T W U Carrying Australia

Transport Workers Union
National Office

Tony Sheldon National Secretary

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Mr Graeme Samuel
Chairman
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

ACCC Grocery Prices Inquiry

Mr Samuel,

I write to you regarding the Australian Competition and Consumer Commission's current inquiry into grocery prices in Australia.

It is my understanding that the inquiry is dealing with, amongst other issues, factors influencing the pricing of inputs along the supply chain and impediments to efficient pricing of inputs along the supply chain.

It is the concern of the Transport Workers Union that the excessive market power demonstrated by major retailers in purchasing transport services, drives down pricing for transport work, leads to underbidding for retail contracts and results destructive competition in the road transport sector influences the pricing of inputs along the supply chain and are is significant impediment to efficient pricing of inputs along the supply chain.

In our view, unequal bargaining power between transport providers and major retail clients means that transport services are not priced at a level to provide safe transport for participants in the transport chain. This situation is exacerbated by processes such as Factory Gate Pricing and Electronic Tendering which apply significant pressure on transport companies as tender prices are bid down in real time until transport providers are unable to recover costs, retain work and conduct their business safely.

Please find attached a detailed briefing paper to assist your office further on this matter. Mr Samuel I believe the above matters should be considered by the ACCC in its inquiry into grocery prices in Australia. We seek an opportunity address ACCC officers on solutions regarding the negative impact of retail dominance on transport workers in the retail supply chain and the flow on effects to the consumer at their earliest convenience. To arrange a mutually convenient time please contact Daniel Moohkey on 9912 0700 or 0447 692 578.

Yours sincerely,

Tony Sheldon
NSW & National Secretary

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The domination of the Australian grocery market by the two major retailers has a significant flow on effect to other participants in the retail supply chain, including those providing transport services.

It is the concern of the Transport Workers Union that the excessive market power demonstrated by major retailers in purchasing transport services, drives down pricing for transport work, leads to underbidding for retail contracts and results destructive competition in the road transport sector influences the pricing of inputs along the supply chain and are is significant impediment to efficient pricing of inputs along the supply chain.

In our view, unequal bargaining power between transport providers and major retail clients means that transport services are not priced at a level to provide safe transport for participants in the transport chain. This situation is exacerbated by processes such as Factory Gate Pricing and Electronic Tendering which apply significant pressure on transport companies as tender prices are bid down in real time until transport providers are unable to recover costs, retain work and conduct their business safely.

Factory gate pricing

The influence of the major retailers comes from their significant share of the Australian Road Freight Task. Based on 2001 ABS data it is estimated that the retail sector makes up 31.7% of the volume of goods transported.

Traditionally the purchase price of goods from suppliers is inclusive of freight. In an attempt to reduce costs retailers are driving a shift to purchase goods from suppliers without the freight component and are taking over the responsibility for the transportation of the product from the suppliers.

This relatively new concept is Factory Gate Pricing (FGP). The basis of FGP is that increased control over the supply chain will better position the retailer to achieve cost efficiencies. The freight cost has been identified by retailers as one area where most efficiency can be achieved. FGP takes advantage of the highly competitive nature of the transport industry and the dominance of the road freight task by the major retailers.

First established in the UK & Europe, FGP is now being adopted by Australia's largest retailers. They are making considerable investment in reconfiguring their distribution networks and introducing new technology to integrate FCP into their operations.

- *Woolworths Project Refresh level II*: the company has targeted primary (inbound) and secondary (outbound) freight management as a priority supply chain initiative. Currently Woolworths is using this approach with some suppliers and is negotiating with others to transfer the responsibility of distribution.

- *Coles*: is also currently rolling out a major transformation program, part of this is to reconfigure its national supply chain network. In an attempt to move up the supply chain Coles has targeted inbound freight as a key area to reduce costs.

These major retailers dominate Australia's freight task, providing already considerable influence over distribution chains, transport and logistics operators and suppliers. This includes significant influence in price setting and key conditions relating to the performance of work.

FGP requires suppliers to provide the product price without transport. Concerned with revealing price sensitive information to competitors, some Australian suppliers are refusing to participate.

Whereas, suppliers who are unclear of their freight cost or who have treated transport as an overhead may be exposed in negotiations with retailers. They will be required to accurately determine the transport cost for each product line.

If suppliers have been using freight to subsidise particular customers or products the introduction FGP will immediately reduce their gross margin.

