



# **CCIQ SUBMISSION COMPETITION POLICY REVIEW 2014**

**CHAMBER OF COMMERCE AND INDUSTRY QUEENSLAND**

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## 1.0 Introduction

1. The Chamber of Commerce and Industry Queensland (CCIQ) welcomes the opportunity to make a submission to the Harper Review Panel as part of the National Competition Policy Review, announced by the Federal Government in March 2014.
2. CCIQ notes the Panel's main directive to conduct a 'root and branch' review of Australian competition law and policy. CCIQ note the terms of reference set for the review are wide-ranging with matters for specific consideration including an overall assessment of the competitiveness of particular industries, a review of selected provisions of the core statute namely, the *Competition and Consumer Act 2010*, and a consideration of the powers of competition enforcement institutions to establish whether their functions are properly being carried out.
3. This submission will focus on issues specifically relating to the Queensland economy, its industries, and businesses to provide the Panel with a clear view of how their business operations are impacted by national competition policy and legal settings.
4. As the peak industry organisation for small and medium enterprise (SME) in Queensland, CCIQ is well-placed to provide feedback to the Panel with respect to the issues targeted in this review.
5. Australia's competitive environment has undergone dramatic changes since the Hilmer Report was commissioned 20 years ago. Advances in digital technology and increased technological connectedness, further integration of businesses into global markets and trade liberalisation policies have introduced new competition dynamics for small and medium enterprise.
6. CCIQ believes the Harper Report must focus its attention on designing competition policy that places small business in an enhanced competitive position, particularly in light of monopolistic and duopolistic behaviour in certain markets. Such an approach should look to ensuring further deregulation of public sector service providers and existing regulation re-designed to produce and/or stimulate competitive market outcomes.
7. With new challenges facing Australia's economy, particularly in areas such as health, education, and intellectual property, as well as the advent of changing business models due to digital technology, there is substantial appetite to examine the wider competition framework.

8. CCIQ believes the broad terms of reference set for the Harper Review Panel ensures Australia can move confidently to tackle the anticipated structural shifts in Australia's economic landscape while ensuring greater productivity growth and the advancement of the nation's living standards.
9. Small business is the lifeblood of Queensland's economy. They comprise around 96 per cent of all businesses and provide over half of employment opportunities to Queenslanders. The health of the small business sector is critical to the health of the economy, and in this light, CCIQ urges the review panel to provide recommendations to government that set the appropriate conditions for SMEs to perform their best.

### *Key issues for the 2014 Competition Policy Review for Queensland small business*

10. CCIQ calls for the examination of national competitive neutrality principles, uncompetitive electricity and energy markets, the market dominance of major supermarkets, the anomalies in retail shop trading hours, the tender process, market failure in North Queensland's insurance industry, and licensing laws in Queensland's hospitality industry.

11. This submission will also suggest ways for the Review to integrate improvements into the legislative and regulatory framework that governs competition and provides suggestions for improving small business competitiveness more broadly.

## **2.0 Competition Issues in Queensland**

### **2.1 Competitive Neutrality**

12. Competitive neutrality is the principle requiring all market players to be held to the same regulatory requirements when competing in a single market. Competitive neutrality principles are in place to ensure that such government enterprises are accountable to measures that neutralise any benefit that may have otherwise been accrued as per the nature of ownership, or other advantages due to government regulation, subsidies or tax concessions.

13. The Hilmer Report first recommended the integration of competitive neutrality principles into the national competition framework, which resulted in their legislative enshrinement. CCIQ believes the Harper Review should commit to reviewing the operating principles of competitive neutrality, as the commercial interplay between government-owned business and private enterprise is increasingly relevant in the current economy.

14. CCIQ has received evidence that some local governments have been operating in private markets to the disadvantage of SMEs in Queensland. Member feedback has pointed to waste collection charges through rate payments, while restricting private competitors who are able to offer lower prices, increased services, and provide choice for consumers.

