The review panel correctly states in the draft report that the proper test for whether restrictions on retail trading hours are warranted is the public interest test.[2] The 'public interest' necessarily requires an analysis of the benefits and costs to the community as a whole.

6. The review panel's reference to the "beneficial effect for consumers of deregulation of retail trading hours" in recommendation 51 is a restricted view of the impact retail trading hours has on the community. It limits individuals in the community to the role of 'consumers' and therefore limits their interests to gaining utility from purchasing goods in the marketplace. A proper analysis must recognise that consumers are also workers, small business owners and family members and restrictions on retail trading hours provide benefits in various ways.

The Benefits of Trading Hours Regulation

7. Trading hours regulation provides benefits to the community by allowing more workers and small business owners to participate in shared community and family time. Workers in retail, transport, distribution and other related industries benefit from restrictions in retail trading by releasing them from the pressures to work on significant days.

8. Workplace relations regulation does not provide sufficient protection for workers who would prefer not to work on public holidays such as Easter Sunday and Boxing Day. The *National Employment Standards* in the *Fair Work Act 2009* (Cth) do not provide an unfettered right to employees not to work on Public Holidays should they want to not work on a particular day.

9. For retail workers in particular, restricted trading days are the only days in the year they can plan to make leave arrangements. This is due to expansive employer rostering discretion,

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[1] See *Competition Policy Review Draft Report*, September 2014, Part 6.1 and Part 8.6
[2] *Competition Policy Review Draft Report*, September 2014, p105

the use of annual leave “blackout periods” and the increasing span of trading hours directly associated with the sales which occur at these times of the year.

10. Even where an industrial instrument provides an unfettered right to voluntary work on public holidays, the insecure nature of employment arrangements such as casual employment contracts allow employers to pressure workers into working when they would prefer not to.

11. Many small business owners also benefit from trading hours regulation. This benefit is not limited to reduced competition in jurisdictions where small business may be exempt from trading hours regulation. Many small business owners do not want to open their shops on significant days and would rather spend the day with their families or in the community. Pressure is placed on small business owners to open in order to compete with larger businesses. Trading hours regulation allows small business owners to also spend time with their families and the community.

12. Trading hour regulations apply to days that are recognised by the community as significant days. Easter Sunday and Boxing Day are significant days that are have restricted trading in some States.

13. Easter Sunday is the most significant religious event in the Christian calendar. The majority of the population identify as Christians. The day is also seen as a significant community day for many non-Christians. Many families take the opportunity to reconnect and participate in outdoor activities.

14. Boxing Day is part of the celebration of Christmas. There are two public holidays in a row for Christmas Day and Boxing Day to enable the proper observance of this significant community celebration. For the broad community, whether Christian or not, the Christmas/Boxing Day period is the preeminent time for family gatherings and celebrations.

15. Restricted trading days allow people to overcome what Dr Menzies refers to as ‘coordination failures’. With households containing more members in the workforce than in earlier generations, it becomes increasingly difficult for families to find time together. The nature of family activities is that they become more pleasurable when the whole family is together. Individuals gain more utility from sharing the leisure time than they do from spending it alone. Coordination failures reduce time spent together and reduce people’s utility.

16. Coordination failures also occur because of the large distances family members sometimes have to travel to be with each other. This is particularly so in Australia compared with many other nations due to the dispersed population.

17. Trading restrictions on Boxing Day are particularly important for overcoming coordination failures because it provides two days for families to gather. Blended families are given more time to visit various sides of the family and families can travel further distances over the two days.

18. Trading hours regulation allows workers and small business owners in non-essential industries to be able to participate in these significant days by spending time together with

friends and relatives, observing religious beliefs, participating in community activities or participating in sport and recreation.

The Costs of Trading Hours Regulation

19. The SDA's previous submission referred to evidence showing the limited economic benefits of deregulation of trading hours, particularly on employment and income.[3] In addition, a recent report by The McKell Institute found there was no evidence of a correlation between extended retail trading and additional retail turnover.[4]

20. While limitations on trading hours impose some restrictions on choice for people that wish to shop on restricted days, the cost should not be overstated. The restrictions do not limit what consumers can purchase but simply delay the accessibility to that choice by one or two days. As noted in the SDA's previous submission, there is overwhelming public support for trading hours regulation, demonstrating a willingness by the community to forgo a choice to shop for a short time in exchange for more shared leisure time among the community.

