



Submission on the Draft Competition Review Report 2014

THE AUSTRALIAN RETAILERS ASSOCIATION

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Australian Retailers Association

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Australian Retailers Association

- Voice of the Retail Industry

For over 110 years, the Australian Retailers Association (ARA) has been the peak industry body in Australia's \$265 billion retail sector which employs over 1.2 million people. As an incorporated employer body under the Fair Work (Registered Organisations) Act 2009 and with a range of member services including employment relations, policy development, advocacy and education, the ARA promotes and protects over 5500 independent and national retailers throughout Australia.

The ARA provides leadership and solutions to improve the long-term viability, productivity and visibility of the retail industry by proactively dealing with government, media and other regulatory bodies on behalf of our members. ARA members comprise a diversity of sizes and types of retailers reflecting the profile of the retail industry, ranging from large national chain retailers to one-person operators throughout the nation.

OVERVIEW

Retailers in Australia, particularly the small and medium (SME) sector, are facing a difficult operating environment. In the last ten years, the structure of the retail sector has shifted and evolved as a result of globalisation, advances in the digital economy and changes to business practice policies (such as employment costs and market power shift of the major retailers and landlords). In addition, the retail sector has experienced various economic environments with the Global Financial Crisis and fluctuating Australian dollar having a significant effect on the performance of the industry. The ARA offers support, information, and representation to around 5,500 retailers across the nation representing over 40,000 store fronts, and works closely with Government and other industry participants to ensure the long-term viability and position of the retail sector as a leading contributor to Australia's economy.

The ARA and its members have a strong vision for the retail industry – based on well-regulated markets and growth, fair competition, productive and innovative businesses, responsible collective initiative supported by Government where appropriate but removing regulatory burden where possible.

We are committed to promoting retail as a viable and exciting career choice for young people, and to retaining and developing the highest standards of practice within individuals and groups at all levels of our industry through advocating and assisting members to deal with new technologies and a changing trading environment.

We are focused on providing members with the information, knowledge and skills necessary to operate more effectively in employment relations, skills growth and Australian Consumer Law in an increasingly competitive retail environment exposed to international competition.

Our members range from small sole operator enterprises to medium, large, independent retailers, national retail chains and franchise stores of all types and sizes. Over 80 percent of our membership consists of businesses ranging from one to five stores, with majority of that figure employing less than 200 staff.

ARA membership and retailers in general have experienced significant cost pressures through international competition, reduced margins, falling growth, competitive issues within the industry and wage costs well above our international competitors.

EXECUTIVE SUMMARY

ARA POSITION

The ARA strongly supports a competitive retail industry.

The ARA believes that an effective competition framework is essential for improving Australia's productivity. The ARA is happy to assist the Competition Policy Review to outline its experiences and views concerning Australia's competition framework in light of your initial draft report. We understand that there are many areas that affect competition, however, the ARA has centred its response around those areas that we believe cause the greatest issue in relation to competition. Competition needs to be seen in a true sense and not just around claimed productivity increases but in the long term outcomes if market dominance removes competitive productive pressures.

- Retail planning laws
- Retail trading hours
- Low Value Import Threshold
- Flexibility, productivity and participation needs of a modern workforce
- Payment systems and reform

- Access to finance
- Market power

FURTHER TO THE SUBMISSION:

RETAIL ZONE PLANNING

The ARA supports any recommendation to include competition principles in the objects of planning and zoning legislation. We believe in supporting new entrants' access to markets but not where new entrants remove competition, or in some cases, corrupt their own offerings in the interests of removing competitors in a market.

The ARA would generally support broadening business zoning restrictions and removing red tape to allow a significantly broader range of retail business in existing business zones. This will ensure a far more competitive retail leasing environment, and the ARA believes that this would assist in reducing the high cost of retail rents in centres throughout Australia.