15. In addition, a number of tourist accommodation businesses have raised issues with the Chamber with respect to local Council's providing free access to showgrounds or parklands as temporary accommodation for motorhomes. Naturally, local caravan park owners who must comply with the fees, licences, taxes, and insurances of a commercial operation are finding it impossible to compete.

16. The above examples stand as practical illustrations of local government as regulator, policy setter, and competitor. CCIQ urge the Harper Review to look more closely at the effectiveness of the current competitive neutrality framework as it relates to competition policy to ensure SME's are not discouraged from entering a market where government operates in a commercial capacity, or are disadvantaged if already operating.

17. This may be achieved by broadening Queensland's complaint mechanisms to come in line with other jurisdictions in Australia. At present, complaints can only be lodged with the Government about businesses that the Government has identified as subject to competitive neutrality principles.

18. It is argued that the Queensland small business community would be better served if this policy were amended to cover all government businesses that engage in commercial operations. This would minimise bureaucratic impediments in dealing with complaints, and ensure more certainty of outcomes for complainants who are directly affected by government involvement in markets.

19. More broadly however, CCIQ urges the Review to provide clear guidelines to government on best practice ways to frame competitive policy to ensure that publically-owned entities do not thwart entrepreneurial start-up, skew competition, or lead to the inefficient allocation of resources in the context of the new economy.

## 2.2 Electricity

20. The Harper Review is expressly tasked with reviewing the competitiveness of key markets such as electricity. CCIQ urges the Review Panel to note the lack of competition in regional Queensland's current energy market and the severe impact this has on prices for small business consumers of electricity.

21. CCIQ firmly believes that electricity price increases have a disproportionately higher impact on business. What is often overlooked is that for businesses to maintain competitiveness and viability, electricity costs must be passed onto consumers through higher prices for goods and services.

22. However, due to high national and international market competition businesses have generally been unable to pass on cost increases, thus eroding business profitability and viability as a consequence of consecutive years of electricity price increases.

23. As with other 'costs of doing business' CCIQ believes we should champion the need to keep them as low as possible and develop an energy sector that is nationally and internationally competitive. While the cost of supply is influenced by a number of factors, it remains that significant ongoing price increases of this nature are unsustainable and threaten to erode Queensland's economic competitiveness.

24. Due to the diminished need for regulated retail tariffs in SEQ, the Queensland government has opted to remove regulated price setting for the SEQ retail electricity market and replace it with price monitoring by 1 July 2015.

25. CCIQ supports the transition to price monitoring, provided that there is sufficient competition within the retail market and adequate customer protection mechanisms in place. Competition in the retail market will rely on there being a balance of power between suppliers, retailers and customers. Consumers will need to be actively engaged to allow competition to succeed. If there is no drive for consumer pressure or accountability on retailers, consumers will ultimately suffer.

26. Further, Queensland is experiencing significant hurdles due to the lack of competition in the electricity sector in our regions. CCIQ notes there is an opportunity for the Queensland government to implement strategies to encourage competition in areas outside of SEQ.

27. CCIQ supports the Queensland government's aim to introduce a network based CSO, in parallel with reform to Ergon Energy's retail business. All retailers would therefore be able to access the subsidised network prices and compete for regional customers. CCIQ believes competition in regional Queensland is vitally needed and must be encouraged outside of the uniform tariff policy.

28. In light of the above, CCIQ urges the Harper Review Panel to canvass the abovementioned issues with respect to competition in Queensland's electricity sector in an effort to improve outcomes for small business.

29. Specifically, CCIQ suggests a revitalised national competition framework that broadens the powers of state regulatory authorities, such as the Queensland Competition Authority, to monitor effective competition and performance of the market.

30. Further, based on the successful Victorian model of electricity privatisation, CCIQ suggests developing a competition policy framework that provides incentives for governments to privatise electricity to deliver better price and service outcomes for consumers, of which small business is a key participant.

