



CIRCLES AUSTRALIA SUBMISSION: PROTECTING CONSUMERS FROM UNFAIR TRADING PRACTICES

For clarification on any views expressed by Circles Australia in this document, please contact:

Amanda Ang

Head of Global Government Affairs and Public Policy

Circles Australia Pty Ltd

Introduction

Circles Australia appreciates the opportunity to contribute to the Treasury's consultation on unfair trading practices in Australia. As recognised by the Treasury in its Consultation Regulation Impact Statement, unfair trading practices can distort competition, then negatively impact both consumers and small businesses.

We are in strong favour of reform to replace the existing protections with a transparent and well-structured policy and/or legislative framework that would provide guidance and clarity for both consumers and businesses, and ultimately foster a fair and competitive business environment.

We note that the Treasury has asked for feedback on the possible options to address unfair trading practices in Australia. We have however focused our response and recommendations on the key policy objectives and outcomes we urge the Treasury to consider. A clear, aligned set of policy objectives and outcomes can guide and determine the specific policies and legislative amendments needed to holistically address unfair trading practices in Australia in a manner that promote fair competition, protect consumers, and foster a healthy business environment. We trust that the recommendations below are constructive for the Treasury in its review.

Recommendations

Circles Australia urges the Treasury to consider the five policy objectives and outcomes in its determination and formulation of a suitable framework to address unfair trading practices in Australia.

1. Adopt a principles-based approach

We strongly recommend adopting a principles-based approach. While this approach is broader than rules-based policies or legislation, a principles-based approach both future-proofs policies and/or laws in fast evolving sectors where technology breeds innovation, and provides adequate certainty for businesses and consumers.

2. Ensuring clear guardrails

We believe it is important for the Treasury to define the boundaries of unacceptable behaviours, without being overly prescriptive. Such an approach would prioritise flexibility, over rigid, definition-driven rules that are likely to quickly become obsolete given the rapidly changing market dynamics. Option 4 somewhat incorporates such an approach; but we caution against the implementation of cross-sector rules as market power imbalances and unfair practices may vary significantly across different industries. A good starting point would be to draw on current practices and the expertise of other jurisdictions, as the Treasury has noted, to identify successful competition boundaries that address unfair trading practices effectively, and what that would they look like in Australia.

3. Broaden the scope of amendments to include Business-to-Business relationships

While the existing protections generally apply to business-to-consumer (B2C) transactions, only one out of the four options (i.e. Option 3) applies a general practices prohibition in the business-to-business (B2B) context. We urge the Treasury to consider expanding the scope of its review to ensure that enhancements to the existing landscape will include B2B transactions, especially in instances where a clear market imbalance exists. Doing so will ensure the promotion of fair, non-preferential practices, regardless of the nature of the firm, enterprise or consumer.

4. Establish a fair, transparent and efficient adjudication process

Efficient adjudication is paramount for a fair and timely resolution of disputes. We advocate for adjudication processes that minimise expense and time delays; and recommend avoiding any appellate processes that are historically known to be both expensive and time consuming. We also recommend avoiding the formation of any complex plaintiff classes that is likely to introduce unnecessary delays and costs. Importantly, participants in the arbitration process must share a common commitment to swift resolution.

We note that there are existing entities – as outlined in the Treasury’s Consultation Regulation Impact Statement – that support and provide recourse to consumers and small businesses. We strongly recommend formalising (e.g. in legislation) an arbitration - or mediation - process to enhance existing measures. This process can incorporate the arbitration rules of the

International Centre for Dispute Resolution and other jurisdictions that have strong arbitration processes and rules, such as Singapore.

5. Ensuring accountability with the establishment of an independent oversight body

It is important that there be public accountability mechanisms to assess the performance of government agencies in upholding and enforcing fair trading practices. In this vein, we recommend the establishment of an independent oversight body to determine the effectiveness of the rules, regulations and policies to address unfair trading practices. The determinations made by the independent oversight body should be made publicly available.

Conclusion

Circles Australia is of the view that the five policy objectives and outcomes outlined above will provide strong foundations for the development of an effective and enduring framework to address unfair trading practices in Australia; and urge the Treasury to incorporate these policy objectives and outcomes in its determination on the best measures to both protect consumers and small businesses while providing clarity and fostering a healthy business environment.

Again, we thank the Treasury for the opportunity to provide our perspective and stand ready to answer any further questions the Treasury may have on our representation above. Thank you.