Retailers have advised the ARA that the inflexible restrictions placed upon them in relation to land use and costly approval procedures are causing significant barriers to business entry and expansion. This often results in anti-competitive issues. The changes to the Victorian legislation are a move toward the removal of restrictions, and by doing so, will assist in ensuring that planning will become more efficient, competitive and ultimately more productive. Unfortunately, as planning is a state issue, the various states have different planning laws. Victoria implemented changes to the Planning Provisions by reforming the States Planning Zones. These changes have created very flexible planning system for retail developments, and should be looked towards as model regulation for all states and territories in Australia. The ARA hears directly from NSW members that planning issues are stopping expansion and reducing options for retail space. The ARA is also aware of conversations in both NSW and Victoria by Governments to see facilitation of competition in market dominated areas such as grocery through some form of effects testing. In most areas of retail such as fashion, homewares and white goods, competition is only restricted because of retail premises stock. In the grocery area competition could be better facilitated if brand dominance was taken into account when approvals were reviewed.

The ARA agrees with the overall simplification approach and asks that any developed agenda takes into account adverse effects on efficient smaller market operators.

RETAIL TRADING HOURS

National Competition Policy (NCP) is based on an explicit recognition that competitive markets will generally serve the interests of consumers and the wider community by providing strong incentives for participants (retailers in this case) to operate efficiently and remain price competitive and innovative. A key element of the NCP is that laws that detract from competition should only be retained if they can be shown to be in the public interest.

The trading hour's regime differs greatly across the states and territories from being almost completely deregulated in the ACT and to a slightly lesser extent in NSW, Tasmania and Victoria, to being restricted on week nights or weekends for some or all retailers in various sectors in Queensland, SA and WA. It should be noted that the call for deregulation of trading hours in Queensland, SA and WA is primarily made by the two major grocery chains.

In regional WA, further deregulation of trading hours is at first instant a matter to be pursued by the local Council in consultation with the community.

In the states and territories with the greatest deregulated trading hours, the major grocery chains have the greatest level of market share. The major chains have 85 percent and over 80 percent market share in the ACT and NSW respectively. The ACT and NSW have the greatest level of trading hours deregulation. In WA, where trading hours restrictions on the major grocery chains was the greatest until 18 months ago, the major grocery chains have only 70 percent market share. A similar situation occurs in SA where trading hours are regulated.

In NSW there is the perverse Boxing Day trading restriction, which impacts negatively on smaller retailers because they operate outside of the Sydney CBD where the trade drivers in outer suburbs and regional areas can not open, thus impacting on retail trade for all operators in what is one of the biggest trading days of the year for retailers in the rest of the country. This is an example of regional and small retail not being able to have a say in what they want in retail trading hours.

The public interest is best served by the continuation of trading hour restrictions particularly where those restrictions encourage smaller retailers to remain sustainable. The call for further deregulation of trading hours by the major grocery chains is not in the public interest because it leads to greater dominance of the grocery sector by the major grocery chains, which will inevitably lead to less competition.

It would appear that in the states where trading hours have been regulated, competition in the SME sector (particularly in the grocery sector) is stronger and remains competitive to the major two retail chains. Before any further decisions are made on the deregulation of trading hours, and to ensure that the SME retail sector remains competitive, further investigations should be carried out to determine if deregulation of all trading hours is in the best interest of the consumer. If retailing has only two major players and no independent retailers, then we will lose any proper competition in the long run. Within a major mall, no retailer should feel 'forced' into opening beyond the core trading hours if that retailer believes it may be unprofitable to open. With penalty rates of two and a half times on public holidays, retailers often feel pressure to open when in fact because of the high wages costs, that retailer may lose money by opening their store.

MISUSE OF MARKET POWER

The ARA supports the recommended change by the panel to introduce an 'effects test'. Misuse of Market Power – Section 46 has had issues around application, however, we would not like to see weakening in existing powers by the ACCC in vague claims by those representing the vested interests of dominant market players whether they are suppliers to the sector or participants.

Over the last four years, there have been just four competition-tested cases filed by the ACCC and there appears to be a significant hurdle to proving anti-competitive conduct for them to act in a greater way. To require *both* elements of substantial market power and substantial lessening competition to be established is likely to result in fewer cases.

It should be remembered that section 46 is a safety net only – where section 50 functions properly, companies should not obtain substantial market power and they certainly should not enhance it. Section 46 cannot fully redress all harm to welfare that follows from the existence of market power.

The ARA believes that there is substantial market power between the two major grocery chains and this has been the case for many of years - there appears to be no lessening of this market power.