### 2.3 Market Dominance of Major Supermarkets

31. One of the most pertinent issues for competition in Queensland and nationally is the market dominance of the major supermarkets. CCIQ's membership has vocally communicated its discontent with the many tactics of Woolworths and Coles and its negative impact on SME's in the food retailing and supply sector specifically. The commentary below illuminates the tensions between SMEs and large business in the marketplace, particularly when the practices of the latter distort the competitive process.

32. Recent statistics indicate that Woolworths and Coles have carved out an overwhelming share of the food and liquor retail market. As the two dominant players, Coles and Woolworths have also acquired a number of department style liquor retailers such as Liquor Land and Dan Murphy respectively, indicating a disturbing trend towards further entrenched market dominance.

33. Some of the negative flow-on effects of a duopoly in food and liquor retailing for smaller food and liquor retailers includes, but is not limited to: predatory pricing practices, having the effect of driving small and medium competition out of the market, anti-competitive conduct, and a worsening relationship with suppliers and smaller retailers resulting in them sustaining a structural disadvantage in negotiations and the market.

34. As a direct result of such practices, independent grocers are struggling to compete for consumers' discretionary income in a sector where the two major players engage in price wars to sell goods at the lowest value. Fresh food supplies are also feeling the pinch as they face a difficult environment for the negotiation of trading terms with the two dominant players.



35. Further to this, CCIQ consultations revealed that rural and regional businesses distrust the recent aggressive expansion tactics Coles and Woolworths are currently engaged in outside urban centres. A familiar story, major retailers are moving into local regional town centres, charging significantly lower prices for groceries, and driving small and local businesses such as butchers and fresh food grocers out of the market.

36. CCIQ does not advocate market interference in this instance, but simply the reinstatement of a level playing field for small business competitors. CCIQ strongly believes that Queensland's economy will function optimally if guided by the principles of free market economics, allowing the economy and industry to drive investment, innovation and employment generation in an environment facilitated by government that supports economic growth.

37. In any instance where these majors are found to contravene the *Competition and Consumer Act 2010*, the Australian Competition and Consumer Commission (ACCC) should rigorously prosecute to the fullest extent of their resources. CCIQ often finds that the legislative framework is appropriate but regulators lack the resources to averse and action their legislated responsibility.

38. CCIQ strongly recommends the Harper Review Panel look deeply at these matters affecting the viability of small business across the country. The Minister for Small Business has made explicit reference to the importance of ensuring small business operations are able to effectively compete in the new economy, and the current market distortion in this sector is hampering these outcomes.

39. In light of this, much of the merit of a market-based economy rests in the notion of competition. The duopoly of Woolworths and Coles undermines this critical component of a functional market economy. The effects of the duopoly are felt in very real and practical terms across rural, regional, and urban Queensland by small and medium enterprise in the food-retailing sector.

40. The Chamber makes specific recommendations for amendments to the misuse of market power and acquisition provisions of the *Competition and Consumer Act 2010* below to go some way in alleviating the pressures on small business in this sector. Nevertheless, CCIQ believes the national competition policy toolkit should broadly incorporate its opposition to the corporate behaviour currently being carried out by the major supermarkets to the significant disadvantage of SME's.



## 2.4 Shop Trading Hours

41. Queensland retail businesses are hampered by anomalies in the regulatory framework that governs trading hours. With one of the most restrictive frameworks in Australia, small business is left interpreting difficult legislation that creates confusion among owners and the incursion of undue costs when they are prevented from trading.

42. As a state that is committed to expanding its economy and stimulating growth, it is critical that business is able to capitalise on opportunities to maximise their revenue. CCIQ believes this is a significant competition issue worthy of attention by the Review Panel as big business is often financially equipped with the resources needed to challenge existing legislation by way of defence; an avenue not afforded to small business.

43. For example, motor vehicle dealerships are not allowed to sell ride-on movers on Sundays due to the current restrictions in the legislation, yet larger 'hardware' chains that sell the same product are permitted to trade. Similarly, caravan and boating retailers are able to open on Sundays to display vehicles and discuss their features, but cannot make a representation of price or make a sale.

