



Response to the Competition Policy Review

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Council of Small Business Organisations of Australia

Contents

EXECUTIVE SUMMARY	2
SOLUTIONS	2
ROLE OF THE ACCC.....	3
DOMINATION BY A FEW	4
Effect on Innovation and Productivity	4
Creation of a Duopsony.....	5
Effect on Policy Development.....	6
Effect on our culture	7
Effect on Choice for Consumers	8
CONJECTURE OR FACTS?	8
THE FUTURE OF COMPETITION	9
The Internet.....	9
Globalisation and International Trade	9
The future for Traditional Bricks & Mortar Businesses	10
SUMMARY.....	10

Executive Summary

This submission should be read in conjunction with other submissions particularly from the Australian Newsagents Federation, the Master Grocers Association, the WA Independent Grocery Association; the Retail Guild of Australia, among others representatives of small business people.

This submission focuses on the current impact of market domination by a few businesses, the need for consideration of urban planning in competition policy and the impact on culture, choice, innovation and productivity of the current situation. We also focus on the role of the ACCC and the future of competition and the need to maintain transparency and fairness in the internet.

We have worked on solutions. We have not just provided our suggestions on solutions to this review. Over the last few years we have had meetings with senior representatives from the largest businesses and representatives from organisations such as the Australian National Retailers Association, the Business Council of Australia and others. We believe that dialogue is a key way to recognise and agree on issues, or when disagreement occurs at least understand all the arguments.

In the end as a small number of large businesses come to dominate markets, communications and access to information they need to accept responsibility for their actions or have that responsibility forced upon them. Otherwise the divestiture of the main offenders is the only option.

Solutions

As mentioned previously various other submissions list ways to free up competition and ensure that consumers have real choice and prices are based on competition and consumer needs not domination by a few. Below is a summary of what we see as solutions and good policies for improving competition in Australia.

- Create sanctions for breaches that will ensure that behaviour is legal and correct. Sanctions should be a substantial fine and also enough damages paid to any small business who is the victim of the behaviour so that they can leave the market place and establish a new income source in another sector or through employment. The reality is that the dominance of some businesses is such that anyone who complains will not be able to work with the business or in that sector at any future stage. The person/family in that business must be compensated enough that they can maintain their health and survive.
- Add divestiture to Section 46 of the CCA as a penalty.
- Better define unconscionable conduct so that it can be enforced.
- Creation of no cost orders to enable parties to pursue claims in Court without the ACCC.
- Include assessment of impact of urban planning on local and national competition. The definition of the market to include the “National Market”, particularly for assessment of creeping acquisitions.
- Remove the capacity for non-local developers to appeal against decisions by councils.

- Ensure the regulator, the ACCC, has the resources to take legal actions against the biggest companies and properly administer the CCA.
- Expand the merger prohibitions for corporations which already have significant market share.
- There should be mandatory notification of all acquisitions by corporations with substantial market power.
- Compulsorily obtain information from those with substantial market power to refute or justify claims made by parties without access to that information.
- Develop an Effects Test to limit creeping acquisitions and price discrimination.
- The boards of Woolworths and Coles must consider voluntary divestiture for the health of our economy.
- We should establish an annual report on the fairness and transparency of the internet.
- Collect GST on goods purchased from within Australia, whether the goods are purchased from local businesses or those based in other countries.

Role of the ACCC

The role of the ACCC is of course a key role. The change in attitude and approach from the ACCC over the last few years has been pleasing. The ACCC now seeks to gather information to either support or dispel arguments and not demand that those with poor resources gather the information for them. The ACCC recognises the concern for business people who are worried about making public their concerns with certain large businesses.

The ACCC should continue to exist as an integrated competition consumer and protection body. Dividing the ACCC into two or more organisations would not be constructive and would make regulation more difficult.

The ACCC must be adequately funded to do its work and also provide education and training for small business. The ACCC must have the resources to take legal action with the confidence that they will have win or lose on evidence and not lose due to better resourcing by the organisations they have taken legal action against.

The CCA should continue to provide for the ACCC to have at least one Deputy Chairperson who has knowledge of, or experience in small business matters.

The ACCC has recently challenged the behaviour of the duopoly and have started legal proceedings against Coles around unconscionable conduct. This will be aggressively contested by Coles and we are concerned that the outcome will be decided by the overwhelming resources that Coles will bring to the case. There are 200 instances that are mentioned by the ACCC. If Coles was to win this case because they have access to more barristers then it would show that they have become so powerful, so large, that they decide law based on resources not on right or wrong.

