# 4. Regulatory influences on Australian retailing

*Australia's competition policy is based on the principle that consumer welfare and sovereignty are enhanced by ensuring markets are open to competition. This does not preclude the existence of market concentration.*

*Anti-competitive behaviour, such as the abuse of monopoly and power, is policed by the Australian Competition and Consumer Commission through its enforcement of compliance with Part IV of the* Trade Practices Act (1974). *Part IV also prohibits "unconscionable conduct" by a dominant party in any trade, including in dealings with suppliers.*

*Restrictions on trading hours remain a selective constraint on large retailers' ability fairly to compete. Some State governments have introduced more convenient shopping hours in response to demand from the community, and reviews of States' anti-competitive and discriminatory legislation, such as trading hours, are required under the 1995 Competition Principles Agreements between the States and the Commonwealth.*

*The* Workplace Relations Act (1996) *gives greater freedom for employers and employees to negotiate working conditions such as working hours, rosters, staffing levels, career paths and penalty rates. This has allowed retailers the flexibility to restructure staff conditions to increase employment security, improve customer service and lower costs, although it may contribute to further concentration in the retail sector.*

## 4.1. The rationale for Australia's current regulatory approach

107. The crises in the finances of many of the State governments in the 1980s concentrated attention on the relatively poor performance of the essential service industries (transport, post and telecommunications, energy, ports, airports, water) under Commonwealth or State government control. Along with an international trend towards deregulation, there was a renewed interest in reviewing and removing the statutory barriers to competition with these public monopolies that were seen as the primary source of their inefficiency. While many governments responded to these pressures for reform, the process was given impetus by the National Competition Policy (NCP) agreed between the Commonwealth and State governments in April 1995, and the associated programs of microeconomic reforms.

108. The guiding principle behind these microeconomic reforms is that consumer welfare and sovereignty is clearly enhanced by the opening up of markets to competitive forces. This does not mean the pursuit of competition *per se*, but as a means of gaining some of the efficiencies of competition, and of removing the inefficiencies of prior regulatory structures where no offsetting public benefits can be demonstrated.

109. The Independent Committee of Inquiry into National Competition Policy (Hilmer, et al, 1993) identified the widespread and generic application of competition rules across all sectors of the economy as an important part of competition policy reform. The rationale for this was based on both efficiency and equity considerations. Application of different competition rules to different industries or sectors of the economy has the potential to distort the allocation of resources, to the detriment of national income, and may unfairly favour

some competitors (publicly owned enterprises, for example) over others[6]. While the primary reform in response to this part of the Hilmer Report was the extension of the TPA to cover government businesses, processes were adopted to ensure that all industries were treated equally under competition rules. Where specific exemptions are granted, such as the code of conduct facilitating the operation of the National Electricity Market, net public benefit must be demonstrated.

110. The principal legislative restriction on retail trade is the regime of trading hours which varies from State to State. The main impact of the NCP reforms on retail trade has been through the legislative review provisions of the Competition Policy Agreement (CPA) between the Commonwealth and State governments, Clause 5 of which states:

> *5.(1) The guiding principle is that legislation (including Acts, enactments, Ordinances or regulations) should not restrict competition unless it can be demonstrated that:*
>
> *(a) the benefits of the restriction to the community as a whole outweigh the costs; and*
>
> *(b) the objectives of the legislation can only be achieved by restricting competition.*

111. As discussed in Section 4.3, Clause 5 of the CPA has prompted some State governments to review their restrictions on trading hours.

112. In keeping with the changes in competition policy generally, the mergers test in s. 50 of *Trade Practices Act 1974* (TPA) was changed in January 1993, from dominance to substantial lessening of competition. The change to the test means that the TPA no longer prohibits mergers and acquisitions solely on the basis of the consequent market share, but rather on the effect on competition in the appropriate markets. **The change in the test is recognition that concentration *per se* is not a source of market distortions, and that the growth of firms (via merger or, implicitly, organic growth) should not be impeded unless it can be shown that the consequent dominance is likely to lead to inferior market outcomes.**

## 4.2. Current and potential limitations of the *Trade Practices Act*

113. As discussed in Section 2, the relatively high concentration of retailing in Australia creates the possibility of anti-competitive behaviour, such as monopolistic or monopsonistic pricing. While the relative openness of the retail industry protects against extreme abuse of market power in the long-term, any *potential* to exert undue influence over consumers or smaller suppliers is largely safeguarded against by the provisions of Part IV of the TPA. The Australian Competition and Consumer Commission (ACCC) is responsible for enforcing compliance with the TPA, and is charged with assessing potential anti-competitive conduct and the prosecution of firms and individuals it believes has breached the Act.

114. In its guide to the TPA, the ACCC (1995) describes Part IV of the Act as prohibiting the following anti-competitive trade practices:

- anti-competitive agreements and exclusionary provisions, including primary or secondary boycotts (s. 45);
- misuse of market power (s. 46);
- exclusive dealing (s. 47);
- resale price maintenance (ss. 48, 96–100); and

[6] Hilmer et al (1993), Chapter 5.

- mergers which would have the effect or likely effect of substantially lessening competition in a substantial market (ss. 50, 50A).

115. These provisions cover anti-competitive conduct in general, not just by dominant firms, although s. 46 is specifically aimed at anti-competitive actions by a business with a substantial degree of market power.

116. Neither the *Trade Practices Act (1974)* nor the ACCC provide specific guidelines as to what constitutes a substantial degree of market power. The ACCC (1995, p. 25) states:

> *Whether or not a business is regarded as having a substantial degree of market power depends on the circumstances in each case. The Court will take into account the extent to which the activities of the business in its market are constrained by the conduct of its competitors or potential competitors, or by the behaviour of those to whom it supplies or those who supply it (s. 46(3)).*

117. This clearly gives the ACCC considerable leeway in deciding when to bring action under s. 46, although there is a substantial body of case law that can be drawn on to guide the extent of market power. While the aggregate levels of concentration on retailing suggest the major supermarket chains collectively have large market shares and potential market power, it is not clear that their shares of the markets for particular products, or within particular geographic boundaries, would be sufficient to constitute a substantial degree of market power for the purposes of s. 46.

118. Nevertheless, and unlike small independent retailers, the large market shares of the major supermarket retailers mean they need always to be sure that their dealings with customers and suppliers cannot be misinterpreted as attempting to take advantage of market power. If a major retailer did attempt to use its market share to exert pressure on suppliers, the ACCC might bring action on the presumption that substantial market power could be proven[8].

119. In addition to the protection against anti-competitive conduct in Part IV of the TPA, the present government recently introduced a new section (s. 51ac) with the intention of protecting small businesses from "unconscionable conduct". This provision prohibits a stronger party dealing with a disadvantaged party in a harsh or oppressive manner. The effect of this provision is currently being tested[9] but, if interpreted as intended, would provide additional protection from any potential abuse of buyer power by the major retailers over their small suppliers.

## 4.3. Restrictions on trading hours

120. While the TPA provides protection for consumers and small suppliers from *potential* abuses of market power by the major retailers, the restrictions of trade imposed by the various States' trading hours legislation *presently* works against the public interest.

[7] See the ACCC's guide "Commission's concentration thresholds and procedures" at http://www.accc.gov.au/docs/merger/mergbac4.htm#E10E4

[8] An example is the recent case in which Safeway in Victoria is accused of using its market power to influence the wholesale price of bread supplied to competing independent supermarkets. See "Woolworth's Safeway 'used punitive' policy on bakers", *The Australian Financial Review*, 10 February 1999, p. 3.

[9] The government has provided funds to the ACCC to initiate proceedings in actions based on alleged breaches of this provision, and the Commission has recently brought the first two cases, both related to retail tenancies (see ACCC media releases, 8/99, 4 February 1999, and 21/99, 2 March 1999.)