44. The abovementioned real world examples illustrate a key issue for competition, as big business is able to exploit loopholes in the legislation to the detriment of small business operators. This goes to the heart of the competition review as current settings enable one competitor an advantage over the other by way of archaic regulation.

45. As a body, CCIQ is against the complete deregulation of shop trading hours as it is the only tool for maintaining a comparative advantage for small business against large retailers. The Chamber urges the Panel to take into account the view of small business when investigating solutions to increase competitiveness in the market.

## 2.5 Tender process

46. CCIQ believes small business is at an unfair disadvantage when they tender for public contracts or major projects. Overwhelming, public sector contracts are awarded to firms that are based outside of Queensland or the region in which the contract is to be executed.

47. The reasons for this are twofold. First, CCIQ believes there is excessive emphasis on government securing the lowest price for a tender, thus sidelining the overall economic impact awarding a contract to a local company. Second, the tender process itself is highly onerous and often small businesses do not have the time and resources that large businesses do to effectively compete for local tenders.

48. The majority of small business indicates more can and should be done to assist local industry in gaining contracts for Government procurement and major projects. Queensland businesses have raised significant and ongoing issues with the pre-existing procurement framework in Queensland, namely that they are not able to easily assess, access or participate in procurement opportunities.

49. The following aspects of the procurement process need improvement: support and assistance provided by the agency or project tender manager, fairness and equity of the tender selection process, delivery of project and procurement and reporting requirements; and the application process and documentation required.

50. While CCIQ does not favour mandatory use of local participation quotas, the Harper Review should consider policy measures that encourage a favourable assessment of those companies that commit to the use of the local supply chain, where reasonable, as part of major projects.

## 2.6 Insurance

51. A recent CCIQ Pulse survey on business conditions showed insurance premiums was the third largest constraint on Queensland business. CCIQ contends that insurance companies are deliberately pricing themselves out of the northern Queensland market to avoid further exposure to the risk of natural disaster-prone regions. This represents a significant market failure due to lack of competition, particularly in North Queensland, where insurance companies have taken to price-gauging customers.

52. In response to serious concerns from members (some of which can no longer afford to insure or who dramatically under-insure) CCIQ has commissioned a study to understand the significance of the market failure and better understand the impact of rising insurance premiums on small business.

53. CCIQ is eager to share the results of the study when completed to work with the Harper Panel to generate options to increase competition in the insurance market, particularly in North Queensland.

## 2.7 Hospitality licensing laws: *an unequal playing field for small business*

54. In their present form, Queensland's licensing laws make small business entry and survival in the liquor sales market extremely difficult. Member feedback has consistently highlighted two important areas where small and medium hospitality businesses are operating at a competitive disadvantage.

55. Firstly, the number of hotels and bottle shops owned by retail giants Coles and Woolworths creates a highly anti-competitive environment for independent hoteliers and bottle shop owners and second, the capacity of clubs and pubs with gaming licences to cross subsidise food and beverage prices, to the disadvantage of restaurants and cafes.

56. Our members have identified the abovementioned licensing regulations specific to the hospitality industry as serious impediments to effectively running a business under a set of requirements that are more easily achievable by those who operate with monopolistic tendencies.

57. These examples from small business owners in the sector highlight the incongruities in the current competition framework that put SMEs at a significant disadvantage, therefore working to discourage new market entrants and making it impossible for operating business to compete effectively. For example, CCIQ highlights the requirement to operate a hotel in order to retail alcohol. Many independent supermarkets have expressed a desire to retail alcohol but are unable to afford ownership of a hotel.

### 3.0 Improving the legislative and regulatory environment for small business

58. CCIQ supports legislative and regulatory reform that delivers a considerable reduction in the burden imposed on commerce and industry. This is particularly relevant when contemplating changes to Australia's competition policy. To this end, CCIQ welcomes the Federal Government's broad commitment to reducing red tape in an effort to remove impediments to productivity growth.