Domination by a few

This section of our response relates mainly to: the effect of domination by the two major retailers, Coles and Woolworths, and their subsidiaries (the duopoly); and the effect on competition and retail of the biggest landlords through their association with developers and with the duopoly (referred to in this submission as the landlord/developer).

It also relates to potential domination in the future in retail and in other sectors, particularly related to communications and trade through the internet.

One important issue is who influences the policy makers when it comes to competition policy. Over the last 20 years those with the most funds and resources have dominated the “behind closed doors” debate in Canberra. Organisations who have the duopoly in their membership base, as well as landlords and developers, have employed highly skilled lobbyists to push their cause and have targeted specific Ministers and back bench members of Parliament, Federally and at the State level, to influence what they think and say.

Those from the small business community, who make up the great majority of retail businesses, manufacturers and producers do not have the same level of resources and will not be able to win the game of influence unless governments and others resist the arguments of those with money and focus on the needs of the economy.

Over last twenty years the key decision makers and regulators have focused in keeping the “big end of town” policies in place and have listened to arguments that focus on the short term and on invalid arguments supported by misrepresented facts.

The landlords are much worse. Shopping centre landlords connect business cash registers to their central office and the harder a business works, the smarter a business works, the more money they make. The biggest landlords are business parasites.

Effect on Innovation and Productivity

There has been a decrease in productivity in Australia over the last 10 years. A statement from the Australian Bureau of Statistics website highlights:

The most comprehensive Australian measure of productivity available is multifactor productivity. It measures the efficiency with which combined labour and capital inputs are transformed into outputs. In the long-term, it represents improvements in ways of doing things (technical progress), which is the primary source of real economic growth and higher living standards. In the short term however, multifactor productivity also reflects unexplained factors such as cyclical variations in labour and capital utilisation, economies of scale, and measurement error.

Australia's multifactor productivity performance has varied over the last decade. Up until 2003-04, multifactor productivity grew strongly. Since 2004-05 however, multifactor productivity has recorded negative growth in most years.

Multifactor productivity(a) in the market sector(b)



The above graph also from the Australian Bureau of Statistics website highlights the decline in productivity.

This is concerning and we believe productivity has been negatively impacted by the behaviour of the duopoly and the landlord/developer effect on manufacturers and suppliers.

In the end retailers do not add value to a product. They sell something that someone else has manufactured or produced. We must reinvigorate the supply chain, the manufacturing base and the producers of Australia. That invigoration should not come from grants but from a proper competitive market place where trade can occur unimpeded by monopolies, duopolies or duopsonies.

Creation of a Duopsony

The duopoly has also become a duopsony. This is an economic condition, similar to a duopoly, where there are only two large buyers for products or services. Members of a duopsony have great influence over sellers and can effectively lower prices for their supplies.

We know that WesFarmers (who also own Coles and Bunnings) and Woolworths dominate retail. We also know they dominate the supply chain made up of farmers, owner drivers, manufacturers and other service providers.

What does this dominance, this duopsony, mean for the supply chain? It has seen the end of any real business to business negotiations and the end of being in control of *'your own'* business. A manufacturer or supplier will be relying upon the benevolence of the duopsony/duopoly. It doesn't matter if a business person is a smart, clever, innovative business manager, the duopsony will make the important decisions for that business person.

Prior to this domination there were better business to business processes or B2B. That assumed that there was fairness and equality in business dealings. Those days have long gone. Now Coles and Woolworths decide what price they will pay suppliers; not on real value but on what they feel like paying. They demand to see all the financial information of suppliers and they decide what profit, if any, that a supplier makes.

To highlight how ingrained is this domination and the attitude that has developed is the quote below from Grant O'Brien the CEO of Woolworths which was published in BRW on 6 December 2013:

Mr O'Brien said he is comfortable enough putting corporate needs ahead of the community, and acknowledges the differing needs of both. "For me you wear two hats: they are community and corporate."

He takes the same approach on the vexed issue of being too heavy-handed with suppliers, arguing Woolworths is acting on behalf of supermarket shoppers who are grappling with household budgets and the need to keep grocery bills down.

"We sit in between the customer and the manufacturer and we will negotiate on behalf of the customer. We're not trying to crush anyone and we're trying to make clearer – internally as well as externally – the opportunity we've got to do better," he said.

Mr O'Brien is a highly professional and successful CEO, but Woolworths now sees itself as the champion of the consumer, or the go-between, and they understand that corporate needs have to come ahead of the community needs. It seems that suppliers are not part of the community that Woolworths represents.

Have Woolworths and Coles taken the place of elected bodies and regulators?