121. In those States where substantial restrictions still apply (Queensland, Western Australia, South Australia and Tasmania), some relaxation has occurred. Nevertheless, in no case has a consistent rationale been presented which justifies particular restrictions, or their selective application to particular products or sizes of outlets.

122. The arguments supporting deregulated retail trading hours are set out in the Victorian Government's *Shop Trading Reform: Statement on Retail Trading in Victoria* (Birrell, 1996), released ahead of deregulation of shopping hours in that State in November 1996. These include:

- inflexibility;
- inconsistency; and
- unenforceability.

123. As noted in Sections 2.3 and 4.1, the review of trading hours by State governments has been undertaken in the context of the general legislative reviews, nevertheless there was already considerable pressure for deregulation in many States because changes in society over the past thirty years have led to community demand for more convenient shopping hours.

### 4.4. Labour market reform

124. The *Workplace Relations Act* (1996) (WRA) came into effect progressively over the first months of 1997. This Act changed the law governing the application of the award wages system and the role of trade unions in the negotiation of the terms and conditions of employment. Although the award system remains a reference point for workplace agreements, firms and their employees now have greater freedom to arrange alternative work practices (working hours, rosters, career paths, staffing levels and penalty rates, for example) than was possible under the award system alone.

125. The WRA envisages bargaining at the workplace or enterprise level, and its benefits should be available to all firms, regardless of size. Nevertheless, because the awards system covers all forms of employment and varies between the States and Federal levels, the reforms are likely to provide larger, national companies with more flexibility, and potential cost savings and productivity improvements, than it does for small State-based firms.

126. The WRA included a three-year moratorium on youth awards wages which is due to expire on 22 June 2000. The Commonwealth Department of Employment, Workplace Relations and Small Business notes[10] that 52 per cent of employed young people under 21 are paid junior wages, and that:

> *in the retailing industry ... wages for 18 year olds are commonly 70 per cent of the adult rate, and for 17 year olds are 60 per cent.*

127. The future of these rates is under review, and the present government has committed itself to ensuring they are preserved for at least another three years. Employees on junior rates of pay represent around 50 per cent of Coles Supermarkets staff, and changes to the wage rates for this group would have a significant impact on employment opportunities Coles could offer young people.

128. In recent years, Coles Supermarkets has made a considerable effort to develop a career structure for its employees, and to shift the balance of its workforce away from causal

[10] DEWRSB (1998a), p. 1.

employment towards more full-time positions – decasualisation in today's jargon. Coles casual employment level has fell from 60 to 37 per cent between 1994 and 1998 with permanent full and part time work increasing from 40 to 63 per cent over the same period.

129. While these changes mostly occurred under the previous centralised award system, recent reform of workplace relations have provided the flexibility and opportunity for further innovation. These innovations serve both to reduce staffing costs in the long-term, and to provide Coles with an Australia-wide pool of experienced employees. They also improve the employment opportunities for and security of staff and provide customers with access to fully trained staff at all hours of operation.

# 5. Overseas experience

*Retailing is an important sector in all advanced economies, always with a large number of firms of varying size. It is a sector that has been subject to considerable change in recent decades reflecting the impact of changing work patterns, technological innovation and improvements in transportation and management systems.*

*The retail sector is competitive in OECD countries with a large number of players and conditions that make for ease of entry and exit. Concentration in the sector varies, depending on population size and distribution and the quality of the transportation system. Australia has a relatively concentrated retail structure but it is not out of line with comparable countries.*

*The OECD observes that the number of shops has tended to fall in member countries at the same time as their average size has increased substantially. Traditional small shops selling basic products are falling in number and being replaced by larger chains and speciality stores.*

*Until recently the retail distribution sector has been one of the most heavily regulated sectors (with the degree of regulation varying markedly from country to country). Some regulation has been to promote more competition but it has also had broader social and environmental aims which included restricted trading hours, zoning laws and in some countries limitations on the number of very large retailers.*

***Deregulation of the retail sector is now being carried out in most OECD countries.** This is taking the form of lifting restrictions on trading hours and on the operation of larger stores in countries such as Japan, together with some experimental changes in zoning laws.*

*The US retail market has been one of the least regulated and is generally regarded as the most innovative and productive. It continues to achieve rapid employment growth.*

*The OECD believes that restrictions on big stores and trading hours have come at a considerable cost to consumers and all-round economic performance in many member countries. Deregulation has been associated with increased retail sales, higher employment and lower prices.*

*The OECD questions whether small shops need to be protected from large-scale outlets since they remain able to play an important role outside the mass food market.*

## 5.1. Cross-country study

130. Retailing covers a broad range of activities and that mix will vary from country to country. The OECD has issued the most comprehensive recent report on the industry in the industrial countries in 1997 as part of a broader report on regulatory reform (OECD, 1997).

131. The data presented in the OECD report relates to the distribution sector as a whole, that is somewhat wider than retailing, however retailing accounts for most activity in the sector. The structure of the industry varies from country to country depending on such factors as the

size of the economy, transportation systems, income levels and government regulation as well as historical and cultural factors.

132. The OECD data reproduced in Table 5-1 provide two measures that bear on industry concentration; namely, retail outlets per 10,000 inhabitants and employment per retail outlet. Of the two measures the latter is probably the better guide, although both show a similar picture.

**Table 5-1: Characteristics of the Distribution Sector**

| | Distribution in the economy | | | Characteristics of the distribution sector | | | Regulations | |
|---|---|---|---|---|---|---|---|---|
| | Share of distribution output in total GDP, 1993 | Share of distribution employment in total, 1993 | Share of retailing employment in total,1990 | Retail outlets per 10 000 inhabitants, 1990 | Employment per retail outlet | Retail sales per employee (USA = 100) | Opening hours | Zoning laws |
| **United States** | **15.7** | **15.5** | **11.4** | **79** | **6.6** | **100.0** | **UNR** | **PAR** |
| Japan | 12.5 | 18.4 | 10.4 | 132 | 4.2 | 70.7 | PAR | REG |
| Germany | 7.8 | 11.3 | 8.3 | 85 | 4.4 | 100.7 | REG | REG |
| France | 12.2 | 13.8 | 9.3 | 97 | 3.8 | 94.8 | PAR | PAR |
| Italy[1] | 15.3 | 19.3 | 10.3 | 171 | 2.4 | 72.3 | REG | REG |
| **United Kingdom[2]** | **12.8** | **17.1** | **11.3** | **81** | **6.5** | **77.6** | **PAR** | **PAR** |
| **Canada** | **10.0** | **16.4** | **12.4** | **80** | **7.1** | **66.7** | **n.a.** | **PAR** |
| **Australia** | **17.9** | **20.8** | **13.1** | **90** | **6.7** | **60.1** | **n.a.** | **PAR** |
| Austria | 12.8 | 14.4 | 7.5 | 69 | 4.8 | 73.4 | REG | REG |
| Belgium[1] | 15.4 | 15.9 | 7.3 | 141 | 2.0 | 94.1 | PAR | REG |
| Czech Republic | 10.7 | 16.4 | n.a. | 36 | n.a | n.a. | n.a. | n.a. |
| Denmark | 10.7 | 10.8 | 7.8 | 100 | 3.9 | 68.6 | REG | REG |
| Finland | 8.4 | 12.5 | 6.7 | 77 | 4.1 | 85.9 | REG | REG |
| Greece | 9.6 | 15.5 | 9.3 | 184 | 1.8 | 62.2 | UNR | REG |
| Hungary | 10.8 | 12.4 | n.a. | 50 | n.a | n.a. | n.a. | n.a. |
| Iceland | 8.9 | 11.9 | 6.4 | 67 | 4.7 | 75.1 | n.a. | PAR |
| Ireland | 7.9 | 14.3 | 11.8 | 90 | 4.2 | 60.3 | UNR | PAR |
| Korea | 11.7 | 22.0 | n.a. | 166 | 2.0 | n.a. | n.a. | n.a. |
| Luxembourg | 13.5 | 15.9 | 9.7 | 116 | 4.2 | 130.1 | n.a. | n.a. |
| Mexico | 22.6 | 14.9 | n.a. | n.a. | n.a | n.a. | n.a. | n.a. |
| Netherlands | 12.7 | 16.2 | 12.3 | 80 | 5.3 | 54.8 | PAR | REG |
| **New Zealand[3]** | **15.2** | **12.4** | **10.0** | **95** | **4.6** | **85.8** | **UNR** | **PAR** |
| Norway | 9.7 | 13.9 | 6.0 | 92 | 3.2 | 92.9 | PAR | PAR |
| Poland | 8.9 | 16.4 | n.a. | 43 | n.a | n.a. | n.a. | n.a. |
| Portugal | 14.1 | 13.2 | 9.8 | 192 | 2.0 | 52.8 | UNR | PAR |
| Spain[1] | 14.2 | 16.7 | 11.0 | 134 | 2.7 | 45.7 | UNR | PAR |
| Sweden | 8.3 | 11.9 | 6.9 | 94 | 3.9 | 86.9 | UNR | PAR |
| **Switzerland[3]** | **14.7** | **13.9** | **10.6** | **83** | **6.8** | **78.8** | **REG** | **REG** |
| Turkey | 16.0 | 12.5 | n.a. | n.a. | n.a | n.a. | n.a. | n.a. |