Many suppliers will still need to make transportation arrangements for the remaining product. However, a reduced freight volume may interrupt efficient load planning, de-consolidating their overall freight task. Downgrading their existing logistics relationships, resulting in less favourable freight rates.

The basis of FGP is to reduce transport costs. Retail companies will take control of the load composition, sequencing and scheduling. Maximising inbound freight loads to suit their needs, with the explicit goal of reducing the transport cost.

Transport providers will be forced to aggressively pursue cost reductions in a market already characterized by high competition and low margins. Transport companies, their workforce and subcontractors will bear the pressure of cost reduction. Additionally, transport providers will need to consider resource intensive alterations in their technology and infrastructure to meet the new requirements.

Concerns have been raised by industry associations that due to Australia's geographical dispersion of population and eastern seaboard concentration of manufacturing there will be an unevenness of freight movements and load distribution. This cost will be born by the transport company not the retailer.

Concerns have been raised about the cost effectiveness of this operation for transport operators.

Effects of excessive market power in the Coles supply chain

Due to the excessive market control of the major retailers, transports operators participating in the retail supply chain have little option but to accept prices which do not reflect the costs of operating a successful transport company. The consequence of this can be devastating. One company, Coastal Express from Ourimbah NSW was placed into administration and ultimately receivership in December 2007 with debts of approximately $4.5M. It had approximately 35 employees. Costal Express was a preferred contractor to Coles for the purposes of FGP.

This company transported goods from the Central Coast of NSW to Melbourne Victoria and Brisbane Queensland. On the Central Coast-Brisbane route it had two main customers; Coles Myer Logistics and Master Foods P/L. Coastal Express performed a similar number and type of loads for both customers. By comparing company documentation it can be shown that the freight carried for Coles Myer was priced at $151.80 less per load than Masterfoods *(Coastal Express invoice # 00015304 ($2342.56) & #00015175 ($2190.76))* . This represents a reduction in price of approximately 6.5%.

In comparing the Central Coast - Melbourne route the difference is a reduction to Coles of approximately 20%. *(Coastal Express invoice # 00014786 ($1875.50) & #00013799 ($2332.94)).*

In this situation considerable hardship was caused to both the proprietor and the former employees and at considerable cost to the public through the Federal Government's GEERS scheme.

Unpaid Waiting Time

The dominance of the major retailers and their ability to impact upon the key conditions of transport workers can be further illustrated in a recent survey conducted by the Transport Workers Union into the "Waiting Time" of drivers at distribution centres in Melbourne, Sydney and Brisbane as well as key regional distribution centres in NSW.

"Waiting time" can be defined as the time spent waiting to load or unload or queuing. During this time a driver is required to remain with their vehicle as they may be required at any time to move the vehicle ahead in the queue or to a loading or unloading dock. If a driver misses their spot in the queue or fails to move their vehicle when required they may be penalised and required to move to the end of the queue, costing them further time spent waiting. Over 500 drivers were surveyed and less than 5% received any payment for time spent waiting, On average a long distance driver will spend more than 20 hours per week waiting to load and unload - time which they are not compensated for. In some extreme cases drivers have spent up to 40 hours per week waiting.

The lengths of these delays have a flow on effect to road safety, with drivers forced to drive excessive hours or at excessive speeds in order to compensate for the time spent waiting. It has been estimated that owner drivers can lose up to $75 per hour or $1500 per week in unpaid waiting time (calculations based on NSW General Carriers Contract Determination - enforceable, minimum standards which provide at least cost recovery).

To address this problem the several of the distribution centres operated by the major retailers have instituted a process whereby a vehicle can not enter a site more than 30 minutes before their allocated delivery time. This response does not address the problem for three reasons;

1) The allocators working on behalf of the retailers can and do change the schedule of allocated delivery times with minimal notice to drivers,
2) It is not unreasonable to assume that a driver may encounter delays when travelling hundreds of kilometres between capital cities. In order not to miss their small window of 30 minutes and face penalties or further waiting times, drivers will make all necessary attempts to arrive early. Upon arrival they will wait until their allocated delivery time, usually at a nearby rest stop or roadhouse, or on the side of the road where these are not available.
3) Additional resources, such as forklift drivers, are not adequately allocated to peak periods, further delaying drivers and increasing unpaid waiting time.

