



6th June 2014

AACS SUBMISSION TO THE COMPETITION POLICY REVIEW PANEL

Competition Policy Review Secretariat,
The Treasury,
Langton Crescent,
PARKES, ACT 2600
Email: contact@competitionpolicyreview.gov.au

Re: response to the Issues Paper released by the Competition Policy Review Panel

To whom it may concern,

On behalf of members of the Australasian Association of Convenience Stores (AACCS), the peak body for the convenience industry in Australia, we make the following submission to the Competition Policy Review Panel regarding the Competition Policy Review Issues Paper.

We welcome the Panel's commitment to undertake "an ambitious and wide-ranging review of Australia's competition laws and policy" with its success depending "on deep and extensive stakeholder engagement".

Small business is a very important stakeholder, one often described as the lifeblood of the economy. Politicians love to evoke their support for small business in radio sound bites and newspaper headlines, but when it comes to actual policy and the day-to-day operating environment for small businesses, it's a sector that's often ignored.

In Australia, convenience stores – the majority of which are small businesses run under license or franchise agreement or as owner operators - compete against a supermarket duopoly with an unprecedented market share.

In the grocery sector, existing competition policy overwhelmingly favours the two major supermarket chains. The dominant market share they enjoy in Australia is not replicated anywhere else in the Western world.

We make this submission on behalf of our many members nationally in the interest of promoting fair competition. We outline numerous specific ways legislation could support small businesses in Australia and achieve a fairer competitive environment for retailers generally.

The AACCS is encouraged that the Competition Policy Review will examine the broader competition framework to ensure that it continues to play a role as a significant driver of productivity improvements and to ensure that the current laws are operating as intended and are effective for all businesses, big and small.

We are also encouraged by the Panel's recognition that competition law has the capacity to drive innovation, making our markets more effective for businesses and consumers in the long term future.

Innovation is one of the pillars of the convenience industry, and our operators are making significant inroads to respond and evolve to changing consumer behaviours. A level playing field in terms of competition is what is missing at the moment.

However not all aspects of the Issues Paper can be accepted as a given. For instance, the Issues Paper Fact Sheet states that "consumers have greater choice about where and when they shop".

The AACS respectfully disagrees. The market share and buying power enjoyed by the main supermarkets chains in the grocery channel, which now extends to fuels, alcohol and hardware among others, has forced many small retailers across multiple categories to shut their doors.

An increase in supermarket home brand lines and fuel shopper docket schemes has exacerbated the problem. Consumers are presented with less choice, not more, particularly as home brand products proliferate in the major supermarket chains.

This is why convenience stores require Government and legislative support now more than ever.

Our industry employs over 40,000 Australians often in family run businesses. We encourage the Competition Policy Review Panel to recognise and respond to the threats facing our industry and consider the opportunities available to us.

The AACS wishes to thank the Competition Policy Review Panel for its consideration of our submission. We are available to discuss the points raised at the Panel's earliest convenience.

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1. Introduction

The Australasian Association of Convenience Stores (AACS) is the peak body for the convenience industry in Australia.

Nationally, our industry employs over 40,000 people in over 6,000 stores. The majority of these stores operate as family run businesses, often under licence or franchise agreement, or independent ownership. They regularly employ family members and people from the local communities in which they operate.

The AACS represents the interests of these small businesses; their owners, staff, suppliers and customers.

The convenience industry in Australia was valued at almost \$16.3 billion in 2013, according to companies contributing to the *AACS Annual State of the Industry Report*. This report contains the most comprehensive information available on the convenience industry in Australia and we would be happy to provide a copy.

As an association we enjoy strong ties with our international counterparts including the convenience stores associations in the US, Canada, the UK and New Zealand.

Additionally, we are a member of the Council of Small Businesses of Australia.

2. Executive summary

In this submission, the AACS provides a snapshot of the convenience industry in Australia, outlining the scope and importance of the industry in the context of the national economy.

We also respond specifically to two questions that arise from the Terms of Reference in the Competition Review Policy Issues Paper.

Looking at practical measures, we consider the business case associated with securing the right for convenience stores to sell packaged alcohol if they so choose.

Permitting the sale of packaged alcohol through convenience stores, as convenience stores around the world are able to do, could go some way to addressing the competitive imbalance in the Australian retail sector. We outline the compelling business case for this and highlight the inadequacies of the emotional arguments against this measure.

We also discuss how excise increases on products like fuel and tobacco negatively impact small businesses much more significantly than the larger chains, and how these increases can often benefit the larger chains.

The AACS also seeks to identify other areas of concern to members for which we believe competition reform is required.