Legend: UNR = Unregulated. PAR = partly regulated. REG = regulated
1. Distribution GDP includes repair services.
2. Distribution GDP includes repair services, restaurants and hotels.
3. Distribution GDP includes restaurants and hotels.
Source: OECD (1997)

133. With 6.7 persons employed in each retail outlet, Australia is at the high end of industry concentration though still below Canada and Switzerland and comparable to countries such as the US, the UK, and New Zealand.

134. In a report undertaken by the Australian Centre for Retail Studies (ACRS, 1998) a number of definitions were used to construct concentration ratios for several countries. Two definitions of interest are those used by the international market research companies AC Nielsen and M&M.

135. As discussed in Section 3.2, the definition used by AC Nielsen (1998) is a narrow conception of the food retailing industry. It includes packaged food and grocery items but excludes fresh foods and takeaway foods, as well as sales of packaged foods by many

independent retailers. According to AC Nielsen figures for 1998, Coles, Woolworths and Franklins supermarkets together account for 80 per cent of the dry packaged goods market. This figure is high by international standards, yet is not the greatest level of concentration observed in developed nations. Table 5-2 shows the market share of the top 5 and 3 food retailers across nine developed economies and illustrates the level of concentration for the selected countries using AC Nielsen data, supplemented by M&M and Merrill Lynch sales data. The market definition is essentially packaged groceries using AC Nielsen's Brandscan. Note that the level of concentration is generally lower the higher is a market's population and density. This effect is consistent with the efficient scale of a retail firm being roughly correlated to these variables.

**Table 5-2: International Grocery Retailers Shares of Packaged Goods Markets**

| Country[1] | Population (millions)[2] | Market size AUD$ b[3] | Top 5 | Top 3 |
|---|---|---|---|---|
| Switzerland | 8 | 25 | 94.2% | 90.3% |
| Sweden | 9 | 26 | 91.2% | 84.4% |
| Holland | 16 | 27 | 52.8% | 49.0% |
| **Australia** | **18** | **37** | **99.0%** | **80.4%** |
| Canada | 27 | 58 | 70.0% | 60.0% |
| England | 58 | 120 | 68.9% | 49.1% |
| France | 60 | 121 | 52.9% | 35.5% |
| Germany | 80 | 175 | 79.2% | 56.0% |
| USA | 255 | 415 | 33.0% | 23.2% |
| Weighted average | | | 55.9% | 41.7% |
| (excluding the USA) | | | 72.0% | 54.7% |

Notes:
1. Canada, United States & Australia are based on 1998 market shares and Germany, France, Netherlands, Sweden, Switzerland & England are based on 1997 market shares. Canada and the United States are unpublished AC Nielsen data.
2. 1996 figures from OECD (1998).
3. Exchange rate based on $A exchange rates as at end of February 1999 using sales data from M&M.

136. The levels of concentration shown for some of these countries is misleading. Canadian retailers are divided between the Atlantic and Pacific coasts, with a significant independent sector. In the Atlantic provinces two retailers share nearly 80 per cent of the market, while the top two retailers in Quebec control 56 per cent of the market, and in the West the top two have half the market between them[11]. One Canadian retailer now has a 40 per cent share of the market. There is no truly national grocery chain in the USA, and concentration levels in some regions are as high as in Australia. In many US States the market is dominated by two or three State-based chains. Consequently, as shown in Table 5-3, retail concentration in many of the major US cities is usually higher than for the country as a whole. The top three retailers generally have market share in excess of 60 per cent, and in Florida (Tampa and Miami) this share is as high as 85 per cent.

[11] Merrill Lynch (1998)

137. Clearly, as suggested by the discussion in Section 2, market concentration is determined by a variety of factors which include the size and dispersion of the population and market. Australia's retail concentration level cannot be considered in isolation from its geography and market size. In the context of these international comparisons, Australia has about the number of major retailers that might be expected to serve a market of 18 million people disbursed over a large land mass in a small number of large metropolitan areas.

**Table 5-3: Retail Concentration in Selected US Cities, 1997**

| City | Population (millions) | Top 3 |
|---|---|---|
| Miami | 2.1 | 85.9% |
| Tampa | 2.2 | 78.2% |
| Los Angeles | 9.1 | 72.7% |
| Chicago | 7.7 | 68.1% |
| San Francisco | 1.7 | 67.9% |
| Seattle | 2.2 | 66.3% |
| Houston | 3.8 | 60.1% |

Source: Merrill Lynch (1998)

138. The market covered by the AC Nielsen surveys is clearly only part of that served by supermarkets and grocery stores. Fresh food, which includes fresh meat and poultry, fresh fish, fresh fruit and vegetables and bread and cakes, accounts for around 26 per cent of total food and grocery retail sales. Takeaway food accounts for a further 12 per cent. The AC Nielsen data primarily cover dry groceries and account for only about 62 per cent of total food and grocery retail trade in Australia. The definition used by the international market research group M&M is wider, covering total food and grocery retail trade plus housekeeping, healthcare and pharmacy type products and toiletries. Table 5-4 shows the M&M measure of market concentration for Australia and eight other developed countries based on the market shares of the top five and top three retailers. The top 3 Australian retailers held a 54 per cent market share using this definition.

**Table 5-4: Market Concentration Ratios – Based on the M&M Definition**

| Country | Top 5 | Top 3 |
|---|---|---|
| Australia[1] | 71% | 54% |
| Canada[2] | 46% | 33% |
| France | 50% | 40% |
| Germany | 48% | 34% |
| Netherlands | 45% | 42% |
| Sweden | 78% | 71% |
| Switzerland | 40% | 39% |
| United Kingdom | 50% | 36% |
| United States[3] | 60% | n.a. |

Source: ACRS (1998), ABS 8501.0 (1998), CML Financial Review, (1998), Woolworths Annual Report (1998), Franklins web site, Statistics Canada (1999), FMI (1998), CML correspondence.
Notes:
1. Australian figure based on ABS definitions equated to M&M. The 4th and 5th top retailers for Australia are Davids and FAL who are the major wholesale suppliers to the independent grocery stores.
2. Canadian data is based on food sales only, i.e. excluding housekeeping, healthcare and drugstore products and toiletries.
3. Concentration calculated based on the chain supermarket proportion of sales.

