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Interview by Leon Byner

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Subjects: Standard form contracts, supermarket leases, proposed Caltex/Mobil merger, collective bargaining.

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**BYNER:** My next guest is somebody that you'll want to hear about because what he's going to do in legislation form is going to affect you and I'm hoping in a very positive way. And so just so you know, let's talk to the Federal Minister for Competition Policy, Consumer Affairs and the Minister Assisting the Finance Minister on Deregulation Craig Emerson. Craig good morning and thanks for joining us today.

**EMERSON:** And thank you for having me on Leon.

**BYNER:** Now Craig you would know that my disposition on issues to which you have the portfolio is that I fervently believe that in this country there is too much power in too few hands. And so, first of all, I know that, let's look at these things incrementally. First of all you're introducing laws against unfair contract terms that'll happen in January. Just briefly tell us why we need these new laws.

**EMERSON:** These are for what are called standard-form contracts between businesses and consumers. A good example would be mobile phone contracts. When a young person does a deal to you know subscribe to a mobile phone they go in and basically put their name and address and sign the contract and all the fine print, many many pages of it, is at the back and they obviously don't read that. This new regime will ensure that there can't be unduly onerous terms in those contracts where they are standard-form non-negotiated contracts. I'll give you an example Leon. Suppose the phone company said in the contract this company will continue to receive the payment from the person who is hiring or using the mobile phone even if the company stops supplying the mobile phone. Well that's outrageous and unfair and so we're not going to allow that sort of thing in these contracts. It's actually modelled on a Victorian unfair contracts regime which has proved to be pretty valuable and not unduly onerous for business.

**BYNER:** Okay the other, correct me if I'm wrong here, but the other thing that you do want to correct and I get this from our consumer affairs is these cheap airlines that make all these restrictions upon you, some of which are not reasonable, and you might even turn up for the flight but the flight times amended but because you didn't turn up within the prescribed time for the flight which isn't leaving anyway. I know you laugh but people lose their money.

**EMERSON:** These things happen and again, we will have a regime that deals with those sorts of, again they're standard-form contracts, people don't negotiate them. They don't go reading through the fine print and they just get hammered when they turn up at the airport.

**BYNER:** So if that happens, is it either not going to happen, or if it does, they'll be able to do what?

**EMERSON:** They'll be able to void the contract and if needed the competition watchdog could take a case to court on behalf of them because a lot of people say oh well you know, it's a pain in the butt but I'm not going to take them to court. Well the ACCC under this new consumer law will be able to take representative action on behalf of consumers who are damaged as a result of these onerous conditions.

**BYNER:** Now Craig what about small businesses? Don't they get hit with unfair contract terms and standard form contracts that also are as onerous?

**EMERSON:** They can and my concern here though is that there was a proposal for this to extend to contracts between bigger businesses and smaller businesses. It sounds fine in principle but the definition of unfairness to a substantial degree was going to be left to the courts and so the courts say what did you mean, government, by unfairness and we say oh we don't know, you decide. Well that could take about 10 years.

**BYNER:** Well your predecessor Chris Bowen was actually going to include small business so did he get it wrong?

**EMERSON:** Well I've thought of what I think might be a better way of dealing with it and it's using I guess the guiding principle if there are specific problems, deal with it through specific solutions. We know that there are specific problems in relation to contracts between businesses and consumers. These are standard-form contracts. In relation to onerous conditions in contracts between businesses we're making clear what unconscionable conduct means and giving more teeth to the watchdog again.

**BYNER:** But see can I give you an example. If you were a small business and you're a supplier to a big company can I come to you and say here is a list of things that you will need to do business with us. And if you don't like it lump it but the trouble is if you lump it you've got nowhere else to go. Now that sort of situation exists between consumers and businesses. You're going to remedy

that and good on you but you won't do it for business and I think that's a mistake.

**EMERSON:** Well I think there are other ways of dealing with it through unconscionable conduct, through false and misleading representations and also through the franchising code of conduct because the sorts of examples, the case you've just mentioned may well be in a franchising agreement. But if we can't say in relation to business to business contracts what constitutes unfairness, then my concern Leon is that this becomes a matter for courts to deliberate over a decade. Meanwhile the larger business says well in order to compensate for this new uncertainty we'll increase fees and charges to the small businesses and or banks and say hey these contracts may not be sound; they could be overturned at the drop of a hat so we're not going to lend to small businesses. And we know already there are problems with banks lending to small businesses and I don't want to make them worse. So I'm actually thinking from the perspective of small business what's best for them and if we had a really really uncertain situation to be sorted out by courts over a decade, I think that would ultimately ....