#### 3.1 Unfair contract provisions

59. However, the Chamber express concerns regarding indications by the Minister for Small Business, Hon Bruce Billson MP, that the government is considering extending unfair contracts provisions to small business.<sup>1</sup> CCIQ urges the Review Panel to exercise caution when contemplating the extension of unfair contracts terms protections to small business.

60. CCIQ believes the Harper Review is designed to focus on outcomes that create more equal competitive conditions for business, not the specific protection of a segment or class of competitors in the market. Any move to extend unfair contract provisions for business-to-business contracts runs counter to the objectives of effective competition policy, the principles of a free-market economy, and the longstanding doctrine of freedom to contract.

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<sup>1</sup> Australian Consumer Law Part 2-3.

61. Furthermore, unfair contract provisions are likely to increase the compliance burden on small business, place Australian competition law at odds with comparable jurisdictions, increase direct costs for business transactions, remove efficiencies in place that derive from standard commercial contracts, and increase indirect costs having negative effects for consumers.

62. CCIQ are in favour of creating an equal-playing field for all businesses that operate in the free market and in this light, urges the Panel to cautiously consider any recommendations that inadvertently make it more difficult for small competitors relative to big business.

### 3.2 Key recommendations for legislative review

#### 3.2.1 Misuse of market power

63. CCIQ calls for significant change to Section 46 of the *Competition and Consumer Act 2010* namely, the misuse of market power provision, to protect small business against the monopolistic actions of powerful market operators. CCIQ supports calls from former ACCC Chairman Allan Fels to shift from the current statutory 'purpose' test to an 'effect' test, to offer greater protection to smaller operators from the predatory pricing practices of large companies to achieve anti-competitive results in the market.

#### 3.2.2 Creeping acquisitions

64. CCIQ is concerned that firms that have substantial market power are attempting to enhance their market power through acquisitions that do not individually lessen competition, but have the potential, over time, to have anti-competitive effects in certain markets. This is particularly evident in the retail grocery sector, as canvassed above.

65. CCIQ believes that the legislation governing mergers does not go far enough in ensuring creeping acquisitions do not threaten small business competitiveness of Australia's retail grocery sector in particular. At present, the legislative provisions that deal with mergers and creeping acquisitions undermine competition to the detriment of small business.

### 4.0 Improving small business competitiveness

66. For small business to thrive in the new economy, a national competition policy framework must recognise the needs and capacities that are particular to SME's. CCIQ believes that the abovementioned issues that impact small business competitiveness need to be addressed in the Harper Review to re-establish a level playing field. However, there is substantial merit for thought

leadership in the areas of infrastructure development and innovation to capture the entrepreneurial and competitive spirit of small business.

67. With this in mind, CCIQ believes the best way to ensure small business remains competitive in an increasingly globalised economy is craft competitive policy that supports a broader policy framework which makes it easier for small businesses to operate. This includes far-reaching tax reform that reduces business-operating costs, replaces complexity with simplicity in legislative and regulatory frameworks, and reduced uncertainty for small business. The kinds of legislative and regulatory reform that is needed are those that reduce the overall burden on commerce and industry. This will necessarily result in increasingly competitive markets and improved competition outcomes for all market players.

## 5.0 Conclusion

68. CCIQ commends the government on setting wide-ranging terms of reference for its review of Australia's competition law and policy framework. As a key lever in the machinations of Australia's regulatory environment, competition policy settings must be structured in a way that encourages growth through the productivity and innovation of small and medium enterprise. Free, fair, and open market competition is central to inspiring entrepreneurial start-up, allowing new, small and dynamic businesses to access markets, and driving innovation to offer greater consumer choice. Although competitive markets present challenges, the benefits of properly structured competition settings, based on establishing and facilitating an equal playing field, is the ideal platform for Australia to successfully achieve its productivity objectives in an increasingly globalised economy.

69. CCIQ believes the Federal Government's review of competition policy is an opportunity to consider what improvements can be made to manage the competition framework so that SMEs are not significantly disadvantaged. An effective, pro-business competition policy framework should look to establish an equal playing field for all market participants to guarantee productivity and growth targets are achieved, and businesses are able to successfully compete.