139. The *share of stomach* definition includes total sales by supermarket and grocery stores, takeaways, other food-retailing outlets, hotels and clubs, and cafes and restaurants. In 1997-98 the top 3 food retailers (Coles[12], Woolworths[13] and Franklins) accounted for 45 per cent of sales turnover on this definition.

140. The main conclusion is that retailing in Australia is relatively concentrated but that Australia is not out of line with other industrial countries. Where concentration has increased it has often been related to the benefits of economies of scale and the advantages of applying the latest in information technology. A US study indicates that bar coding and electronic scanning of products has resulted in a lift of 12 per cent increase in productivity in terms of the number of items checked per labour hour expended. The rise in concentration in UK retailing has been particularly marked in the grocery sector but has had benefits in terms of retailers dealing directly with manufacturers and better reflecting the interests of consumers[14]. Moreover, even though concentration has increased in many UK retail markets, it is reported that "competition through new entry has always been a feature".

141. An aspect often overlooked in European food retailing and distribution is the fact that there are many pan-European buying or wholesale groups. Several of these groups have food sales in excess of A$100 billion, supplying groceries to multiple chains across national boundaries. The buying power and economies of scale in their distribution networks enable

[12] In this definition, CML food and liquor outlets are included (ie Coles and Bi-Lo supermarkets, Liquorland and Red Rooster).

[13] For food retailing, the Woolworths supermarkets group is taken into account.

[14] *Competition in Retailing,* Research Paper No.13 prepared for the UK Office of Fair Trading by London Economics 1997.

these groups to supply various national and pan-European chains at prices which enable them to compete effectively with the larger national chains.

142. As discussed elsewhere in this submission, there are reasons to expect a fairly high degree of concentration in retailing in Australia if some of the disadvantages of a relatively small and widely distributed population are to be offset. The much more important question is whether the current industry structure in Australia provides a range of goods and services at prices that do not represent an excessive mark-up on costs. **A good structure is also one that responds to changing community needs and is innovative in terms of product development and service provision.**

## 5.2. Regulation and regulatory reform

143. Most industrial countries possess legislation concerning industrial competition. The retail distribution sector is, however, often subject to separate regulation in OECD countries. Until recent times, it was indeed one of the most heavily regulated sectors although the degree of regulation differed markedly from country to country. In some cases, current regulation is directed at maintaining competition, particularly price competition. To this end constraints are placed on permissible marketing techniques and the relationship between retailers and wholesalers is subjected to controls. Other regulations have broader social and environmental objectives which often have the - doubtless unintended - effect of protecting established firms. There are restrictions on trading hours, zoning laws and in some countries limitations on the number of very large retailers (the so-called hypermarkets generally located on the outskirts of urban areas). As previously mentioned, however, deregulation is taking place today in most OECD countries, though at a varying pace, and is generally praised by the OECD for its positive economic benefits

144. The United States retail distribution market has been one of the least regulated, for example trading hours have been deregulated for decades, and has been the major source of innovation in world retailing. Retailing and the location of retail outlets in the United States are subject to perpetual changes. Checkout operations and inventory management were first computerised in the US. The US led the way with self-service formats and saw the establishment of large specialist discounters such as Toys 'R' Us and Circuit City (electronic equipment). There is pressure on the traditional downtown retail outlets from the growth of large discount shopping malls on the outskirts of many city areas. Mail ordering has always been important in the US and is now being developed into television ordering and purchasing through the Internet.

## 5.3. Restrictions on large Stores

145. OECD analysis suggests that restrictions on large outlets have had a significant effect on their density, particularly in Japan and Italy.

146. Japan has apparently had the most restrictive regulations relating to the retail industry of any industrial country. The main regulatory restriction that remains in place is its 1979 Large-Scale Retail Store (LSRS) law. This law controls the establishment of large stores (over 500 square metres) and also regulates the number of closure days and opening hours for such stores. The average store size and staff numbers are accordingly quite small[15]. Labour productivity is therefore relatively low and contributes to an inefficient and costly distribution system resulting in higher prices. Reforms in the past decades have led to an

[15] The average size of a Coles store is around 2500 square metres, with some as large as 5000 square metres.

increase in the number of large and more efficient stores. Labour productivity in retailing has since improved and the number of discount stores in Japan has increased.

147. The OECD (1997, Vol II, p. 109) states that:

> *By moving to suburban locations and by undertaking their own product development and merchandising, discount stores in the clothing sector were able to reduce the ratio of final product price to raw material costs by half.*

148. More generally, improvements in efficiency, the emergence of discount stores and more efficient procurement patterns, have all contributed to greater price competition and reduced costs in the retail sector. Retailing employment has continued to grow despite growth in store size and productivity. It is generally agreed that further reforms would bring additional benefits to the Japanese population. In short, the LSRS formerly protected small shop owners but (as has now been revealed) at a considerable cost to the consumer and to the overall performance of the economy.

149. In France there is a large number of small shops. The establishment of large stores is regulated by the Loi Royer (introduced in 1973 and subsequently tightened). In the event, the Loi Royer does not seem to have prevented the establishment of hypermarkets in France but it has added to the costs and prices of services provided by supermarkets. It has also slowed the development of commercial centres. The OECD notes that in 1988 the hypermarkets and supermarkets in France were respectively about 100 per cent and 30 per cent more productive than 'normal' retail outlets. Labour productivity in French retailing is about 13 per cent below the US level and a little below that of Germany.

### 5.4. Trading hours

150. Restrictions on trading hours were originally intended to secure one free day per week for employees and to prevent them from having to work excessively long hours. More recently most OECD countries have been liberalising hours in response to the strong demand by consumers for longer opening hours. We are not aware of any major country that has moved to restrict trading hours in recent times.

151. The recent experience of a number of European countries is of particular interest. Sweden no longer regulates shopping hours. It is estimated that this has boosted employment in the sector by 1.5 per cent. The assessment of the OECD is that the liberalisation of hours appears to have enhanced opportunities for consumers to choose and is a major welfare gain. Large self-service stores and service shops, including petrol stations, have captured an increased share of the market. The market share of hypermarkets in retailing everyday consumer goods has increased from about 5 per cent to about 10 per cent. In general, there has been an increase in competition with stores competing on price, business hours, product range and the levels of service.

152. Germany has a fairly advanced retail industry structure with superstores and hypermarkets well represented but until recently shop opening hours were strictly regulated. McKinsey[16] estimates that before recent reforms weekly shopping hours outside of working hours in Germany were only 14.5 compared with 41 in the United States. The IFO Institute in Germany has estimated that turnover in retailing could increase by 2-3 per cent over a three-year period as a result of a full liberalisation of shop opening hours[17]. The gains would

[16] Cited in OECD (1997), Vol II, p. 121.

[17] IFO Institute for Economic Research, cited in OECD (1997), Vol II, p. 122.

presumably be concentrated in the larger outlets which might see turnover increase by 5-7 per cent whereas smaller stores might experience a decline in sales of 1-2 per cent. Full time employment would increase by 1.3 per cent.

153. The Netherlands and Denmark have had some of the most restrictive shopping hours of any countries in Europe but both have moved to relax them. One study in the Netherlands suggested that if hours were extended as much as in Sweden, sales would increase by 1.2 per cent and employment would grow by 2.6 per cent. Early experience with more modest reforms has generally been positive with consumers taking advantage of longer shopping hours. The reforms are expected to improve the general structure and dynamism of the economy. The number of businesses is expected to increase and above normal profits to be competed away.

## 5.5. Zoning laws

154. Apart from restrictions on the establishment of new businesses, many countries have regulations that affect the location of large-scale retailers. In Germany, for example, there are regulations covering the location of stores of 1000 square metres or more that are ostensibly designed to prevent excessive traffic and noise but which also have the effect of protecting smaller stores from competition. The OECD believes that developers operating just within the limits have largely circumvented these restrictions. But the regulations have added to the cost of establishing new centres that are presumably often of less than optimal size.

