



Australian
Competition &
Consumer
Commission

The Harper Competition Review: An ACCC Perspective

Dr Michael Schaper
ACCC Deputy Chair

COSBOA National Small Business Summit
Sydney, Thursday 16th July 2015

1. The ACCC: What We Do

- National regulator: oversees laws on consumer protection, fair competition, product safety, infrastructure access
- Also regulates some specific industries (energy, telecommunications), industry codes (franchising, horticulture) and price or service monitoring (airports, postage, stevedoring)
- An **independent statutory agency** within the Treasury portfolio
- Seven Commissioners (statutory appointments), 700 staff, offices in each state and territory
- Dual educative and enforcement function
- **Enforcement agency ... does not set policy**



Australian
Competition &
Consumer
Commission

Legal Framework

- Principal legislation: *Competition & Consumer Act 2010* (previously known as *Trade Practices Act 1974*). Includes the *Australian Consumer Law*
- Laws apply across the country
- Apply to all activities “in trade or commerce” – legal structure is usually irrelevant
- Covers both goods and services
- Activities of government often exempt
- Generally cannot impose penalties: court-based litigation (but can issue infringement notices)

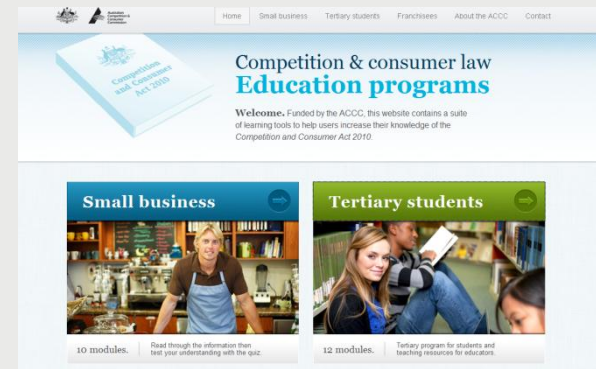
ACCC Engagement & Assistance To The SME Sector

Our view

- The Act gives small businesses both rights and responsibilities
- It's about protecting the competitive process – not individual firms
- Every small business should have the opportunity to succeed on its merits

Our activities include:

- Small Business Info Network – email database
- Small business telephone helpline
- Information guides
- Website, social media
- Referrals to mediation/SB Commissioners
- Small Business Consultative Committee



www.ccaeducationprograms.org

Small business in focus



Small business, franchising and industry codes
Half year report no. 10

January-June 2015

5020 small business complaints

2366 small business enquiries

Main issues raised



Misleading
conduct



Product
Safety



Consumer
Guarantees

376 427 visits to the ACCC's business webpages over the last six months

7 834 small business and franchising related complaints and enquiries recorded by the ACCC Infocentre over the last six months

12 729 users of the ACCC's three free online education programs for small businesses, tertiary students and franchisees over the last six months

\$33 808 losses reported to the ACCC by small businesses for 'false billing' scams over the last six months

Recent Small Business Related Outcomes



Coles Supermarkets: Unconscionable conduct in dealing with certain suppliers – **\$10 million penalty + \$12 million in refunds as part of undertakings**



Coverall Melbourne (cleaning franchisor): False or misleading claims, unconscionable conduct and Franchising Code breach – **\$500,000 penalty**



Coles: misleading 'Baked Today' and 'Freshly Baked In-Store' bread promotion – **\$2.5 million penalty**



Safety Compliance Pty Ltd: misled small businesses into purchasing safety products such as wall charts and first aid kits – **court considering penalty**

2. The Harper Review

Major review of competition policy and law – first in 20 years

Covers many other areas of government policy and law

Independent review established by, and reported to, Minister for SB

Final report includes more than 50 recommendations

ACCC welcomes many but not all recommendations

Recommendations not binding – up to government to consider and implement

Competition Policy: Small Business

Harper recommends changes govts should make



Taxi and ride-sharing regulations should be reviewed



Restrictions on retail trading hours should be removed



Restrictions on pharmacy ownership and location should be removed



Restrictions on parallel imports should be removed (eg books and second-hand cars)



Planning and zoning rules should be subject to public interest test

Some Harper Recommended Changes to the *Competition & Consumer Act*

Price signalling provisions should be repealed

- Current law prohibits anti-competitive price signalling and information disclosures in the banking sector only

Concerted practices should be prohibited

- A practice jointly arranged, carried out or co-ordinated between market participants.
- Conduct would only be prohibited if concerted practice has the purpose or effect of SLC

Misuse of market power laws should be re-framed

- Section 46 should be re-framed to prohibit a corporation with a **substantial degree** of market power from engaging in conduct that has the purpose, **effect** or **likely effect** of substantially lessening competition...

Other Harper Recommended Changes

Price discrimination bans should not be reintroduced

- Price discrimination allows traders to charge different prices for the same or similar goods or services
- Can be beneficial to consumers

Existing ban on resale price maintenance should be retained

- RPM occurs when a supplier requires a retailer to price its products at a specified minimum retail price or higher
- Limits ability of SB to compete on price; hurts consumers

Collective bargaining should be made easier

- Collective bargaining involves 2 or more competing businesses coming together to negotiate with a supplier (or business customer) over terms, conditions and prices
- Permitted if public benefits outweigh public detriment

Harper Committee recommendations on 'institutions' (ACCC & related bodies)

Australian Council for Competition Policy should be established to provide 'drive' and 'leadership' to the competition policy agenda, with a full-time Chairman.

ACCC Chairman could be made part-time (along with half of the ACCC Commissioners).

ACCC Deputy Chairs (small business & consumer representative) should be abolished.

ACCC should only deal with competition & consumer issues.

Regulatory functions (telco, water, energy, gas) should go into a new agency.

Small Business Access to Remedies

The Harper Review Panel found small businesses need greater assurance that competition complaints can be dealt with.

“Understandably, the ACCC is not able to take proceedings in respect of all complaints brought to it.”

Harper Review Final Report

Recommendation: ACCC should take a more active approach in connecting small business to alternative dispute resolution schemes where it considers complaints have merit but are not a priority for public enforcement.

3. Need More Info?



Small business helpline

1300 302 021



www.accc.gov.au/smallbusiness



Small Business Info Network

Sign up at www.accc.gov.au/sbin

Publications

Small Business in Focus
The Franchisee Manual



NEW

Follow the ACCC
on **LinkedIn**

