



CHOICE submission in response to the draft legislation on Component Pricing

April 2008

Introduction

On 28 March 2008 the Assistant Treasurer and Minister for Competition and Consumer Affairs released for comment an exposure draft of a Bill to introduce the Trade Practices Amendment (Component Pricing and Other Measures) Act 2008. Comment is sought by 10 April 2008.

The purpose of the proposed Act is to ensure that consumers are able to readily identify the full price of goods and services. It does this by prohibiting businesses from providing a component price of a product or service unless they also prominently display the full price of the product or services.

The provision will not apply to:

- business to business or business to government transactions,
- prices where the full single price is not quantifiable at the time of the advertisement,
- financial services, or
- the postage and handling element of any transaction.

Overview

CHOICE strongly supports the introduction of measures such as this Bill to increase the ability of consumers to receive accurate information about products and services at the earliest time. Such information assists them to make decisions about which products they will buy or which products they will further investigate prior to taking the step of starting to deal with a particular supplier. In addition to providing better outcomes for consumers it assists consumers to play their role in activating competition and thus producing more optimal results overall.

Exclusions

CHOICE believes that it is appropriate to limit the provisions to consumer transactions as provided for in the current draft, particularly if it assists in ensuring that this much needed legislation is enacted without further delay. We note however that there is likely a case on economic efficiency grounds for extending the provisions to small business who are in a generally similar position to consumers for at least some of their purchases.

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CHOICE supports the exclusion of financial services. There are important issues about the way in which information about the cost of financial service products is communicated to consumers, however given financial service products are different in kind and often more complex these issues are better dealt with by other means.

The other two exclusions raise more complex issues and are discussed under the relevant headings below.

Application of provision

The provision is expressed as applying to a representation *in an advertisement*. This would plainly not apply to a representation in response to a consumer inquiry (by email, on the phone or face to face). There are a number of situations where it would be desirable to foster a practice of discussing single prices in business to consumer transactions. Current situations include for example travel agents that routinely quote price “plus tax” in response to phone inquiries. For example we were recently quoted \$1100 plus taxes as the cost of an international flight only to find that the true cost was \$1540; an alternative (more attractive) option cost \$1370 plus taxes. The single price was \$1785 – ie the taxes were significantly less on the alternative option. Comparing the pre tax prices would mislead the consumer about the relative cost.

It is not clear why the legislation should not apply to any pre-sale representation as to the price.

Recommendation: The provisions of the bill should apply to representations made by a corporation in addition to advertisements.

‘Quantifiable’ and Advertisements by Manufacturers

It is not clear whether or not the draft bill will resolve an issue of concern to CHOICE – namely that of manufacturers advertising a price for goods – whether described as a recommended retail price or otherwise – which is not in fact the maximum price for the goods; in particular where it is not in fact possible to buy the goods for that price. The motor vehicle industry is one industry where this outcome is common.

Manufacturers are not permitted to set or advertise a minimum price for goods, although to specify a maximum that retailers must not exceed will not breach the law. They may advertise a recommended retail price.

When a consumer purchases a new motor vehicle the components of the final price include the manufacturers ‘recommended retail price’ together with the cost of registration and compulsory insurance which are necessary to enable the vehicle to be driven on a public road (and often collectively called ‘on road’ costs), together with so called ‘dealer delivery charges’.

In our submission ‘dealer delivery charges’ are essentially part of the retailers mark up. They are not in any real sense a payment for an additional service. These charges are part of the normally payable price for the goods but have been excluded from the ‘recommended retail price’. It is extremely rare, to say the least, for these charges not to be paid by a retail purchaser of a new motor vehicle. It is unclear what the consumer



receives in return for paying the charge. It is sometimes suggested that this is a payment for the dealer arranging registration and insurance, however the amount of the charge is such that this is not credible.

Motor vehicle manufacturers frequently advertise a price for new motor vehicles exclusive of 'dealer delivery charges' and often other charges, in particular stamp duty. Dealer charges, stamp duty and on road costs can add \$2,000 - \$3,500 to the price of an average vehicle¹.

The ACCC has issued guidance on the application of the current law to motor vehicle pricing. That guidance includes the following statement:

The ACCC takes the view that a component is part of the price if it is mandatory to pay for that component to acquire the good or service advertised. It does not matter that the payment may be due and payable to someone other than the person advertising the package. For example, if the price of a motor vehicle is advertised, then any compulsory payments for delivery, stamp duty and so on, required to be paid to obtain that motor vehicle, must be specified irrespective of the fact that payment for those components may not be directly payable to the trader advertising the motor vehicle². [p 5]

While the example cited is directed at dealers rather than manufacturers, the logic from the consumers' point of view is the same. The market would be better informed if consumers' focus was directed to the true price of acquiring the goods.