155. The Netherlands, Sweden and Spain also possess relatively strict zoning laws that add to the cost, length and complexity of the approval process. These laws were generally established with environmental and other social factors in mind. Little economic analysis has been carried out on the side-effects but it is interesting that the four big cities in the Netherlands are now experimenting with less constraining rules with a view to stimulating low–skilled employment.

156. In the UK, where out-of-town retail turnover has grown from 5% in 1980 to over a third in 1997, the British government put in place guidelines, which put more emphasis on town planning. However, the new planning guidelines essentially entrenched the position of existing retailers and raised the entry barriers for new ones. According to a retail market specialist in this field, Robert Clark[18],

> *...the UK's planning environment ...has been a major contributory factor to sustaining UK food superstores operators profitability.*

157. In Belgium and to a lesser degree in France (hypermarkets being a exception), planning regimes have severely curtailed the development of modern, efficient, larger retail stores and must, therefore, have reduced long term retailer profitability – not to mention the benefits these more modern stores offer consumers.

## 5.6. The impact of restrictions

158. According to the OECD (1997, Vol II, p. 55), studies of the impact of large-scale restrictions on performance in the retail sector reach similar conclusions:

[18] Robert Clark, UK based Retail Market Consultant, correspondence with the Australian Centre for Retail Studies, January 1999.

- *the restrictions have substantially retarded structural change in the retail sector, particularly in food retailing, and have often also limited the efficiency of those large-scale stores that were allowed to establish;*
- *they have tended to favour existing stores and sometimes provided them with substantial rents. Large stores that have been allowed to establish have benefited in particular, as they were confronted with only limited competition;*
- *restrictions on large stores have reduced the potential gains to consumer welfare from larger outlets, in particular by limiting the expansion of consumer choice;*
- *regulations on large stores may have reduced innovative effects and slowed down the development of modern retail formats. Large retailers have often taken the lead in developing and implementing new technologies, such as scanning and integrated inventory management.*

159. The OECD questions whether a strong case can be made for protecting small shops from large-scale outlets because developments suggest that small shops continue to play an important role in advanced retail systems (where they are more specialised and customer orientated), particularly outside the mass food market. The OECD also questions whether restrictions on large stores are a good means of protecting employment. **It notes that modern retail systems remain quite labour intensive and that the US distribution system (arguably the most advanced) has continued to show rapid employment growth over the past fifteen years.**

# 6. Potential impact of changing current restrictions on retailing

*The universal application of competition law means there are already safeguards against the potential abuses of market power that might arise from concentration in the retail industry. No other country specifically limits the market share of retailing firms.*

*While the concentration of the retail market may increase under the current Australian approach, there is no reason to expect that this will mean either a lessening of competition or less competitive outcomes.*

*Proposals to cap market shares target "concentration" without considering the consequences for the retailing industry or national income and welfare. They neglect to assess whether there is strong competition in retailing and whether consumers, or even the small supermarkets, would gain from limiting the growth of the major supermarket retailers.*

*Problems with appropriate definitions of markets and the bounds of ownership and control make applying limits on market shares costly, if not impossible, to enforce.*

*Industry-specific limits on concentration in retailing would violate the principle of the universal application of competition law, and put the gains from microeconomic reform at risk.*

*Deregulation of trading hours has been the result of the increased cost of consumers' time and the advantages in terms of costs of longer opening times. Trading hours are an aspect of competition between retailers that is properly left to market processes.*

*Proposals to cap market shares or restrict any further liberalisation of trading hours would come at a considerable cost to the community.*

*Such measures would be a very inferior way of addressing perceived problems with the competitive structure. These can be addressed satisfactorily through the general regulatory framework.*

160. The need to regulate the retail sector stems primarily from potential abuse of the market power generated by the natural tendency towards concentrated supply and vertical expansion back along the chain of supply. There are two principal approaches to such regulation: generic anti-trust legislation and industry-specific regulation.

161. These are considered in turn below.

## 6.1. Generic approach

162. Retail industry in other countries is not generally subject to industry-specific competition policy. In OECD countries threshold levels of market share are set as a guide but not retail-specific limits. Protection against potential abuse of market power is provided through non-discriminatory anti-trust laws.

163. The current form of competition regulation applied to retailing, as with almost all substantially private Australian industries, is the regulation of anti-competitive practices, Part

IV, of the *Trade Practices Act 1974* (TPA), discussed in Section 4.2 above. To date, the main exemptions to the economy-wide application of the Act, granted by the ACCC through industry codes, have related to previously publicly-dominated utility industries (gas and electricity, for example[19]).

164. At present the retail industry is overseen by the ACCC, and expansion, mergers, acquisitions and new entry are guided by generally well established rules. While mergers and acquisitions are limited by ACCC guidelines regarding threshold levels of concentration, the major supermarkets are largely free to expand their market shares as best they can. Market dominance by itself is not an issue unless it leads to a demonstrable abuse of market power. The regulation is therefore consistent with the general principles informing the NCP, in that competition is presumed to be the best means of organising the industry until specific anti-competitive behaviour is proven. Even then, intervention would most likely be limited to the particular party or parties involved, and would not apply industry-wide.

165. Both the United States and the United Kingdom also rely on generic anti-trust legislation to assess the impact of market domination, although each has a level of concentration above which investigations into mergers or market behaviour are triggered. As yet, neither country has imposed industry-specific limits on market share in retailing. A similar approach is taken in other OECD countries, although in most the retailing industry is, or has recently been, subject to other regulations (such as limits on trading hours, planning and zoning laws and building restrictions). In most cases this regulation has not been directed at preventing the concentration of the retail industry *per se*. Rather, it is a by-product of measures intended to protect small retailers from larger competitors.

166. The extension of the fair trading provisions of the TPA to cover small business (s. 51ac) is also a generic regulation covering all sectors of the economy (including publicly-owned corporations). While the two cases brought so far relate to retail tenancies, there is no reason to expect that the major supermarkets need to change any of their dealings with suppliers to ensure compliance. Similarly, unless the new provisions were selectively applied to retailers, they would not represent an additional regulatory burden on the industry in particular. However, the burden of any adjustment in the light of judicial interpretation of "unconscionable conduct" is most likely to be borne by the large retailers, and potentially shared with their small suppliers (for instance, as lost opportunities to trade at marginally favourable terms that could be viewed suspiciously by the ACCC).

167. The generic approach allows unfettered competition between retailers of all sizes, promoting efficiency in supply, low margins (and hence prices) and continued improvements in the quality and diversity of products on offer and the ancillary services available to customers. Customers are protected from abuse of market power both by existing legislative measures and by the relatively low costs of entry and the large numbers of alternative suppliers of most goods.

168. Under this framework the industry could become more concentrated, but there is absolutely no indication that this would lead to a less efficient outcome. Higher levels of concentration are likely to arise from the closure of small independents unable to compete with the major supermarket chains. Competition between the remaining retailers, large and small, for the market share thus 'released' is likely to reduce margins, or at least costs, and may therefore actually improve the efficiency of the market as a whole.

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[19] The telecommunications industry is subject to an industry-specific regulatory regime but nevertheless, its structure parallels the generic regulation. It is intended to remove the special provisions for telecommunications once competition develops.

169. Equally, suppliers, large and small, are protected from anti-competitive behaviour by the TPA. The expansion of the major retailers back up the chain of production and distribution is therefore likely to be driven largely by cost rather than strategic factors. Where retailers choose to strengthen their ties with small suppliers in order to serve their customers better, those dealings will carry the added protection of the expanded fair-trading provision.

## 6.2. Industry-specific regulation

170. To address the problems it believes result from the present concentration of the retail grocery market the National Association of Retail Grocers of Australia (NARGA) has made the following specific recommendations:

- Place a cap of 80 per cent of the retail grocery market on the three major chains immediately; and
- The 80 per cent cap be reduced to 75 per cent within five years with each major chain being allowed to control no more than 25 per cent of the total retail grocery market share.