The Effect of Deregulation of Trading Hours on the Labour Market

21. Often reviews into the retail industry focus on the product market and the relationship between consumers and retailers. While it is clearly important to focus on the product market, the importance of the retail industry as a labour market should not be overlooked. The retail industry is the second largest industry by number of employees. It employees over 1.2 million workers; more than 10% of the workforce.[5]

22. The draft report notes that "trading hours have been progressively deregulated by state and territory governments over recent years"[6]. The regulation that remains is extremely limited. To deregulate trading hours further would provide little economic benefit to the community.

23. The submission by Dr Menzies shows that in an already highly deregulated market, further deregulation provides little benefit. Figure 1 shows the labour market assuming an inverse linear relationship between demand and supply. The shaded area represents the dead-weight loss before externalities are considered. L* is the optimum level of labour in the market. L^1 is the restriction placed on hours worked by trading hours regulation. A movement from L^1 to L^2 reduces the deadweight loss significantly more than a movement L^2 to L*. In other words, a hypothetical move from twenty restricted trading days to ten restricted trading days provides a significantly greater benefit than moving from ten restricted days to zero restricted days.

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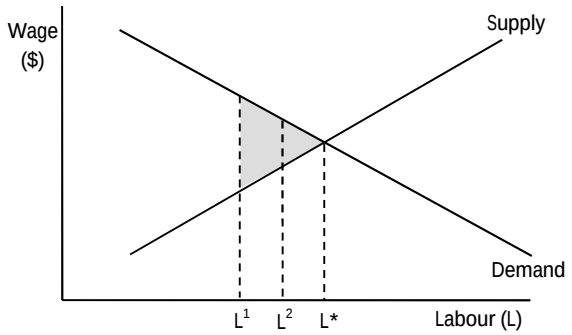
[3] For example Moss, Alan (2007) *Report of the 2006/07 Review of the Shop Trading Hours Act 1977* and The SA Centre for Economic Studies (2006) *The Potential Economic Impact of Liberalisation of Shop Trading Hours*
[4] The McKell Institute (2012) *Does our spending increase? The relationship between trading restrictions and retail turnover*
[5] Australian Bureau of Statistic (2014) *Labour Force, Australia, Detailed, Quarterly, Aug 2014*, Cat. No. 6291.0.55.003
[6] *Competition Policy Review Draft Report*, September 2014, p57

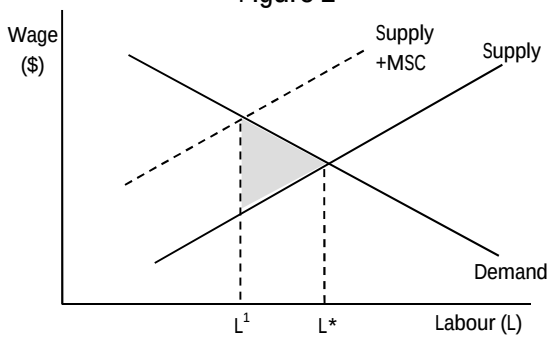
Figure 1



24. Figure 1 does not account for externalities. Dr Menzies argues that low paid workers, such as those in the retail industry are more likely to internalise negative externalities in an unregulated market. As argued above, retail workers are particularly vulnerable to being pressured to work on public holidays. Restricted trading days provide significant protections for these workers which workplace regulation does not provide.

25. The dashed line in figure two is the supply of labour when marginal social costs are taken into account. As discussed above, the social costs include lost utility from missing out on family and community activities on significant days. The regulation of trading hours moves the labour supply to the optimum level of labour when externalities are taken into account.

Figure 2



26. The challenge of course is to ensure that the restrictions on trading hours are at a level that offset the negative externalities and minimise dead-weight loss. The SDA submits that the current levels of restrictions do not satisfactorily offset the negative externalities and further deregulation of trading hours would only increase the loss to the community.

Conclusion

27. Trading hours regulation provide a significant benefit to the community by allowing more shared time and increasing utility for those that would otherwise have to work. Workers and small business owners are able to participate significant community days by spending time with friends and relatives, observing religious beliefs, participating in community activities or participating in sport and recreation.

28. The cost of regulation is limited. There is little evidence to show that there is any economic loss to the community by the imposition of trading hours regulation. Any further deregulation would result in negligible benefit to the community.

29. Further deregulation of trading hours is not in the public interest.