3. Convenience industry snapshot

- Convenience stores are in the main small businesses that employ many people nationally and represent a significant proportion of the national economy. They are part of the fabric of Australian society and are pillars in the local communities in which they operate.
- The convenience store industry employs over 40,000 people in over 6,000 stores nationally. The majority of stores operate as small, family run businesses.
- The convenience industry represents an important sector of the Australian economy, contributing over \$16.3 billion in sales to the national economy in 2013 according to the *AACS Annual State of the Industry* report. The industry is also a major collector of tax for the Government through its sale of tobacco and fuel.
- Convenience stores continue to place a high priority on innovation, updating their service offering to better meet changes in consumer behaviours and needs.
- The industry faces significant challenges at present. Convenience stores require Government and policy support more than ever to overcome these challenges, so they may continue to provide the convenient, valuable service offering they have provided to Australians for generations.
- Higher overheads associated with increased labour and training costs, penalty rates, tighter margins, increased administrative costs resulting from tobacco plain packaging and the discussion on measures such as a 'sugar tax' - just to highlight a few areas - all have an impact on the profitability of stores now and potentially in the future.
- This is occurring against the backdrop of an environment of difficult trading conditions for retailers generally.
- Stores are also experiencing worrying levels of channel shift across many product categories as major grocery chains use their unmatched buying power to strengthen their market share.
- The convenience store industry continues to bear the brunt of legislative changes, supply chain inefficiencies, higher utility and labour costs.

4. Response to key questions arising from the terms of reference

The AACS wishes to specifically address the following two questions as posed in the Competition Review Policy Issues Paper:

Are there unwarranted regulatory impediments to competition in any sector in Australia that should be removed or altered?

To address this important question, the AACS offers the following case study outlining one specific regulatory impediment faced by the Australian convenience sector. The AACS is pursuing permission for convenience stores to participate in the packaged alcohol market, as convenience stores around the world are permitted to do.

AACS focus: Securing the right for convenience stores to sell packaged alcohol if they choose

The AACS has previously submitted the business case for the sale of packaged alcohol through convenience stores to the Council of Australian Governments and we await the Council's response.

This business case is summarised below for the Panel's reference.

Permitting convenience stores to sell packaged alcohol products has the potential to address the imbalance in the national retail landscape and improve the capacity for small businesses to compete with the major chains.

There is no credible reason why convenience stores should not be permitted to sell alcohol products. Likely objections typically come from an emotional – not business – perspective.

In our submission to the Council of Australian Governments we counter the potential arguments against permitting the sale of packaged alcohol in convenience stores and we are happy to provide the Panel a copy of our submission.

From a business perspective, there are numerous compelling reasons for government to permit the convenience industry in Australia to sell packaged alcohol:

- The two main supermarket chains have successfully used the existing regulatory framework to dominate alcohol sales to a level that has become unsustainable.
- According to the IBISWorld Industry Report: *Liquor Retailing in Australia*: "The major supermarkets, Woolworths and Coles, dominate the industry, with a combined market share estimated at 57.5% of industry revenue in 2013-14. As such, the industry has a moderate level of market share concentration. Overall industry concentration has increased in the past five years due to the entry and the growing power of Woolworths and Coles through acquisitions and strategic expansions."
- The supermarkets use their dominant market share to negotiate favourable agreements with alcohol producers while exploiting their market position to promote the sale of their own, higher-margin private labelled products.
- IBISWorld expects revenue from liquor retailing to grow at an annualised 3.1% over the five years through to 2018-19. This growth will largely be fuelled by the two major chains as more independent bottle shops are forced out of the market.
- The convenience store model naturally aligns with consumers' preferences when they make alcohol purchases.
- According to IBISWorld, consumers shopping for alcohol "have been found to be very much impulse buyers who can be influenced by store display, layout and specials as to what they purchase." These specific behaviours directly align with the convenience industry's few remaining competitive advantages and reinforce the revenue potential for small businesses.
- Internationally, convenience stores around the world are permitted to participate in this category. Packaged alcohol is an important category for small businesses in their endeavours to compete against larger grocery chains.

- An analysis of packaged alcohol sales in overseas convenience industries provides a glimpse of the potential revenue accessible for stores in Australia.
- If the US contribution of beer sales in convenience stores of 7.9% in 2013 was translated to the Australian convenience store market, this would represent around \$489 million of additional sales to our industry.
- In the UK convenience industry, sales of beers, wines and spirits represent 12.5% of total sales for the channel in 2013. This percentage translated to sales in Australian convenience stores would represent an additional \$775 million in sales on an annual basis.
- By restricting the convenience industry from selling alcohol, Government is preventing a significant proportion of the retail market from exposure to a potentially crucial revenue stream at a time when the dominance of the major chains has never been greater and retail trading conditions are tough.
- Convenience stores are able to sell age restricted products such as tobacco responsibly and would sell alcohol in line with agreed trading hours for these products as determined at the local level.
- Preventing convenience stores from selling alcohol is not slowing the growth of the industry. "Woolworths has grown its share of the packaged liquor market from 29 per cent to 48 per cent since 2007, while Coles's share has grown from around 18 per cent to 20 per cent." - Sue Mitchell, *The Australian Financial Review* March 11th 2014.
- Introduction of this category to convenience stores would also open up job opportunities at both a corporate and individual store level, as well as provide suppliers with an alternative distribution channel.

A national approach to this issue is urgently required. The AACS welcomes the opportunity to discuss this significant economic opportunity further.