171. The obvious criticism of NARGA's proposals is that they target concentration without considering the consequences for the efficiency of the retailing industry or the net effect on national income and welfare. By throwing the emphasis on the market shares of the major supermarkets NARGA neglects to enquire whether there really is strong competition in retailing and whether consumers, or even the small supermarkets, would genuinely gain from limits on the growth of the majors.

172. When entry is relatively free, as is the case in retailing, concentration does not reflect the true performance of the market in serving the needs of consumers. In principle, and in the absence of other indicators of market outcomes, there is no basis for believing that any particular level of market share unambiguously denotes a poorly performing market.

173. Even if it were possible to identify a clear relationship between high concentration of ownership and market inefficiency which would justify intervention, it is not clear what the appropriate measure, and associated limit on concentration, should be. NARGA provides no justification or explanation for its proposed limits.

174. While it is relatively easy to demonstrate that a particular industry is more or less concentrated than the average of other industries, it is therefore much more difficult to establish an unacceptable measure of concentration with the ultimate intent of limiting the market shares of the largest firms. As with the ACCC's merger guidelines, the best that might be hoped for is to determine threshold levels of concentration where investigation should follow if they are overstepped. Tirole (1990, p. 221-223) discusses the properties of some commonly-used concentration indices and demonstrates that the relationship between the indices and the profitability of incumbent firms' will depend on the dispersion of their costs. By themselves, concentration indices are simply inadequate as measures of market efficiency or inefficiency. **Consequently, since the performance of the market is the relevant issue, any inquiry should be directed at the effects of high levels of concentration, not at market shares *per se*. Intervention should not occur until there is irrefutable evidence of anti-competitive practices.**

175. Enforcing limits on market shares invites disputes over levels of ownership and control, and creates inefficient incentives for mergers and acquisitions. As with the rules enforced by the Commonwealth governing cross-media ownership in Australia, there is considerable potential for uncertainty (and consequent inefficiency) about the boundaries of ownership

and the closeness of independent companies' trading relationships. The essentially arbitrary nature of the enforced limits also invites political manoeuvring and influence peddling.

176. As shown in Table 3-10, Woolworths has around 35.9 per cent of the total dry packaged goods sales across Australia when the Safeway and Purity/Vos trading arms in Victoria and Tasmania, respectively, are included. That share falls to only 25.2 per cent when these arms are excluded. At what point could Woolworths – if required to cut its market share – successfully urge that it had divested itself of enough of these "excessive" interests? What would happen if the newly "independent" stores were not competitive and, in leaving the market, once again raised the major supermarkets' market shares? **Alternatively, in Western Australia nearly 40 per cent of the dry packaged goods market is sold by independent supermarkets supplied by the same distributor. Would the concentration restrictions extend back along the chain of production and distribution** and, if so, would the relatively small supermarket majors be forced to divest their interests and further enhance the market share of the dominant wholesaler?

177. It is difficult to forecast the development of retailing subject to caps on market share, not least because the forces that have increased the concentration of the industry to date are still at work. While the major supermarkets may still have unexploited economies of scale, they may only be able to expand further by entering market niches where their existing store formats are not suitable. Coles has recently opened its Coles Express supermarkets, small inner-city stores tailored to the convenience market. While this demonstrates that the larger retailers can diversify formats to tap into new demand, it does not guarantee their success, especially given the greater potential for competition from other retailers at the smaller scale. Coles' buying power may help it keep margins low, but price alone is not the determining factor in this niche. Similarly, the recent growth of franchised food retailers and chains tied to large distributors suggests that, in these markets at least, the positions of the major supermarkets could be challenged in the near future. If small independent supermarkets disappear, it could be due more to their inability to compete with these rivals, particularly convenience stores, than with the larger stores supplying a different market sector. Capping market shares would then ultimately do little to save the independent supermarkets.

178. NARGA's proposal suggests it has the Australia-wide AC Nielsen shares of the dry packaged goods market in mind as the triggers for divestiture. Nevertheless, as the various measures of market share discussed in Section 3 show, there is no clear boundary to the appropriate market definition in which "critical" levels of concentration might be reached. The majors' shares of the *share of stomach* market are much smaller than their dry packaged goods market shares. Other market definitions will suggest other levels of concentration, and none will accurately represent the range of goods sold in the major supermarkets or the other services and facilities which attract customers to their stores.

179. For instance, part of the reason for the recent resurgence of both Woolworths and Coles has been their expansion into fresh food, and the wider range of these products in their stores has probably also helped them increase their dry packaged goods sales. The ability to identify and capitalise on the interaction between the demands for the products they stock is a dimension of the competition for customers' which the small independent stores cannot easily match. It also underlines the weakness of judging market strength on the basis of only a subset of the products in the major retailers' stores.

180. As suggested above, forcing retail turnover into smaller stores is likely to increase the costs of supply and ultimately raise the prices of groceries to consumers. Even if the major retailers were force to sell individual stores to "independent" owners, the loss of economies of scale and scope in purchasing, distribution, warehousing and marketing would ensure costs

and prices were higher. This must necessarily cut demand and reduce the opportunities for employment in the industry, as well as the market served by the retailers' suppliers.

181. As discussed in Section 4.1, the recent changes to the *Trade Practices Act*, and reviews of other legislation which affects the level of competition in the economy, are based upon the principle of universal application. The rationale for this is that exemptions or specialised regulation for particular industries or sectors are more likely than not to distort the allocation of resources and reduce national income and well-being. Industry-specific regulation which reduces competition should therefore be the exception rather than the rule, and should only apply where no alternatives exist and after careful demonstration of its net public benefit. In the absence of demonstrated anti-competitive behaviour or inefficient outcomes for consumers, **application of industry-specific limits on retail concentration would be a substantial violation of the principles behind the *Trade Practices Act*.** A repudiation of the principles behind NCP, and a reversal of the microeconomic reforms based on them would risk the past and future gains from a more flexible and efficient Australian economy.

182. Even if appropriate market definitions and measures of concentration could be identified and enforced, the NARGA proposal takes no account of the possible consequences.

183. One of the NARGA claims is "every job created in a larger store replaces 1.7 jobs in smaller stores"[20]. To arrive at this figure, turnover per employee in the larger supermarket stores was divided by the turnover per employee in the small supermarket stores. This is an unusual argument for assessing the transfer of employment since it is not clear that there is a stable relationship between turnover and employment. Nevertheless, this claim cannot be supported by the only relevant ABS data (the 1991-92 Retail Activity Survey). In fact, as shown in Table 6-1, the small and medium-sized supermarkets and grocery stores had a turnover of $151,776 per employee, compared with $145,080 per employee in the large supermarkets and grocery stores. Based on these figures, the NARGA calculation would become 0.96, thus implying that every job created in a *smaller* store replaces 1.05 jobs in *larger* stores.

**Table 6-1: Supermarkets and Grocery Stores, Turnover per Employee, 1991-92**

| | Persons Employed | Turnover ($m) | Turnover/ Employee ($/person) |
|---|---|---|---|
| Small | 24,210 | 3,749 | 154,853 |
| Medium | 14,215 | 2,083 | 146,535 |
| Large | 134,057 | 19,449 | 145,080 |
| Small and Medium | 38,425 | 5,832 | 151,776 |

Source: ABS 8622.0, Table 4.

184. This conclusion is consistent with one published in a detailed paper published by the Industry Commission in 1997 reviewing the impact of small business on employment and unemployment[21] in the Australian economy as a whole. They concluded that: "All told, ... to a large extent small business is not an independent motor driving new job generation in the economy.". **The modelling work they undertook also suggested that share of small**

[20] NARGA (1998), p. 8.