Currently the contract allocation system within the transport industry is characterized by underbidding or "destructive competition" - where transport operators compete for work at a rate lower than the actual cost. Australian retailers control 31.7% of all freight movements (BITRE 2001 *Working Paper; An overview of the Australian Road Freight Transport Industry*), and therefore award some of the biggest contracts in the transport industry. There currently exists little incentive for retailers to improve inefficiencies and address issues of queuing and restrictive delivery windows.

Capacity and volumes are compromised by the time trucks are held up at distribution centres. It is estimated that the volume of freight transported would increase by 10% per annum if the inefficiencies causing unpaid waiting time were addressed. Resulting in an additional $1.4 billion injection into the transport industry without the need for additional infrastructure investment.

Waiting time has a further flow on effect to unnecessary carbon emissions and climate change. It is estimated that the average heavy vehicle emits 12.5 tonnes of carbon a year while idling during waiting times. By allowing a more rapid turn around of time sensitive freight a 12.5 tonnes of carbon per truck can be saved each year.

Excessive competition forcing freight rates, wages and safety down

The concept that excessive competition forces transport costs down to a base level as inputs vary is corroborated by the key national body for the Australian trucking industry, the Australian Trucking Association (ATA). For almost 15 years the ATA has consistently argued that road transport is a price taker, not a price maker. (See the report prepared for the ATA by Swan Consultants *Impact of road transport diesel taxes on the Australian economy* 1994). In other words, in arguing for reductions in road transport taxation levied through diesel excise, registration charges and the like the ATA maintains that any reduction in its cost base will be passed on to the road transport industry's clients and ultimately Australian consumers due to the effects of competition in the industry.

It is in the area of remuneration and related conditions that the power relationships within the transport and logistics supply chain are most clearly seen. Economically powerful industry clients have the volume of demand to determine the price of transport services and, key conditions relating to the performance of transport work. Successive instances of contracting out, combined with unpaid waiting time at clients' premises, exacerbate the problem, especially in the long distance sector. [1] As a consequence of these characteristics, drivers, and in some cases owner-drivers, who are obviously the very last link in the transport supply chain, in that they perform the work, have the weakest concentration of market power and must often take the price given to them or fail to receive work. This makes them prone to engaging in unsafe practices, such as driving for too long, in order to obtain for themselves and

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[1] In the *Mutual Responsibility for Road Safety* case the Full Bench of the Industrial Relations Commission of New South Wales noted, amongst others, the following relevant characteristics of the industry [emphasis added]:

(a) there is widespread non-compliance with award and contract determination provisions and, in particular, underpayment of wages (a view supported by the Executive Director of the NSW Road Transport Association, Martin Iffland);

(b) it is not uncommon for transport companies, which themselves would not engage in conduct in breach of industrial instruments, to subcontract work of marginal viability to other transport companies, which are prepared to breach industrial instruments in order to make a profit;

(c) labour costs are the most significant component of transportation costs and there is an inherent incentive to achieve savings through non-compliance with industrial instruments or through the engagement of owner drivers or small fleet owners who are prepared to do what it takes to make the work profitable;

(d) the competitive pressures in the long distance sector have resulted in a situation where the major transport operators perform only a fraction of the work in the industry with the rest being contracted out;

(e) most companies performing long distance work resist enterprise bargaining because of the likelihood that an enterprise bargaining arrangement will price them out of the market by requiring the payment of labour costs measured against yardsticks other than that of financial viability;

(f) there is a link between remuneration and safety issues such as excessive hours of work;

(g) commercial pressures, most notably from major retailers, have intensified, resulting in the major transport companies tendering for contracts at very low rates and leading to the result that they subcontract out any work that they cannot perform profitably. Commercial pressure is also exercised by major retailers in the form of directed delivery schedules placing stress and, at times, unrealistic expectations on the driver actually performing the work;

(h) major retailers refuse to take responsibility for the consequences of the time restrictions that their delivery systems impose on subcontractors and major transport operators themselves contract out responsibility for the work and yet resist being called to account when things go wrong further down the chain;

(i) the transport industry is characterised by chains of successive contracting out of work with commercial power decreasing with each successive step; and

(j) those higher up the chain often contract out work for the express reason of transferring responsibility for the safe performance of the work to others.

their families an appropriate level of remuneration to maintain a standard of living commensurate with community expectations.[2]

