

14 October 2008

TRADE PRACTICES AMENDMENT (CLARITY IN PRICING) BILL 2008

Second Reading

Mr BRADBURY (Lindsay) (8.02 p.m.) — It gives me great pleasure to rise in support of the Trade Practices Amendment (Clarity in Pricing) Bill 2008, which seeks to amend the Trade Practices Act 1974 and to enact certain changes that will seek to bring greater clarity in relation to pricing, in particular in relation to component pricing. I should begin by trying to provide some background to this notion of component pricing, which is the practice of representing the prices of goods and services as the sum of the individual components. I think we are all very much aware of this method of pricing. It is a method that I think most of us at one time or another have either been deceived by or at least been misled by. Sometimes that has led to purchases having been made; in other cases it has not. We have seen this practice quite regularly in the past. I know I have seen it in relation to airfares in the newspaper or on television. Up flashes a big price—a headline price—saying how much it will cost for a ticket from X place to Y place and you normally see a very big asterisk next to that price.

To some extent, a combination of that traditional notion of caveat emptor and the fact that, on too many occasions, so many of us have been stung by misleading practices in the past often has meant that we are a little bit more sceptical about these things and we do seek out further information. Often we seek out the fine print. Many consumers unfortunately learn those lessons the hard way. What this amendment is seeking to do is to try to ensure that people do not have to learn the price of goods and services that they are seeking to acquire the hard way, by having forked out more money than they were anticipating because of misleading advertising or representations that were not necessarily untruthful but less than complete in their disclosure of the price.

In relation to the significance of this, I note that there was an article in the Sydney Morning Herald on 12 January 2008 under the headline, 'Law to expose hidden pricing'. It is unclear to me in a sense whether or not the particular case outlined in that article would have been caught by the existing component pricing provision—specifically section 53C of the Trade Practices Act. But what struck me in this article was the discussion about the advertising of airfares on a website, travel.com.au. The article did not seek to make any adverse inferences about that particular website, but it did contain a breakdown of the different components of an airfare which was a Sydney to Auckland return ticket. In that case, the base fare was \$226. In addition to that, there were other charges of \$229 in fees, including a \$120 fuel levy. So in this particular case we see associated fees and charges actually exceeding the amount of the base fare. From the information available, I am not clear whether that information was presented to consumers in a fashion where they could discern whether or not that was the case. What we do know is that, with the passage of these particular amendments, we will see changes to section 53C of the Trade Practices Act that will ensure that there will be no doubt that consumers will understand the single price, the true price, the price that they will have to pay—the amount of money from their pocket that will go towards securing that airfare. When you consider the significance of those figures—that is, an increase of over 100 per cent in the price, if you believed the base fare to be the correct fare—it is critical that

these amendments be passed. They will go a long way, I think, towards ensuring that consumers have complete disclosure of the cost of entering into a particular transaction.

Why enter upon trying to pass these amendments? There are a couple of reasons for that. The first one concerns the existing section 53C of the act. I think it would be fair to say that the original intention of that section was to cover cases of the sort that are now under consideration and that this amending legislation seeks to redress. If we have a look at the existing section 53C, that section states:

A corporation shall not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services, make a representation with respect to an amount that, if paid, would constitute a part of the consideration for the supply of the goods or services unless the corporation also specifies the cash price for the goods or services.

I think that most people observing that statement would perceive the cash price to be the amount to be paid. Certainly, if you look at the explanatory memorandum that accompanied the legislation that introduced section 53C in the first instance, I think the intention back then was clearly that the changes we are now trying to introduce should have actually come into effect back when section 53C was first introduced. Let me read from the explanatory memorandum:

... the new section 53C prohibits a corporation advertising part only of the consideration payable for goods and services without disclosing the total consideration for which the goods and services may be purchased outright. This provision is directed at a trader advertising that a consumer may buy a product for a low deposit without disclosing the total price payable.

Perhaps it was that final sentence that created the mischief, but I think that, read as a whole, that statement is—certainly I read it as being—a clear assertion of what the original intent of section 53C was.

Notwithstanding that, clearly the courts have taken a different view. There has been varied judicial opinion on this particular point but I note that, in the Dell case and other cases—I think the other relevant case was *Australian Competition and Consumer Commission v Signature Security Group Pty Ltd*—the decisions handed down seemed to infer that section 53C should be interpreted as having a slightly different meaning from that which the original legislators and draftspeople intended. That has created the situation where the provision that sits on the statute book does not reflect the original intention or what the community standard would also require that interpretation to mean.