[21] Revesz, J. and Lattimore, R. (1997), *Small Business Employment*, Industry Commission Staff Research Paper, Industry Commission, Canberra, August.

**business employment in total employment was "not at all statistically or economically significant as a long-run determinant of the unemployment rate".** It follows that policies intended to bolster small businesses are not guaranteed also to increase the rate of growth of total employment.

185. Based on these figures, forcing the large retailers to divest some of their interests to meet arbitrary concentration limits would most likely decrease total retail employment. This effect would be compounded by the negative impact on total retail grocery sales of the increases in prices associated with the higher margins generally needed to sustain smaller stores, as discussed in Section 3.1 above.

186. As discussed in Section 2, the efficiency of markets depends on their ability to deliver the highest valued goods and services to final consumers at the lowest prices. Employment of any factor of production (land, labour or capital) is a by-product of this process, not its objective. While it is interesting to speculate what the labour employment consequences of changes to the structure of retailing may be, this has no bearing on the efficiency of the market or the welfare of its employees. **In the absence of clear evidence of market failure, intervening in the processes that determine the structure of retailing with the intention of increasing employment is most likely to reduce the efficiency of the industry, raising prices to consumers and reducing the contribution of the industry to national income.**

### 6.3. Restricting trading hours

187. The other principal restraints on competition in retailing are the various States' trading hours regimes. As discussed in Section 4, these are the subject of the legislative review process under the NCP. These regimes apply selectively to different sectors of the retailing industry, varying both by the size of the outlets (measured, for instance, by floorspace or employment) and the nature of the business or the goods it offers.

188. NARGA has previously suggested that the present trend towards liberalisation of trading hours should be halted, pending the outcome of an assessment of the impact of growing concentration in the industry. **Trading hours legislation is the principal regulatory barrier to improved efficiency in Australian retailing.** Moreover, it is difficult to interpret any motivation except self-interest to any proposal to restrict trading hours by the size of store.

189. Further restrictions on shopping hours would be detrimental to the community at large and not necessarily result in any benefit to small grocery stores. For example, an ACT experiment in late 1996 to restrict late night shopping with the purpose of moving that trade to small grocery stores failed and was reversed in 1997 because it made little difference to peoples shopping habits and lacked broad community support (see also Section 6 of Attachment C). The then ACT Minister Gary Humphries said at the time[22]:

> *Local shops must now turn their attention to being competitive, by offering services which perhaps are not available in, or attractive to, larger supermarkets.*

190. Competitive markets can provide appropriate price and other signals that impact on diversity and quality of products without regulatory restrictions. Similarly, market processes will strongly influence efficient retail opening hours, and attempts to preserve hours set in different circumstances is likely only to lead to lower incomes and reduced welfare. The benefits of automatic teller machines, for example, would not have been fully realised if they

[22] Gary Humphries, MLA, *Government Steps up Changes to Local Centres*, Ministerial Press Release, 8 May 1997.

could operate only in traditional banking hours. Similarly, the need for core office hours has been reduced with the widespread advent of facsimile and answering machines and voice- and e-mail. Transactions which previously required simultaneous voice communication can now be organised by a sequence of electronic messages, over a possibly shorter total period, without the parties having to make themselves available at tightly coordinated times.

191. One of the desirable features of competitive markets is that they adjust efficiently to changing circumstances. Changes in prices in these markets send signals to consumers and firms that lead them individually to react and collectively to produce the best new allocation of resources. Perfectly competitive markets also tend to generate efficient levels of quality and diversity of offer for much the same reasons. Where demand exists for smaller or larger packaged quantities of goods, or products of higher or lower quality, it is in the interests of suppliers to provide them. This process will not work perfectly in practice, when there is consumer uncertainty about quality for instance, but markets generally reveal the information needed to evolve efficient solutions better than centralised processes.

192. In many sectors of the economy there is a clear benefit from coordinating the actions of individuals through centralised conventions. In manufacturing and commerce, for example, production processes require individuals to contribute their skills simultaneously, or at least in a set sequence. Fixed shift hours and office hours are an obvious method of coordinating the contributions of individuals when critical numbers of workers or skilled teams need to be brought together. As with all other aspects of agreements to trade, government has a role to play in enforcing agreements, including conditions that specify the length of working hours and "core" hours of attendance. Government can also provide a focus point or base-line from which the parties can negotiate an agreement, either as a suggestion or by example through the terms of its own employment, for instance. Nevertheless, beyond this basic coordinating role, regulatory limitations on the times at which trades occur necessarily do not respond to changing circumstances as well as market processes.

193. While the majority of households were comprised of at least one person able to shop during "office hours" (9 am to 5 pm, weekdays only) the costs of restricting shopping times to similar hours were relatively low. As social conditions changed and more women entered the workforce, the time available to households to shop during those hours was reduced, and the demand for longer opening hours grew. Provided staff can be employed to work over the longer opening times, something that ideally is the product of employers and staff negotiating appropriate terms, longer opening hours spread fixed costs (rent or leasing costs and the energy costs of refrigeration, for example) over potentially greater through-put of products. This allows stores that open longer to exist on smaller retail margins. The cost advantages of longer hours have therefore reinforced the other factors favouring increased scale of retail outlets.

194. Where regulatory restrictions are lifted, retailers can compete on opening hours, as well as price, quality and ancillary services such as parking. This competition can be expected to generate an equilibrium of opening times which balances the costs of opening against the likely trade that will arise. It will also provide niche opportunities for those willing to provide goods or services outside of the opening hours of the majority of traders. It follows that not all stores will be open at the same time, nor that the major retailers will open at the same times. In the jurisdictions where they have substantial freedom to set opening hours, Coles has persisted with 24 hour a day trading in many locations where Woolworths has limited itself to opening between 7 am and midnight. Specialised retailers, those offering the type and quality of products and advice not available from the major retailers (antique

dealers, pharmacies, hi-fi and photographic stores, for instance), would not be competing in the same market niche, and would not be forced to open in the same hours.

195. Part of the impetus for total deregulation of trading hours comes from the problems of introducing flexibility into some sectors of retailing without overly complex enforcement processes. As noted in Birrell (1996), prior to the almost total deregulation of opening hours in Victoria, barbeques could be bought on Sundays, but meat could not. Clearly, attempting to enforce essentially arbitrary distinctions between stores allowed to open and those not adds substantially to the inefficiency cost of inflexibility. It also highlights the absence of a coherent rationale for placing any limits on opening hours.

**196. The review of competition-impeding legislation being undertaken in each State as part of the National Competition Policy, including review of restrictions on trading hours, should consider whether there are any net public benefits in the current restrictions.**

197. State governments are not obliged by the NCP to remove all anti-competitive legislation, and each is able independently to determine the net balance of the public costs and benefits of particular restrictions. The emphasis placed on local, social and community impacts in their assessments is therefore a question of judgement to be exercised by the government of each State.

198. The approach of the Victorian government to the deregulation of trading hours is a useful example of this point. While promoting a blanket deregulation of hours, the government nevertheless provided for local district councils to restrict hours where this attracted broad community support, as expressed through a voluntary ballot. The emphasis in this policy is for the local community to decide the net public benefit of any proposal to restrict shopping times. In Bendigo, the only district to have voted on a proposal to re-regulate trading hours, an overwhelming majority, 73 per cent of eligible voters turned out (more than the 45 per cent who voted in the Constitutional Convention) and of them 77 per cent supported continued deregulation.

199. In a pluralistic and multicultural society such as Australia, the religious antecedents of many public holidays have lost their significance for much of the population. Public holidays therefore serve only to reduce the "standard" number of working days around which employment is organised and against which wages and terms are negotiated. The proclamation of public holidays and other "non-trading" days serves as a focal point for negotiation of the terms of employment. This, for instance, helps working families coordinate time together: time in which people still expect to be able to buy goods and services. Even if an argument could be made for restricted opening hours on particular days or at particular times, there is no obvious rationale for exempting stores by any measure of their size.