Further, the safety-related effects of competition on the road transport industry was documented by the Full Bench of the Industrial Relations Commission of NSW in the *Transport Industry - Mutual Responsibility for Road Safety (State) Award and Contract Determination (No. 2), Re [2006] NSWIRComm 328 (2 November 2006)* decision:

> "Commercial pressures, most notably from major retailers, have intensified, resulting in the major transport companies tendering for contracts at very low rates ...
>
> "Labour costs are the most significant component of transportation costs and there is an inherent incentive to achieve savings through non-compliance with industrial instruments or through the engagement of owner drivers or small fleet owners who are prepared to "do what it takes" to make the work profitable;"

This recognition by the courts is supported by government-commissioned inquiries. The NSW Government's wide-ranging *Quinlan Inquiry Report*: Professor Michael Quinlan *Report of Inquiry into Safety in the Long Haul Trucking Industry 2001.* Federally, the October 2000 federal parliamentary inquiry by the House of Representatives Standing Committee on Communication, Transport and the Arts - *Beyond the Midnight Oil* commissioned by the then Deputy Prime Minister, the Hon John Anderson, then Minister for Transport and Regional Services.

What these reports strongly suggest is that safety in the transport industry is inextricably linked with the financial and commercial arrangements pursuant to which work is performed. Accordingly, both reports support calls for more guidance and regulation.

The Quinlan report found that:

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[2] In *Regina v Randall John Harm* (unreported, 26 August 2005) His Honour Justice Graham in sentencing a driver said:

In the present matter, the statement of facts refers to safety cams and log books. Restrictions on the maximum speed of heavy vehicles have also been implemented. Despite those measures, heavy vehicle truck drivers are still placed under what is, clearly, intolerable pressure in order to get produce to the markets or goods to their destination within a time fixed, not by any rational consideration of the risks involved in too tight a timetable, but by the dictates of the marketplace. Or, to put it bluntly, sheer greed on the part of the end users of these transport services. The time has come when those who are the beneficiaries of the interstate transport industry must take some blame for what happens at the sharp end of the interstate transport industry. The drivers are put under intolerable pressure. They drive when they are too tired, and when that becomes too difficult, they take drugs to try and prolong the state of awakening, albeit with risks that it can impede their concentration and actually make things worse.

When a collision occurs, such as happened here, who ends up in the dock? Who ends up behind bars? Not the operators. Not the transport companies. Not the big corporations who are the people who use those transport services. But the driver. It's the driver who goes to gaol. The companies still make the profits. The drivers become another casualty of the heavy transport industry. Their lives are ruined, in many ways just as badly as many of the victims lives are ruined, by the imperative of greed which lies at the heart of the interstate transport industry. Case after case in the Courts demonstrates the inadequacy of the government's response to these problems and the inadequacy of the transport industry's own response to these problems.

"Customer and consignor requirements on price, schedules and loading/unloading and freight contracts more generally, in conjunction with the atomistic and intensely competitive nature of the industry, encourage problematic tendering practices, unsustainable freight rates and dangerous work practices.

These practices along with the ease of entry into the industry, pressure from customers in a strong bargaining position to demand cheaper rates as well as poor business practices of a number of operators all lead to safety being sacrificed first to compensate for these demands."

Beyond the Midnight Oil states:

"Unreasonable or ill-informed demands from those who use the transport industry or from agents who organise the movement of freight, have been cited as one of the greatest contributing factors to fatigue in the road transport industry (page xxxvii). Identification of the practice of "fining" drivers for being late "We were quite shocked by some of the stories told to us by drivers of their experiences of having to wait many hours to unload, unable to leave their vehicle or get proper rest, and then being expected to still be on time at their next destination......The practice of penalising drivers for being late, while customers are not penalised for making drivers wait is not an acceptable or equitable practice" (p 133);

The Full Bench of the Industrial Relations Commission of NSW in the *Mutual Responsibility for Road Safety Case*[3] made an express finding that there is a direct link between methods of payment and/or rates of pay and safety outcomes:

"Link between remuneration and safety

> 33. In the 2003 Deputy State Coroner's inquest referred to earlier, the following observation was made (emphasis added):
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> My main areas of concern arising in the Inquests, namely, working hours, fatigue and drug use are to the forefront of current policy discussions and proposals. However, as a general observation, it seems to me as if the focus is on finding solutions to the symptoms of the basic problem rather than dealing with what I perceive to be the underlying problem. *As long as driver payments are based on a (low) rate per kilometre there will always be an incentive for drivers to maximise the hours they drive, not because they are greedy but simply to earn a decent wage.* I anticipate that this incentive will remain an overriding concern for drivers irrespective of legal and safety considerations. This is obviously a structural matter for the road transport industry that has already been placed on the agenda by Professor Quinlan. However, structural changes do not feature prominently in current initiatives as far as I can ascertain.