The other question is: is this a particular problem? If it were simply a case of the courts interpreting the matter in a way that had an intention contrary to the original intention of parliament, it may not have been such a problem. But it is a problem in this case because of the large number of complaints that the Australian Competition and Consumer Commission received in relation to these types of matters. I note that during 2007-08 the ACCC received around 430 complaints relating to the existing section 53C. That is a significant number of complaints. In addition to that we have seen some figures that have been collected by Consumer Affairs Victoria which demonstrate that around 250 complaints have been received in relation to these types of matters so far this calendar year. It is not a trivial or insignificant matter. It is not one that is not generating some disquiet within the community. It is one that is creating real concern, and that is why it is incumbent upon us to act and to do what the previous government failed to do—that is, take decisive action in relation to this measure.

That provides us with some of the background to why it is important that we pass these amendments, but I want to make one additional point. This is a crucial amendment. Section 53C, as originally intended and as we hope it will exist after this legislation is passed, is designed to do two things. First and foremost it is about providing consumers with protection. I think that is self-evident. All of the speakers in this debate so far have focused on the fact that this is a measure that will provide consumers with protection. Equally—we should not lose sight of the importance of this matter—this is an important measure because it is pro-competition. Let us not forget that most of the advertising that has led to this particular problem has been in fairly competitive markets where individual competitors are seeking to gain an advantage over other rivals within the marketplace. I mentioned the airline example a little bit earlier. The growth of some of the low-cost carriers in particular has driven increasing competition within this sector.

It is an important competition measure because, quite frankly, it is unfair to have certain competitors out there in the marketplace not fully disclosing the complete cost to the consumer when others are doing the right thing by consumers. Ultimately, in a competitive marketplace you are likely to see all competitors end up going down the path of trying to achieve the same benefit by hiding the ultimate price. I would like to quote from another article. This article was in the Sydney Morning Herald back on 11 October 2005. There was a discussion in this article under the headline 'But wait, there's more' about the various practices within the airline industry:

Virgin Blue's chief executive, Brett Godfrey, says the airline has always been a strong advocate of all-inclusive pricing, but "was forced" earlier this year to follow the advertising practices of other carriers in order to remain competitive.

That is evidence of the point I have just been making. If we have a situation where this is not prohibited and it is allowed to occur then in a competitive marketplace all of the competitors will be seeking to get the jump on their rivals by engaging in the same sorts of practices. So it is a competition issue. But, ultimately, where there is that level of competition and insufficient disclosure, it comes back to being an anticonsumer set of arrangements, and that is why we are acting on this particular measure.

I want to reflect on some of the elements of the bill. In particular, it is worth noting that these provisions will only apply to partial price representations made by business to consumers. So business-to-business transactions will not fall within the net of this particular section. It is also worth noting that there is an exemption for financial services, and this is largely—though not completely and totally—as a result of the existence of section 12DD of the Australian Securities and Investments Commission Act, which essentially mirrors the sorts of provisions which are contained within section 53C of the Trade Practices Act. In the ASIC Act those provisions relate specifically to the provision of financial services. It would be inappropriate and confusing to both business and consumers if there were an overlapping set of arrangements that were to intervene so far as financial services were concerned.

There are exclusions in relation to postage and handling, although it is worth noting that the bill does provide that the charges for sending the goods from a supplier to the consumer do not need to be ordinarily included in the total price. However, if the postage cost is known by the business and the postage cost is compulsory then the provision requires that the business must disclose that price in the representations that they make to the consumer. So in cases where that cost is not ascertainable and where it is not compulsory there is no requirement, but where it is ascertainable and it is compulsory it must be disclosed.

It is important, I think, to note that the bill does not prohibit the use of component pricing per se. What it does do is require that, if a business chooses to use component pricing, that business must also state the total price that the consumer would have to pay to acquire the goods or services. Importantly, in cases such as this the total price will have to be at least as prominent as the most prominent of any of the components of the price. So, going back to the airline advertisement example, if on the screen it flashes up '\$99 for a trip to the Gold Coast' with a big asterisk, that would not be acceptable anymore. If the total cost of the airfare were \$200 then it would have to flash that up in writing equally as large or at least as prominent, however the judiciary might ultimately interpret that. I think 'at least as prominent' would warrant much more than an asterisk, and in the end that is what we are hoping to achieve. There is an exemption in relation to the 'at least as prominent' requirement in terms of disclosure, and that in particular relates to contracts for services where the services are provided over the duration of the contract. These particular contracts will generally involve periodic payments, and typically they involve contracts for telecommunications services, subscription TV and other services of that nature.

I think, all in all, this particular proposal is one that is worthy of the support of this parliament. It is one that strikes an important balance between the need to not overregulate business, on the one hand, and the need to ensure that, on the other hand, consumers are protected—that consumers are able to approach transactions on a 'what you see is what you get' basis, which I think is one of the key objectives of most consumer legislation. In addition to that, it is a measure that will ensure that competition can occur in a way that does not adversely impact on the consumer's ability to know ultimately what they are signing up for when they enter into a contract. That is what these amendments are about. They do it in a sensible way. This does reflect decisive action on the part of a government that has only been in power for less than a year but has grappled with an issue that its predecessor had fumbled with for so long. I commend the bill to the House.