The guide goes on to outline how advertising by manufacturers should be undertaken to comply with the current law. It notes that where the manufacturer 'is not able' to specify dealer and other charges it may state the recommended retail price together with a clear statement that the advertisement is from a manufacturer and that other charges apply.

In our submission this situation is unsatisfactory from a consumer point of view. The consumer needs to know the price she or he will be required to pay to buy the car.

If some part of the price (the dealer delivery charge with or without stamp duty) is excluded then there is scope for abuse. In particular there is nothing to stop a manufacturer reducing their RRP while encouraging dealers to increase their dealer charge to put them in the same position they would have been.

¹ For example see advertisement for Fiat Ritmo Sydney Morning Herald Apr 12-13 Drive p 7 'From \$29990 plus on road costs ... Excludes dealer delivery and statutory charges. Driveaway prices from \$33,028 to \$33,761. A typical capital city dealer charge might be \$1650; stamp duty varies by state and value of the vehicle with a flat 2% the lowest rate. The duty payable on a vehicle with an RRP of \$20,000 ranges from \$400 in Queensland to \$740 in South. Higher rates are charged in states other than South Australia on higher value vehicles. Other 'on road' costs include registration and compulsory insurance. These may be included in 'driveaway' prices.

² ACCC 2004 *Guidelines for Pricing in the Motor Vehicle Industry* available at <http://www.accc.gov.au/content/item.phtml?itemId=621763&nodeId=3f5524e3028a361931a0d268584b252e&fn=Guidelines%20for%20pricing%20in%20the%20motor%20vehicle%20industry.pdf> accessed 11 April 2008.



The draft bill may have one of several effects depending on the interpretation of whether or not dealer charges are 'quantifiable'. If they are quantifiable then perhaps the manufacturer will be obliged to state each dealer charge in any advertisement. So if they

have 12 dealers in a relevant jurisdiction they may need to discover and state 12 prices. This is obviously unworkable where there are any significant number of dealers. Alternatively it may be that dealer charges are not quantifiable³. In this case we are left with the unsatisfactory current situation.

One possible policy response is to require, where there are variable or unquantifiable elements to a price, a *prominent* statement of that fact and the nature of the additional charges that may be applied. We would support such a proposal as a response to genuinely unquantifiable charges, but not to known but varying charges.

A second possible response is to require that where a minimum level for the varying or unquantifiable charge is known, then the single price must include that minimum amount. An argument against this proposal is that it would mean that some consumers would in fact be able to acquire the goods for the stated minimum single price but other consumers may not be able to do so. Take for example the case where the varying price relates to the costs associated with transporting the goods to a retailer in a regional or remote area.

City consumers may be able to acquire the goods for the stated (minimum) single price; but regional and remote consumers will not be able to do so without the cost/inconvenience of travel to the city. But remote/regional consumers are nevertheless better off than under the current system or that would pertain under the Bill if enacted. Those consumers have a similar problem under the current system. Requiring a minimum real single price would at least ensure that some consumers could obtain the goods at that price and for the balance at least the advertised price would be closer to the actual price than it is at present. In addition the potential incentive to artificially lower the recommended retail price would be removed which would benefit all consumers.

A third possibility is to adopt the previous solution with the additional provision that the manufacturer's advertisement needs to specify the range of single prices.

There may be other ways to solve the problem – for example giving the ACCC powers to determine binding guidelines for particular industries.

Recommendations

1. Where a charge is unquantifiable and thus excluded from the single price the advertiser should be required to state in a prominent way the fact that the charge is payable and the nature of the charge.

³ It is not however obvious how this can be so. While the dealer is under no external legal obligation to inform the manufacturer of the amount of charges, a dealer plainly has the capacity to do so and in fact clear does so at present in some cases - many manufacturer's ads include those charges in 'driveaway' prices, and from time to time current manufacturer ads include a statement of the amount of the dealer charge. Presumably a manufacturer could require its dealers to provide information about dealer charges as a matter of contract between dealer and manufacturer, that is as a condition of being entitled to sell the vehicle.



2. Where a component of the price necessarily or routinely payable by consumers varies according to the retailer an advertiser other than the retailer must state the range of charges payable.

Handling and postage

CHOICE supports in principle the exclusion of handling and postage charges. We are however concerned that the meaning of 'handling' is unclear and may be open to abuse. Perhaps it should be defined or qualified by a word such as 'reasonable' or 'proportionate'. We note the ordinary meaning of 'handling' as per the Macquarie Dictionary set out in the draft explanatory memorandum. This definition seems to us too wide.

Recommendation: 'Handling' should be defined or qualified to ensure that only those costs closely connected with additional packing and arranging postage can be included.

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CHOICE is an independent, not-for-profit, non-party-political organisation established in 1959 to provide consumers with information and advice on goods and services, health and personal finances, and to help maintain and enhance the quality of life for consumers. CHOICE provides consumer education, conducts surveys into consumer attitudes, lobbies for improved conditions for consumers and distributes unbiased consumer advice.

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