Effect on Policy Development

There is more to this story. We know that the union for retail, the Shop Distributive and Allied Employees Association (SDA), is the largest union in Australia and dominates the union movement. We know that over 95% of SDA members are to be found in Wesfarmers and Woolworths or their subsidiaries.

So what does it mean when three big dominant organisations come together? Simply put our economic health is decided by these three organisations. If the SDA gets a pay rise then smaller businesses will close. If penalty rates stay high or increase with pay rises then many small business will close, at least on Sundays and public holidays. The Duopoly will increase their share of the market place through attrition created by the actions of the SDA.

When opening hours for the duopoly were deregulated then the duopoly increased market share and the SDA increased membership. This means that Coles and Woolworths have increased their market share not by improved services or better products but by attrition and an ability to manage increased costs that competitors cannot handle.

The SDA also has strong influence on the Labor Party, being its biggest funding source. The SDA is a highly successful union but the potential for one large organisation to have inordinate influence over government or potential government policy should not be an outcome of competition policy.

An example of the power of the duopoly is with the introduction of the carbon tax. Coles made the decision to not pass on the extra power costs. They knew that their smaller competitors would have no choice but to pass on the costs and as a result some would close and Coles would increase its market share. A benefit of the carbon tax to the duopoly was an opportunity to increase market share by attrition.

Yet when it came to suppliers passing on the increased costs from the carbon tax the duopoly created [unfair demands](#) on suppliers to justify any increase. The duopoly demanded to see business plans, to visit suppliers' premises and to make suppliers jump through many hoops to justify an obvious price increase. The suppliers had nowhere else to go, suppliers are now at the mercy of Coles and Woolworths, and government policy will be perverted to achieve an aim that is not necessarily good for the community but is good for the duopoly.

Effect on our culture

The domination of the biggest retail landlords and the duopoly on a local community has changed the nature of communities. The main street - high street traders are under threat and in some communities have disappeared due to the development of local retail monopolies based on a large shopping mall and the anchor tenants within that mall – Coles or Woolworths.

The landlord/developer will ignore the opinions of the locals and if the council does not approve their application they will appeal to State planning Authorities to overrule the decision. They will keep appealing and seeking to have the decision overruled for long periods, even years, until they get what they want.

Culture changes do occur as a result of this domination. The example of what happened in the Victorian town of [Bright](#) shows that a large Woolworths shop can destroy other businesses and change the retail and hospitality sectors so that choice is removed and the town has no great point of difference from any other similar centre.

This is reflected across the nation where [communities](#) do not want the changes proposed by absent landlords and developers but are ignored. Only communities with high [quality grass roots activism](#) will not become a clone town.

The proliferation of plain labelling for products within Coles and Woolworths also changes our culture. When well known brands – Australian local brands – are forced to lose their name and provide their product to businesses who will unfairly rebrand their product, then this sends the wrong message to consumers and the general community. Will communities really believe that Coles and Woolworths make all their goods? Domination should not mean the end of recognition for those that make a difference.

Rewards for innovation and difference for a small business person is not found just in a financial benefit as there is also the important personal benefit, the pride of contributing to an economy, a community, an industry, and being identified and recognised for that contribution.

Effect on Choice for Consumers

The domination by the duopoly and the landlord/developer has created less choice in retail.

The growth of local retail monopolies based on shopping centres run in the main by Wesfarmers, Stocklands, Federation Centres and QIC means that retail is the same in these centres. The same franchises, the same products and prices.

The quirky cafes and restaurants, the unique boutiques and retail shops will disappear or have disappeared already. With the duopoly also advancing into insurance, car maintenance, banking and the like then real choice will continue to disappear.

Conjecture or facts?

The dominance of lobbyists from the big end of town and the concerns from the supporters of suppliers and other retailer has created an environment of some confusion. The facts needed to alleviate the confusion either don't exist, or are deliberately hidden.

Interestingly the confusion has never inhibited the duopoly and the developer/landlord partnership from growing. This confusion seems to have favoured the few large businesses to the detriment of the majority of businesses, the smaller ones.

The lack of clarity has limited the capacity of other business to innovate, to grow and to trade effectively and efficiently.

Much of this lack of clarity, the confusion, the angst and concern comes from lack of information. The biggest landlords refuse to provide information necessary to make informed comment as it is "commercial in confidence" yet information that may support their arguments will be readily available.

The duopoly and the landlords will keep information that might be damning away from the public eye. Domination of the marketplace also means domination of information and this has been to the benefit of the duopoly and the landlord/developer and to the detriment of productivity. We need to ensure that the information is true and accurate, and available.