**BYNER:** Okay. What about revelations in the financial press a couple of weeks ago that the big supermarkets, if they get a competitor at a shopping centre, the shopping centre compensates them? Isn't that unfair?

**EMERSON:** Well I think it is and I've been working with the ACCC on this very matter. These are called restrictive provisions or restrictive covenants in the leases between the shopping centre owners and supermarkets and if a rival does come in within the period of the lease agreement then the rent is dropped quite substantially and that means that the shopping centre owner will go oh we better not allow anyone else in. I'm a believer in competition and I think the more ...

**BYNER:** Is that illegal? Is that conduct illegal at the moment?

**EMERSON:** It depends on the precise terms and conditions but the advice of the ACCC is that at least some of them are illegal others may be skirting close to the wind and ...

**BYNER:** Are we going to see some prosecution on this then?

**EMERSON:** What we're going to see, and its underway now, is the major supermarkets agreeing, and I hope they do, it's starting to look pretty positive, to basically removing these provisions from the agreements and I think that's a big plus for competition in the supermarket grocery retailer.

**BYNER:** Craig I just want to talk about fuel. Yesterday the ACCC suggested in that the proposed acquisition of Caltex of Mobil would actually see less competition. Is that going to be allowed?

**EMERSON:** Again this is a job for the ACCC and they put out a discussion paper yesterday. I have to stand back and be at arms length while they

deliberate over that and I'll respect the opinion that they arrive at but they are seeking public comment.

**BYNER:** Can I put this to you and this might be a question on notice. We've got a consortium of fuel suppliers in Victoria who want to be able to use Port Stanvac as an alternative storage facility for fuel which most people that I've spoken to including Professor Frank Zumbo of the NSW School of Business believes that it will have a downward pressure on fuel prices. It seems that Mobil don't really want to negotiate at all even though the consortium are quite prepared to pay a proper market price. Will you have a look at this?

**EMERSON:** I will. As I say my general presumption is more competition is better for consumers so if there are pro-competitive policy proposals I'm really interested in them. If they're anti-competitive policy proposals I'm not very interested in them because I think more competition is better for consumers.

**BYNER:** Now one question. We just heard the plight of a dairy farmer a while ago who's getting 31 cents a litre at the gate but when you're family or mine go to the supermarket we get charged a poultrice. We've surely got to do something about you know some transparency between the plate and the gate.

**EMERSON:** There is a horticulture code of conduct that relates to it. I'm not going to say to you Leon that therefore it's perfect and there are no problems, I'm not going to assert that.

**BYNER:** Problem is though it doesn't include retailers.

**EMERSON:** Okay, but it does include, so there's another set of laws and I'll acknowledge this, introduced by the previous Coalition government that enables people such as the milk producers to get involved in collective bargaining to use the power of collective bargaining so that they're not picked off. And I encourage the small business people of Australia to use those facilities. They haven't been used much, maybe because people don't know that they're there. We know that working Australians can bargain collectively. Why not have small businesses bargain collectively?

**BYNER:** Well this is a point if somebody did to an employee what big companies are doing to farmers like the Roti family, Fair Work Australia would come in and clanger them but because they're dairy farmers they get treated like serfs on their own property.

**EMERSON:** And that's precisely why there are these collective bargaining provisions. I hope though through this interview we've done some service in alerting people to their existence. The ACCC looks at application for collective bargaining. I know their disposition tends to be favourable to do it. It's certainly one way of applying a little bit of muscle in those negotiations.

**BYNER:** All right. Craig I thank you for coming on today. Do know though that too much power in too few hands is now creeping outcomes for ordinary

Australians that I'm sure the people in your party who are very committed to fairness and equity would find most onerous.

**EMERSON:** Well as a philosophy Leon I couldn't agree with you more.

**BYNER:** Craig Emerson. Craig is the Minister for Competition Policy, Consumer Affairs, Minister Assisting the Finance Minister on Deregulation with a whole range of issues that you and I have talked about on this program for a long time. Let me assure all elected Members of Parliament, I don't care where they are who they are these are election issues and they are hot. You're going to have to put your hand up and say where you stand. You're going to have to put your hand up and say what you'll do. Status quo, is it working?

ENDS.