Are the current competition laws working effectively to promote competitive markets, given increasing globalisation, changing market and social structures, and technological change?

The AACS has long argued for the deregulation of the retail sector as a means of levelling the playing field for retailers in Australia.

As it currently stands, the two major supermarket chains benefit from competitive advantages across a range of product categories, including groceries, fuel, liquor and hardware.

Suppliers have increasingly focused their efforts on servicing the major chains, often at the expense of smaller retailers, for fear of being "squeezed out". Meanwhile the treatment of those suppliers by the major chains has been an increasing cause of concern and has even been subject to ACCC investigation.

Small businesses struggle and the retail sector takes on an increasingly bland, unimaginative profile dominated by the supermarket duopoly. Communities themselves become mirrors of each other, the identity of places jeopardised. Globalisation should not equate to a loss of local, state and national identity.

All the while, consumers – being presented with fewer and fewer choices – suffer.

The world today is 24/7. People work different hours, around the clock, technology somewhat rendering the 9-to-5 routine obsolete. Convenience stores are open all hours, providing a valuable and often essential service to local communities.

It is imperative that Government at all levels, supported by the law, recognises the important role small business plays today and tomorrow in the national economy.

The AACCS welcomes a proactive approach from the ACCC in monitoring areas of anti-competitive behaviour by some major competitors. The action taken with respect to discount dockets for fuel tied in to major supermarkets is an example of a measure that does assist in levelling the playing field and our industry encourages the ACCC to investigate and take appropriate action if/when breaches of the Competition and Consumer Act are seen or reported.

5. Other areas in need of competition reform

Penalty rates

We have previously discussed the fact that people no longer work a 9-to-5, Monday to Friday working week by default. In many cases people desire night work or weekend work to fit in with their other family, study or recreational pursuits.

Forcing small businesses to pay penalty rates places a huge cost burden on these businesses. Penalty rates are unsustainable and may cause some businesses to choose not to trade at particular times, harming their own bottom line but also creating obvious problems for their employees, many of whom prefer to work at night or on weekends anyway.

Small business owners often take on additional shifts because they believe that to serve their customers they need to be open long hours, but cannot afford the very high penalty rates. This places their health and family life under severe pressure.

The major chains can easily cover these additional labour costs, often contracting managers on different awards to work at times when penalty rates would otherwise apply.

Excise increases

The impacts of frequent and excessive increases in excise on products including fuel and tobacco, the rumoured potential for increases in tax on other products such as soft drinks, typically causes channel shift to the major supermarkets at the expense of small retailers. The majors are more easily able to absorb the additional costs, offsetting these costs against their many other product categories, thereby strengthening their market share.

Below we take a closer look at tobacco regulations and the way in which recent legislative reforms have negatively impacted small businesses.

Tobacco regulations and the imposts on small business

The impacts of Government regulations on the sale of legal tobacco are typically felt most significantly at the small business level.

Regular tobacco excise increases and experiments like plain packaging have a direct impact on the increase in trade of illegal black market tobacco, robbing honest retailers of legal tobacco sales, while also robbing the Government of tax revenue it would have otherwise collected.

This aside, it's the additional cost burden of tobacco regulations that create a serious impost on small businesses, in some cases putting the viability of these businesses at risk.

Tobacco excise increases drive consumers to bulk tobacco purchases from the major supermarket chains. This has been proven time and time again and the evidence on this score is clear. The major chains have the buying power and market share to offset higher excises against their many other product categories and small businesses suffer from a loss of trade as a result.

Plain packaging has exacerbated the anti-competitive landscape. This policy has driven shifts in consumer behaviour to cheaper tobacco brands, as brand loyalty has been eroded, with the result being potentially increased channel shift to supermarkets, with greater volumes of tobacco being sold at cheaper prices as brands lose their relevance.

All the while, the policy has resulted in no reduction in incidence of smoking in the short term despite the imposts on small business. Education remains the most important measure in reducing the incidence of smoking in Australia.

While tobacco remains a product able to be sold legally, all levels of Government should allow retailers to be able to get on with their businesses without constant concerns about the next barrier a Council, Territory, State or Federal Government will place before them, each determined to outdo the other with regulations.

A national set of tobacco retailing regulations would be very beneficial to all parties and would make compliance much simpler.

6. Conclusion

The lack of a level playing field in the retail sector calls for an urgent and significant review of competition policy in Australia.

For too long the legislated advantages the larger supermarket chains have enjoyed, whether by design or by consequence, have put undue pressure on small businesses across Australia.

The lack of consultation and consideration of the small business perspective when it comes to new regulations that impact our industry has contributed to the ineffectiveness of current competition laws.

As an example, the inability for convenience stores to compete in the packaged alcohol market is one of several areas of critical concern to our members and the convenience industry.

As such, the AACS supports the Panel's review of Competition Policy in Australia and we welcome the opportunity to play a role in the review process.

We thank the Panel for its consideration of our submission and extend an invitation for it to contact the AACS directly for further information.

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