Although there have been calls for lessening of the market power by the two dominant chains, there appears to be no enforcement action, other than the decision by the ACCC (supported by the Minister for Small Business) over fuel docketts.

In the United Kingdom the four largest chains account for 75 percent with Tesco and Sainsbury accounting for 48 percent with further entrants to the market driving costs further down for consumers, proving that more operators equal more competition.

The ARA's concern with the market dominance by the two retail grocery chains is that market dominance could also occur in other areas of retailing, and if a retail segment is dominated by one or two retailers, there is no opportunity for a competitive market place. Over time the dominant retailers will be in a position to drive prices up rather than the consumer having a competitive market. Indeed from small single store members to national retail businesses who operate with turnovers in the billions, concerns remain over the misuse of market power.

The ARA has reviewed the Retail Guild submission to the Competition Policy and is fully supportive of the comments on market power included in their submission.

SECTION 47 OF THE ACCC ON GOVERNANCE

The ARA notes recommendations around reducing the Commissioner's roles to part time. We would see little need to see a change from the full time Commissioner model and believe this would only detrimentally impact on the role of the Commissioners and reduce the effective pursuit of the competition issues.

The ARA believes moving to a part time role would not see the ongoing pursuit of case work and no comparison can be made to ad hoc assessments other bodies undertake. The complexity and ongoing nature of a multitude of cases would see their pursuit lessened.

PHARMACIES AND RECOMENDATIONS

The ARA reiterates its long standing recommendation that pharmacy regulations remain the same in the interests of a diverse and competitive retail sector.

The ARA has several national pharmacy groups as members. These organisations support local businesses that are often the mainstay of local communities and indeed are the activity centre drivers for much of the retail trade in shopping centres and retail strips.

The regulation of the pharmacy sector assists in reconciling tensions between commercial imperatives and public health policy objectives, creating an environment conducive to upholding the National Medicines Policy and one which helps grow retail diversity both directly and indirectly. Deregulating the sector along with the resulting concentration of retail spend into supermarkets driving more spend away from the independent retail sector.

The current regulatory arrangements in the pharmacy sector are clearly in the interests of consumers and in the broader public interest including a diversified and competitive retail sector. The provision of government policies intended to assist consumers in managing their health through the agency of privately owned pharmacies established in towns throughout Australia harnesses the use of approximately \$5 billion in privately held assets, according to figures supplied by the Pharmacy Guild. This effectively creates a private-public partnership between community pharmacy and the Australian Government, delivering one of the most efficient pharmaceutical subsidy schemes in the world.

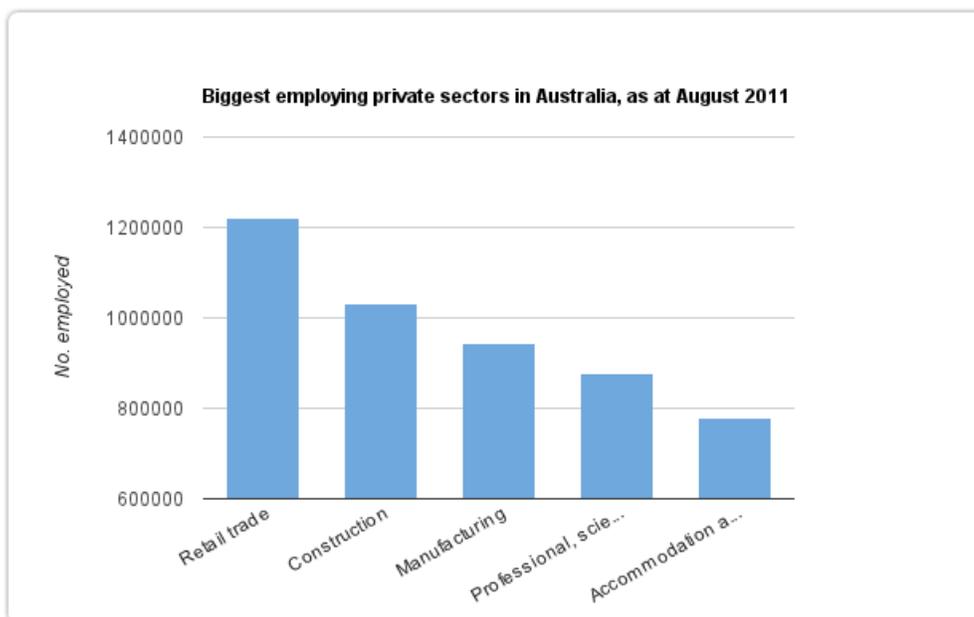
Community pharmacy thus plays a vital role in the provision of health care services in Australia and is a core component in the National Medicines Policy. Uniquely, a pharmacy is a professional medical practice with a significant retail component which, as mentioned, drives significant foot traffic and additional retail trade in activity centres.

