

25 May 2015

General Manager
Small Business, Competition and Consumer Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam

I write in relation to your request for feedback on the Competition Policy Review Final Report. For your background, Business SA has already made two submissions to the Expert Panel and hosted two business workshops in South Australia with Expert Panel members. This submission reiterates our key issues and concerns with competition policy related matters in the context of how they are addressed in the Expert Panel's Final Report.

Executive Summary

Business SA broadly supports the recommendations of the Expert Panel to increase the effectiveness of competition law, particularly through secondary boycott provisions and addressing trading restrictions in industrial agreements. Introducing shop trading hours deregulation is also well overdue. The Expert Panel has a strong focus on improving the accessibility of competition law to small business which is to be commended. However, we do have concerns that the collective concerns of small business may not necessarily be appropriately managed by the ACCC.

We strongly support an inquiry into competition in the gas market, particularly considering the impact on key manufacturing sectors in regional South Australia. However, we are disappointed that the Final Report does not adequately address competition issues within the market for potable water supply and associated trade waste.

Business SA supports consideration of competition policy related to planning matters under exceptional circumstances. South Australia is currently undergoing wholesale planning reform, primarily on the basis of improving efficiency within the existing system, which must be a key consideration in so far as how matters of competition policy are dealt with. While it is critical that any power to consider competition policy is used sparingly, it is also necessary for all matters of competition policy to be matters for consideration, not just a select few.

Strengthening competitive neutrality provisions is long overdue and ensuring complaints are heard by a body independent of Government is step in the right direction. We also welcome the creation of an Australian Council for Competition Policy to undertake market studies, including at the request of small business which should also include their representatives.

Background

The following points are provided as background to Business SA's position:

1. Business SA supports secondary boycott provisions being retained and effectively enforced. Furthermore, we agree that maximum penalties should be the same as for other breaches of competition law.
2. Section 45E of the *Competition and Consumer Act 2010 (CCA)* prohibits a person (an employer) from making a contract, arrangement or understanding with an organisation of employees that contains a provision restricting the freedom of the employer to supply goods or services to, or acquire goods or services from, another person. We agree with the Panel that a business should generally be free to supply and acquire goods and services, including contract labour, if they choose. If employing contract labour results in a more efficient and cost effective outcome for a business, it is ultimately in the long term interests of consumers which is a key pillar of competition law.

Business SA also supports the recommendation for the ACCC to be able to intervene in proceedings before the Fair Work Commission and make submissions concerning compliance with sections 45E and 45EA. Notwithstanding, ideally the *Fair Work Act 2009* should be amended to align with section 45E of the CCA.

3. Business SA supports collective bargaining provisions being made more flexible and easier for small business to use. It is important for small businesses to be able to join forces to increase bargaining power with large businesses without facing unnecessary regulatory hurdles.
4. It is important that the proposed Australian Council for Competition Policy be able to undertake market studies at small businesses', or their representatives' request. Notwithstanding, we agree that their information gathering powers should be used sparingly. Increasingly the regulatory burden on any size business is unacceptable.
5. Business SA supports the recommendation to remove restrictions on shop trading hours with the exception of Christmas Day, Good Friday and ANZAC Day morning. Business SA has long advocated for an end to regulated shopping hours, primarily on the basis that it is not the role of government to decide when businesses can open and consumers can shop. Furthermore, in an increasingly competitive retail environment, consumers can shop on-line 24/7 and existing regulations on 'bricks and mortar' retailers places them at a further disadvantage. Deregulation also enables retailers to align their trading hours to match consumer demand and open at times when it is the most profitable to trade, not just the times they are allowed to trade.

Furthermore, the total deregulation of shop trading hours removes the situation where exempt shops are allowed to open at times when others must remain shut. These exemptions are discriminatory and irrational and some retailers are significantly disadvantaged because their competitors are able to open while they are not.

6. Business SA supports restrictions on parallel imports being removed unless it can be shown that the benefits of the restrictions to the community as a whole outweigh the costs; and the objectives of the restrictions can only be achieved by restricting competition.

On the premise that competitive markets present no arbitrage opportunity for parallel imports, we see no reason to impose any parallel import restrictions which only serve to add to business input costs and consumer prices at large.