Other submissions to this review have facts and figures to support our arguments, if these are challenged by the supporters of duopoly and the landlord/developer then the facts must be gathered and assessed by independent people and organisations.

We hope this review will determine the facts that exist in Australia today. If the current situation is what is best for our economy, for our ability to innovate and for the future of productivity then we need to communicate this to those in the supply chain – that they are basically employees/franchisees of the few dominant businesses. Other retailers and communities also need to be informed that their community's culture and their choice in products and services will be decided by others.

The Future of Competition

The future of competition in Australia is being influenced by the current situation but is also being impacted by the internet and how it is managed as well as how the increasing globalisation of trade is managed by groups such as APEC, OECD and the G20 among others. The behaviour of certain countries will also be an issue.

The management of international politics and trade is for those in DFAT and other policy organisations to manage. The changes that are taking place are global and are not driven by one or two big businesses but there are big international companies that are taking advantage of the situation to dodge tax, to trade unethically and to misuse their market power, Amazon being the prime example.

This needs to be addressed and the best place to address these issues is through the international trade associations, trade agreements and trade meetings. What we can manage is the internet and trade processes and activities.

The Internet

The internet must be a transparent place to do business. History shows that there will be many people who will attempt to manipulate the internet for their own purposes and to limit access to competitors for potential customers.

We must ensure that a consumer will find on the internet what they are seeking. Search engines and apps for smart devices must be accountable and not inhibit competition or choice. We do not believe there is a large problem at present but let's keep it that way. We acknowledge that the ACCC has focused on this issue and we congratulate them for that foresight, making sure there is no problem to fix is the best form of regulation.

We should establish an annual report on the fairness and transparency of the internet. COSBOA is in dialogue with senior representatives from Google to discuss ways to communicate issues as they emerge. Google may have recognised that with domination comes responsibility. It is probably true that one search engine will always dominate the internet and we are pleased to see Google respond in a positive and engaging way.

Globalisation and International Trade

There is more trade between nations than at any stage in our history. More and more trade occurs through the internet where money changes hands before goods are transported from one country to another. There is also increasing trade of digital goods such as: music and songs; ebooks; blue prints and plans; marketing material; and intellectual property, where no physical transaction takes place.

This creates complex issues around competition. For example the approach to the collection of GST on imported goods in Australia gives a benefit to business based overseas who do not have to collect the GST nor be involved in any of the GST related paperwork and associated compliance costs. Australian based businesses are less competitive as a result.

This unfairness is compounded by the fact that many overseas major suppliers to businesses in Australia **do** have to collect the GST. For example in the book industry the US based supplier *Baker & Taylor* have to collect GST on sales to bookshops in Australia. The UK based *Book*

Depository do not have to collect GST on books sold to bookshops or to the general public in Australia. This impacts on competition and the problem is easily rectified by applying the same process to everyone else that is applied to Baker & Taylor.

It is interesting that most global entities who don't collect the GST have a legal presence in Australia through trade marking of their brand, to protect them while trading in Australia. This gives them a physical presence in the country through a legal agent and that at least should create the capacity to collect GST as well as make them accountable to the CCA.

Other issues that affect competition is the cost of delivery of goods. It costs much more to post goods from Australia than to send goods to Australia. This price difference provides a competitive edge to overseas businesses selling into Australia and inhibits our ability to sell into foreign markets. Given the distances between Australia and the rest of the world we may understand why it costs more to send but why does it cost less to send here?

The future for Traditional Bricks & Mortar Businesses

Without doubt there has been a major change in the retail sector and the way consumers access goods and services. The better retailers, the smaller ones, have responded and changed to take advantage of technology. The larger businesses, as always, will struggle to change quickly. There are some issues that may impede businesses changing quickly enough to compete.

As highlighted earlier in this submission, urban planning activities must be included in assessment of competition. The views of "local communities" must have preference over the needs of absent landlords and developers.

Otherwise we will have more and more carbon copy retail communities throughout Australia. There will be a dominance of franchises, big chains and captured towns. Retail and hospitality will be predictable and those who want to create something different will find little opportunity to do so.

In too many places the landlords decide on colour, placement, music and products. Boring is not good for the economy and will force more and more consumers onto overseas websites.

Summary

If Australia is to increase its productivity and maintain our current standard of living then we must innovate, develop new products and new processes.

We must take advantage of the skill and intellect that exists within our science, manufacturing, producers' and general small business communities. The current situation of domination by very few businesses on retail and the supply chain to retail inhibits innovation. These large businesses are not innovators, they inhibit innovation.

Our competition policy and management must not just provide the best for consumers in the near future but also in the far future.

Ends