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[3] *Transport Industry – Mutual Responsibility for Road Safety (State) Award and Contract Determination (No 2)* Re: [2006] *NSWIRComm* 328

34. <u>We consider that the evidence in the proceedings establishes that there is a direct link between methods of payment and/or rates of pay and safety outcomes.</u> We shall refer to the submissions of the Union in this regard:

The evidence has shown a direct link between the rate of pay and/or the method of payment on the one hand and safety outcomes on the other. The uncontested evidence of Associate Professor Michael Belzer [Ex 45] in the context of long distance trucking in the United States is that driver pay has a strong effect on safety outcomes [Ex 45, p 15]: "*Higher pay produces superior safety performance for firms and drivers. The precise driver-level study of Hunt suggests this relationship may be as high as 1:4.*" He also concluded, on the basis of a survey based on self-reported driver crashes in the sector, that "*...every 10% more that drivers earn in pay rate is associated with an 18.7% lower probability of crash, and for every 10% more paid days off the probability of driver crashes declines 6.3%.*" [Ex 45, p 105].

Belzer also examined, using an extensive driver survey, the relationship between the rate of remuneration and hours worked [Ex 45, p 11]. Referring to the results of this survey, he stated [at p 104]:

"Our measurement supports the hypothesis that drivers have target earnings and drivers paid lower than average seek to achieve earnings of about $750 per week by increasing their hours, in confirmation of the "sweatshop" hypothesis."

Reduction in remuneration

The result of the excessive market power of major clients of road transport can be seen in the wages paid to truck drivers. The road transport industry pays drivers lower than comparable industries, on an hourly rate truck drivers earn $18.48 compared with $21.23 for all occupations (*as defined by the Australian Bureau of Statistics Labour Force Survey).*

Over 50% of truck drivers work in excess of 41 hours a week; the average hours worked is 46.8 hours compared with 39.7 hours for all occupations. This means that truck drivers work on average an additional 369.2 hours per year compared with all occupations average (<u>http://www.btre.gov.au/docs/events/ATS2006.pdf</u>).

Against this backdrop and at a time when road transport is facing significant shortages in labour supply, it is disturbing that client pressure and its associated actions have seen wages in road transport reduced by a significant amount. In 2006-2007, in a period in which two parliamentary inquiries were conducted into the tightening of the jobs market in the road transport sector, average weekly earnings in the sector actually fell by 5.6% (ABS (2007b), *Average Weekly Earnings [ABS cat. No.6302.0]).* In the same period 228 people died in heavy vehicle fatalities in Australia (*ATSB Fatal Heavy Vehicle Crashes, Australia, June 2007).*

Coronial reports, State and Federal Government Inquiries, Academic research and Industrial relations commission determinations have all identified the link between, on one hand, low rates of pay and other inappropriate industrial practices and on the other hand, safety concerns such as pressure to work excessive hours; pressure to exceed legal speed limits and pressure to drive through break and sleep times. It is in the area of remuneration and related conditions that the power relationships within the transport industry supply chain are most clearly seen.

Wal-Mart

While the current major retailers in Australia like Coles and Woolworths are not perfect in the operations, the Australian community should be concerned that reports indicate the controversial US retail giant Wal-Mart is considering opening in Australia.

Wal-mart has an appalling record in the treatment of their employees, with the company receiving numerous fines for violating US labour laws over many years. These violations include, firing workers on protected medical leave, wage and working hours violations, forcing workers to skip rest breaks and employing teenagers to work in unsafe conditions (www.walmartwatch.com).

The Transport Workers Union has significant concerns that the behaviour demonstrated by Wal-mart in the US will continue if operations commence in Australia and become exacerbated along the supply chain. To the detriment of transport workers and their families.

Economically powerful retail clients have the commercial influence to determine the price of transport services and, in may circumstances, key conditions relating to performance of transport work.