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Subjects: Trade Practices Act, creeping acquisitions, unconscionable conduct, Petroleum Resource Rent Tax.

GREENWOOD: Now this is said to be overdue by many people, and that is that the Government today has decided that it will toughen up what's known as Section 50 of the Trade Practices Act. This effectively allows, to a certain extent, the ACCC to have greater powers, in particular when existing, shall I say, strong companies with strong market share seek to acquire more market share slowly, or indeed by actually taking what's seen to be called unconscionable conduct. In other words, buying up land in a small town, or perhaps trying to take, if you like, chain stores out from the various quarters or whatever it might be. The Minister for Small Business is Craig Emerson who joins us now. Hello Craig.

EMERSON: G'day Ross. Thanks for having me back on the program.

GREENWOOD: No problems at all, always a pleasure. The one issue about this is, this has been an area of competition law that's seen to be needed to have been strengthened for perhaps a decade or more.

EMERSON: Yeah I think that's right. The competition watchdog - the ACCC - was pretty keen that we move in this area, and so we started a process not long after forming government, and this is the culmination of that process. It's called creeping acquisitions, and you described it very accurately. Large or powerful businesses acquiring, one by one, department stores, or liquor outlets or even service stations. People don't really know this is going on until one day they wake up and there's this very strong market dominance. So it's meant to address that problem.

GREENWOOD: Well the issue is of course that if this is what is presumed to take place, though it would be fair to say it's not just the notion of creeping acquisitions. It's large organisations coming into a market - say a country town or a suburb or whatever it might be - and as a result of their dominance and their, if you like, strength in that market that it literally crowds independents out of those areas as well. Does it actually cover that type of behaviour as well?

EMERSON: Well if it were it does in relation to so-called green field sites. I think you said in your introduction, the buying up of vacant land ...

GREENWOOD: Yes.

EMERSON: ... in a shopping precinct, that is covered. We have had a disagreement with some of the major grocery retailers as to whether the current law can cover that. We say that it can and that if there is any challenge to that we would legislate further in this area. I think that's had the effect of them saying "well we better back off and not press the government on that". Because you don't want a situation - as you say - where a couple of corporations, one or two, can gobble up all of the land and therefore pre-empt any possibility of competition in that country town, or even a local suburban market.

GREENWOOD: Exactly. Your statement today says it allows the ACCC and the courts to take strong action against business operators who bully, harass or coerce others in a weaker position. Does this imply that in the past or even currently there are business operators who bully, harass or coerce?

EMERSON: It certainly does, and in the last couple of years since the change of government the ACCC has taken three cases of unconscionable conduct. We said to them - "take them, see how you go and if you don't succeed then we will amend the law". Turns out that they have succeeded. In fact they've taken four, and three are already determined and they've won on all of those three. It's often a situation, Ross, where it might be someone on the receiving end of this who's got some sort of disability or doesn't really have English as a first language, and therefore the whole situation is tilted very strongly against them. And so we are strengthening those laws as well. It also will apply importantly, Ross, the law, to not just the process of coming to an agreement but to the contents of the agreement and to the ongoing behaviour of the parties to that agreement. So businesses won't be able to think 'well I've got the contract settled, now I'm all in the clear'. If the terms and conditions of that contract contain unconscionable provisions we'll be able to deal with that. And if they behave badly and bullying occurs subsequently to the contract being signed that will be covered too.

GREENWOOD: So you believe that the independent, oh let's call them truck driver, independent local store, those people can rest easier tonight because of these amendments? That they effectively are not going to get squeezed out of the operation in the future?

EMERSON: They can rest easier. But I would be misleading your listeners to say that this deals with any and all possible unfairness in the market or in behaviour between two businesses, one large and one small. You know, it's a pretty tough world out there and you can't legislate for fairness, but you can legislate against really odious, beyond-the-pale bullying type of conduct, that sort of intimidation that you mentioned.