Consistent with what has been observed in retail sectors in Australia and in the delivery of pharmacy services in other parts of the world, a deregulated pharmacy sector would result in a significant loss in the number of independent community pharmacies and a reduction in the very high levels of competition that exist. This would lead to reduced accessibility to pharmacy services and a reduction in innovation and differentiation.

Deregulating the pharmacy sector would achieve, at best, only limited savings, and would irreparably undermine several of the core objectives of the National Medicines Policy. It would affect timely access to medicines that Australians need, the quality use of medicines and also have a real and substantial impact on the retail sector.

Retail is responsible for directly employing 1.2 million people from a diverse range of careers including customer service, butchers, bakers, pharmacists, hairdressers, mechanics, finance, information technology, communications, human resources and management.

Over 1 million Australians work in retail



Source: ABS Australian Industry, 2009-10, 8155.0

PAYMENTS SYSTEMS AND REFORM

The ARA along with the Australian Merchant Payments Forum (AMPF) represents the interests of merchants within the important payments sector of the economy. It is critical that the perspective of merchants is considered in addition to those of schemes, issuers, acquirers and cardholders. Merchants make significant investments in payments infrastructure and are essential components of the payments system. The Reserve Bank of Australia (RBA) has been a global leader in reform of payments systems,

particularly card payments systems, but Australia is now beginning to fall behind other jurisdictions and we are becoming non-competitive around the world, both in scope of reforms and in the quantum of some reforms.

The ARA still sees this area as an area of competition which has not been addressed by the Inquiry although we do concede many issues will be addressed via the Financial Systems Inquiry.

The RBA has traditionally been a reluctant regulator, and this has seen some areas of payments now causing merchants costs that have been thrust on them due to an unforeseen shift of costs that, in the merchant's opinion, they should not have had to bear.

There might be cause where regulation has failed for competition policy to come into effect change in payment systems. Given the amount of change in the market and the potential for market power to impact on payments, the ACCC needs to work with the RBA to ensure sufficient competition is maintained and misuse of market power does not affect retailers.

ACCESS TO FINANCE

According to Deloitte Access Economics, approximately 10 percent of Australian SMEs have difficulties accessing finance, with the Australian Bureau of Statistics (ABS) data stating access to finance is the biggest barrier to innovation in Australia. As retailing is moving at a very fast pace, access to finance for the purpose of innovation is critical to its ongoing success. Retail has entered the digital age, and as many retailers are coming to grasp with moving into the online channel, finance will continue to be a major challenge. There are approximately 140,000 retail businesses in Australia with around 95 percent of those businesses being SME retailers.

The ARA supports the need for a strong banking sector; however, reduced competition will have a harmful effect on business innovation, productivity and competition. The ARA's position is that we need to ensure there is no further bank consolidation and every attempt is made to facilitate the entrance of both domestic and overseas financial institutions to allow a return to pre GFC finance as soon as practicable.

CONCLUSION

The ARA finds most competition issues within the sector come from the grocery giants, often causing independent retailers to be 'squeezed' out of the market.

These issues are not just raised by our independent supermarket or convenience stakeholders but also from liquor, petrol and hardware members. We are now seeing mixed products being moved through dominant retailers to such a degree that many specialty retailers have had to remove themselves from those particular markets.

There ARA believes this enquiry needs to make sure the market is sustainable into the future and that competition can only be maintained through diversity and not by the dominance of two major retail chains.

The ARA would be very happy to discuss this submission in greater detail with the committee.

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