200. As noted in Section 2.2, the efficiency of competitive markets relies upon freedom of entry and exit. Selective restrictions on trading hours effectively prevent the excluded firms from entering and competing. Not only is this an unfair restraint of trade, it is likely to encourage inefficiency and excess profits in the favoured sector. **This is consistent with the observations in OECD countries where trading hours have been deregulated, and labour productivity, employment and competition in the retail sector have all increased.**

201. Restrictions on trading hours have the effect of:

- Inconveniencing consumers, and raising the time costs of shopping since consumers do not have the option of moving shopping into times with relatively low opportunity cost (alternative uses);

- Raising the stock (and therefore the cost) of retail capital needed to service a given volume of retail trade in a restricted period of time;
- Reducing total retail shopping because the time cost is higher; and
- Protecting small retailers, not subject to restrictions, from fair competition in hours when larger stores are not given the opportunity to open.

202. There are no clear benefits from limiting opening hours to offset these costs. It makes no more sense to limit trading hours than it does to fix the prices of groceries or to decree that sugar must be sold only in one kilogram packets.

203. It should be noted that the arguments against re-regulating trading hours also generally apply to tightening local building and zoning guidelines and planning and approvals processes with the sole intention of blocking large retail development. Extending regulation should be undertaken only if there are demonstrated weaknesses, and should not be motivated solely by a desire to impede large-scale competition to incumbent retailers.

# 7. Summary and conclusions

204. The retail industry as a whole is very important in the Australian economy. It accounts for about 44 per cent of total private final consumption expenditure and 15 per cent of total employment, while retail and wholesale trade together account for some 11 per cent of GDP. At the last retail census held in 1991-92 there were more than 172,000 retail outlets, of which 9,486 were supermarkets and grocery outlets.

205. Supermarkets and grocery stores between them account for about half of all food sales (including food sold through takeaways, hotels and restaurants). Of that proportion, about 61 per cent (some 30 per cent of the total) is sold through the major supermarket chains, Coles, Franklins and Woolworths. These three chains also account for about 80 per cent of the dry packaged groceries market, which is the subset of the retail food trade that excludes fresh food.

206. The degree of concentration in the retail food trade has resulted in Australia, as it has overseas, partly from striking developments in transportation, storage and distribution technologies that have cut costs for large, networked stores more than for small independent ones. It is otherwise partly the result of equally striking changes in consumer shopping habits that favour the diversity and facilities that the larger stores are best able to provide. Given that many people are now willing or able to spend limited time shopping, the emergence of large, one-stop shops becomes entirely understandable.

207. Australian supermarket and grocery retailing is relatively highly concentrated by international standards, because the market is smaller than in other developed economies. But, while a large number of providers usually ensures competition, the reverse does not necessarily apply. In other words, a small number of outlets does not automatically mean the stifling of competition. If entry to an industry is relatively free, as it is in Australian retailing, concentration does not afford the opportunity for the abuse of market power. Should margins be excessively high, new firms will enter and set up competition.

208. There is indeed no evidence that current levels of concentration have led to inefficiencies or distortions in the structure of the market. Nor is there any evidence of the cartelisation of markets that is often associated with concentrated industries. Retailers vigorously compete with one another. This is indicated by the low margins over wholesale costs that they receive. Goods are thus available to Australian consumers at lower prices than would be possible without the economies of scale afforded by concentration and if the industry were in fact uncompetitive.

209. The efficiencies available to the major retailers permit them to trade at much lower margins, and hence charge lower prices, than their smaller rivals. Were consumers obliged to buy all their food in small specialty stores, instead of in supermarkets, it would cost them over 25 per cent more. This would be necessary in order to provide small stores with the higher margins that they need to remain viable. Despite some claims to the contrary, it is unlikely that such an imposed reorganisation of the retail trade would lead to more employment in the sector.

210. The size of a firm does not guarantee business profitability. For its part, Coles Supermarkets has had to make continual adjustments to its operation in order to keep up with changing consumer demands and newly-available technologies. Occasionally in the past, like other chains, the company experienced difficulties, only to recover later. Certainly, Coles Supermarkets' stores are utterly different from the stores of a few decades ago.

Nevertheless, they always remain vulnerable to the inroads of innovative competitors that succeed in developing new methods, new technologies, new formats or new products.

211. If there are perceived to be problems with the competitive structure of retailing - and the analysis has failed to find them - they would best be addressed through the regulatory framework that already exists. Trying to tackle them by capping market shares or reversing the liberalisation of trading hours would be a most inferior way of proceeding. It would be counter-productive and come at a sizeable cost to the community.

# References

AC Nielsen (1998), *Retail World*, Various issues.

ABS (Australian Bureau of Statistics) (1993), *Retailing in Australia, 1991-92*, Cat. No. 8613.0, ABS, Canberra.

ABS (1994), *Retail Industry State and Territory Summary, 1991-92*, Cat. No. 8625.0, ABS, Canberra.

ABS (1994), *Retail Industry Commodity Sales Australia, 1991-92*, Cat. No. 8624.0, ABS, Canberra.

ABS (1994), *Retail Industry Australia, 1991-92*, Cat. No. 8622.0, ABS, Canberra.

ABS (1998), *Small Business in Australia, 1997*, Cat. No. 1321.0, ABS, Canberra.

ABS (various issues), *Retail Trade*, Cat. No. 8501.0, ABS, Canberra.

Australian Centre for Retail Studies (ACRS) (1998), *International Concentration Comparisons*, Research project for CML, December.

Baumol, W.J., Panzar, J.C. and Willig, R.D. (1982), *Contestable Markets and the Theory of Industry Structure*, New York: Harcourt Brace Jovanovich.

Berg, S.V. and Tschirhart, J. (1988), *Natural Monopoly Regulation*, Cambridge: Cambridge University Press.

Birrell, M. (1996), *Shop Trading Reform: Statement on Retail Trading in Victoria*, Victorian Department of Industry, Science and Technology, September.

Department of Employment, Workplace Relations and Small Business (DEWRSB) (1998a), *Workplace Relations Act User Guidelines No. 8. Junior Wages*, January, downloaded on 11/3/99 from the DEWRSB web site, at http://www.dewrsb.gov.au/wract/userguid/guide8.pdf.

Department of Employment, Workplace Relations and Small Business (DEWRSB) (1998b), *A Portrait of Australian Business: Results of the 1996 Business Longitudinal Survey*, AusInfo, Canberra.

Kiel (1996), *Economic Impact of the 1994 Changes to Retail Trading Hours in Queensland*, Submission to the Inquiry to Determine the Effects of the 1994 Legislative Changes to the *Trading (Allowable Hours) Act*.

Merrill Lynch (1998),

National Association of Retail Grocers of Australia (NARGA) (1998), *Submission to the Senate Select Committee on the Socio-Economic Consequences of the National Competition Policy*, Submission Number 8, August.

OECD (1997), *Report on Regulatory Reform. Volume I: Sectoral Studies* and *Volume II: Thematic Studies*, OECD, Geneva.

OECD (1998), *OECD in Figures*, downloaded on 16/2/99 from the OECD web site, at http://www.oecd.org/publications/figures/index.htm.

Office of Fair Trading (1997), *Competition in Retailing*, Research Paper 13, September.

Productivity Commission (1998), *Aspects of Structural Change in Australia*, Research Report, AusInfo, Canberra, December.

Revesz, J. and Lattimore, R. (1997), *Small Business Employment*, Industry Commission Staff Research Paper, Industry Commission, Canberra, August.

Roy Morgan (1998), *Supermarket Tracking Report*, September.

Tirole, J. (1990), *The Theory of Industrial Organisation*, Cambridge, Massachusetts: The MIT Press.