GREENWOOD: Now I know you are the Minister for Competition Policy and Consumer Affairs, but I know when we spoke a couple of weeks ago you were always also very passionate about the Resource Super Profits Tax. I wanted to take you back there because of all of the argument that's taken place, and of course because you as one of the architects in particular of the Petroleum Resource Rent Tax in this country, I want to try and work out: do you believe now as there's been suggestion of compromise in the air, that there is a need for compromise, that the current tax actually starts looking a little bit more at Petroleum Resource Rent Tax that you introduced all those years back?

EMERSON: We have welcomed the consultation process and I guess there are two processes going on Ross, to be frank. One is a very loud public knock-down, drag-out brawl that's going on. And I wouldn't describe it other than that. And then there's the process of the major companies engaging with the Government through the consultation process where they are putting some of these sorts of arguments. So let's get the report from the panel which is due to report ...

GREENWOOD: Which is due Friday of course.

EMERSON: ... I think tomorrow. Yes certainly around tomorrow, and have a look at what they've got to say. This is the process that we did set up. But that Petroleum Resource Rent Tax has been in place for a quarter of a century and it's served Australia well, including the exploration, gas, oil and gas exploration and development industry of this country.

GREENWOOD: Politically, I mean leaving aside the economics of all of this, politically is it difficult because quite clearly there are two issues at stake for the Government. Number one - obviously the budget is predicated upon raising the \$9 billion. It's not predicated totally but it is obviously an important plank of the budget to make certain you can get the money in from the miners to be able to make certain that the budget effectively does balance up. The second side of it is also, after of course, the Emissions Trading Scheme changes, is it important politically for the Government to be able to make changes without being seen that it's actually caved into the, to the interests of the miners who quite clearly are launching that vigorous campaign?

EMERSON: And it is a vigorous campaign. And I thought the ad that I heard a little earlier again was not reasonable, and that is, it said this is all short-sighted thinking. Well, if we'd taken that attitude 25 years ago with the Petroleum Resource Rent Tax it wouldn't have done such a good job for Australia. As I've mentioned the last time we spoke, Ross, the Gorgon Gas

Project, the Pluto Project. That Gorgon Project is Australia's biggest export project and it operates under this Petroleum Resource Rent Tax. So by all means let's have the consultation, let's settle down a bit and let's have truth prevail. These arguments that are very short sighted I don't accept. And you're right I've been working in this area really from my Masters thesis right through my PhD and into the Hawke Government when we introduced this tax. And you know I think that was very far-sighted. And if we had just succumbed to the campaign that was launched, which is not very different to the campaign now, well I don't know what would have happened because we would have had a crude oil levy and a royalty regime that would have led to the premature closure of Bass Strait, and it's still open and producing oil and gas.

GREENWOOD: And you believe ultimately that the miners would accept something that did look like the Petroleum Resource Rent Tax? I know certainly the hard end of town, the Clive Palmers perhaps would not, but do you believe the big ones - in particular BHP Billiton - who do show in their advertisements this morning some, if you like, leaning towards compromise, do you think they would wear something that looked like that?

EMERSON: Yeah, it's a bit hard to say because you have to sift through these two processes, one the very public argy bargy to put it mildly and the other more considered process with the consultation. And so I can't really speak for them. You know they would rather, oh well look the truth is the Minerals Council said it supports a profits-based tax and I think most of the major mining companies support a profits-based tax over the royalty regime. But when you get to the next stage that's when you get a divergence of views. Certainly the sort that you described between, say, the Clive Palmers on the one hand and the big, you know big organisations such as BHP and Rio.

GREENWOOD: Dr Craig Emerson of course, as I say, is the Minister for Competition Policy and also Consumer Affairs and always someone I quite like to talk to because of his experience in putting that Petroleum Resource Rent Tax in place in the very first place. Craig Emerson many thanks for joining us here on Money News.

EMERSON: Thanks very much Ross.

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