

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ECONOMICS

REVIEW OF THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION ANNUAL REPORT 2017

3QON: Unfair contract law: Dairy industry

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Mr BUCHHOLZ: If you could pay a little bit more attention in trying to get a commonality of date of contract so that there's a capacity to bring some market pressure in that bidding process, which doesn't exist at the moment.

Mr Sims: We'll take that on board. It could be relevant. If the code gets accepted, which it hasn't yet been, something could be worked in.

CHAIR: Perhaps **on notice** you might be able to provide the committee with a bit more detail in relation to some changes to unfair contract law that you would like to see, or if you've had any further consideration?

Mr Sims: I would be delighted to do so.

Answer:

The ACCC notes that the business-to-business Unfair Contract Term (UCT) regime is to be reviewed two years after it came into effect on (12 November 2016).¹ The ACCC will consider the UCT regime more closely in the coming months and looks forward to the opportunity to contribute to the review.

As foreshadowed in the ACCC's submission to the parliamentary inquiry into the operation and effectiveness of the Franchising Code of Conduct, the ACCC considers that the following aspects of the current UCT regime should be reviewed:

- Penalties and prohibition – Currently it is not illegal to include a UCT in a standard form contract, however, the ACCC or a party to the contract can seek to have a UCT declared void in a Court. The ACCC therefore cannot seek civil pecuniary penalties, nor issue infringement notices in relation to contract terms that are likely to be unfair. The ACCC considers that the current UCT regime could better incentivise compliance if it expressly prohibited UCTs in standard form contracts and made civil pecuniary penalties and infringement notices available for breaches of that prohibition.
- Thresholds for small business – In 2016 the consumer UCT regime was extended to apply to business-to-business transactions where one of the parties to the contract is a small business. The ACCC considers that the thresholds to be considered a small business under the UCT regime should be reviewed, including the upfront value of the contract and the number of employees a business has.

¹ See Australian Government response to the Productivity Commission Inquiry into business set-up, transfer and closure, May 2017, page 5. Available at: <https://static.treasury.gov.au/uploads/sites/1/2017/06/Final-Government-Response.pdf> .