7. Business SA supports a review of competitive neutrality policies being undertaken by an independent body such as the proposed Australian Council for Competition Policy. Furthermore, we support the proposal that all Australian governments assign responsibility for investigation of competitive neutrality complaints to a body independent of government.
8. Business SA supports the recommendation for the Federal Government to undertake a detailed review of competition in the gas market. This is particularly important to industrial businesses in South Australia's South East, a pivotal regional economy.
9. Unfortunately the Final Report does not adequately address the existing competition issues in relation to water supply in South Australia or make strong enough recommendations to address them.

Even after taking into account the plateau in water usage and supply charges from 2012/13 to 2014/15, the tier one non-residential water usage rate has still increased by 879% since 2004/5 and the tier two rate by 537% over the same period. Concurrently, business supply charges have increased by 182%. The vast majority of these increases have occurred since 2008/9 which the State Government/SA Water have both justified on the basis of having to fund the Adelaide Desalination Plant and to a lesser extent, the North South Interconnection System Project.

Furthermore, trade waste charges have increased by over 1000% across the same period and SA Water is still planning to levy 9.5% per annum increases from 2017/18 on the basis of moving towards cost reflectivity.

Concurrently, the CPI index for South Australia has only increased by 30.41% since 2004/5.

Considering the majority of SA Water's revenues are derived from the return on its asset base which is regulated by the State Government, there is a pressing need for more independence for the Essential Services Commission of South Australia to execute its role as SA Water's economic regulator. The State Government cannot regulate its own corporation which typically provides several hundred million dollar dividends.

10. Business SA acknowledges the recommendation for the ACCC to 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.

However, the Panel has not addressed how the ACCC should deal with small business complaints which have merit and while they might not be a priority for action individually, could be if there was a collective weight. This is very important for small businesses and their representatives to understand.

11. Business SA supports the recommendation that when the ACCC determines it is unable to pursue a particular complaint on behalf of a small business, it should communicate clearly and promptly its reasons for not acting and direct the business to alternative dispute resolution processes.
12. While Business SA does not believe matters of competition policy are adequately considered for under existing planning arrangements, we are concerned that the Expert Panel's recommendation on competition policy and planning is quite one dimensional.

We agree that any consideration of competition in planning legislation should not explicitly or implicitly favour incumbent operators. It should only be to ensure the preservation of competition in the long term. Importantly, consideration of competition in planning legislation needs to have regard to issues beyond local boundaries given the nature of markets such as food and groceries. It will be crucial that consideration of competition in planning decisions is only made where appropriate and that it does not unduly delay existing planning processes. South Australia is in the midst of comprehensive planning reforms which are largely premised on the need to improve the efficiency of the State's planning system, namely to reduce approval times. Consequently, any future introduction of competition into State planning systems must be carefully managed so as not to unreasonably impede the drive for efficient approval processes.

In reality, the existing governance structures in the planning system are not properly equipped to consider complex issues of competition policy and there may need to be provisions for referrals to the ACCC. It is simply unreasonable to expect local governments to be able to make decisions based on issues of competition policy without expert input. In light of this, the consideration of competition in any approval process should only be by exception, perhaps requiring Ministerial approval, and should by no means occur as a matter of course.

From what Business SA has heard from the Panel, we are not convinced that the introduction of competition into planning legislation will be framed to ensure the long term interests of consumers with respect to ensuring competition in markets such as food and groceries. It seems the only manner in which competition is likely to be considered is to ensure that no market player is restricted in building any retail or wholesale premises. From Business SA's perspective, if competition is to be considered in the planning system at all, then all aspects of competition policy must be on the table and not just those selected by the Expert Panel.

Who we are

As South Australia's peak Chamber of Commerce and Industry, Business SA is South Australia's leading business membership organisation. We represent thousands of businesses through direct membership and affiliated industry associations. These businesses come from all industry sectors, ranging in size from micro-business to multi-national companies. Business SA advocates on behalf of business to propose legislative, regulatory and policy reforms and programs for sustainable economic growth in South Australia.

Should you require any further information or have any questions, please contact Rick Cairney, Director of Policy, Business SA on (08) 8300 0060 or rickc@business-sa.com.

Yours sincerely

Nigel McBride
Chief Executive Officer