



**Small Business
Development Corporation**

Our ref: D24/9829

Senate Standing Committees on Economics
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Dear Chair

INQUIRY INTO 'BIG BOX' RETAILER PRICE SETTING

Thank you for the opportunity to comment on the Inquiry Into 'Big Box' Retailer Price Setting (the **Inquiry**).

The Small Business Development Corporation (**SBDC**) is an independent statutory authority of the Government of Western Australia (**WA**), established to support and facilitate the growth and development of small businesses in the State¹. Under the leadership of the WA Small Business Commissioner, the SBDC provides a range of services to assist and empower small business operators in the State when they are making crucial decisions over the course of their business lifecycle, and when they are faced with uncertainty or unfairness in their business, particularly when dealing with another party.

These services are tiered based on the level of support needed, and include:

- information and guidance through online channels (including the SBDC's website), workshops, business advice and outreach services;
- dispute resolution service, which includes pre-mediation case management and mediation if required; and
- examining behaviour negatively impacting on the commercial interests of small businesses, particularly when there is a power imbalance between parties.

Through these various touchpoints with small businesses, along with regular engagement with small business and industry representatives, the SBDC is able to monitor the WA small business landscape and constructively contribute to government and parliamentary reviews and policy development. To that end, the SBDC's feedback on the Inquiry follows.

¹ The views presented here are those of the SBDC and not necessarily those of the WA Government.

Submission focus

The SBDC's submission will follow the Terms of Reference as set out by the Committee. Namely, the role of Australia's 'big box' retailers and large format retailers in price setting, with particular reference to:

- a. the market behaviours of such retailers, including price negotiation practices, abuse of market power and engagement with suppliers, in particular horticultural producers;
- b. whether big box and large format retailers that sell products that fall under the category of grocery should be included in the grocery code of conduct; and
- c. acquisition and use of land.

As outlined in the Terms of Reference, a 'big box' retailer refers to a retail store that occupies a large physical footprint and offers a variety of products and a broad product mix to its customers.

The submission will examine how small businesses are impacted by an imbalance in negotiating agreements with buyers (i.e. market behaviours), the harmful practices of big box and large format retailers and closing or losing the opportunity to stock their products in a supermarket (i.e. acquisition and use of land).

WA small business context

To provide context, the Australian Bureau of Statistics reports that there were 238,907 actively trading small businesses in WA as at 30 June 2023², making up 96.9 per cent of all businesses in the State. Nearly two thirds (62.8 per cent) of all businesses in WA are non-employing, while over three quarters (76 per cent) of all businesses are based in the Perth metropolitan area.

The largest industries for small businesses in WA are:

- Construction (41,745 small businesses, 16.9 per cent of all small businesses);
- Professional, Scientific and Technical Services (30,841, 12.5 per cent);
- Rental, Hiring and Real Estate Services (27,402, 11.1 per cent);
- Transport, Postal and Warehousing (22,156, 9 per cent);
- Health Care and Social Assistance (16,546, 6.7 per cent); and
- Agriculture, Forestry and Fishing (15,892, 6.4 per cent).

When considering the small business perspective in WA, the size and geographic diversity of the State needs to be recognised. About one third of the nation's landmass, WA covers 2.5 million square kilometres and is home to 2,905,922 people (see Figure 1). It is a state of extremes and distance; to drive from Albany in the Great Southern to Kununurra in the Kimberley takes about 36 hours.

² Australian Bureau of Statistics 2024, *Counts of Australian Businesses, including Entries and Exits*, cat. no. 8165.0 ABS.

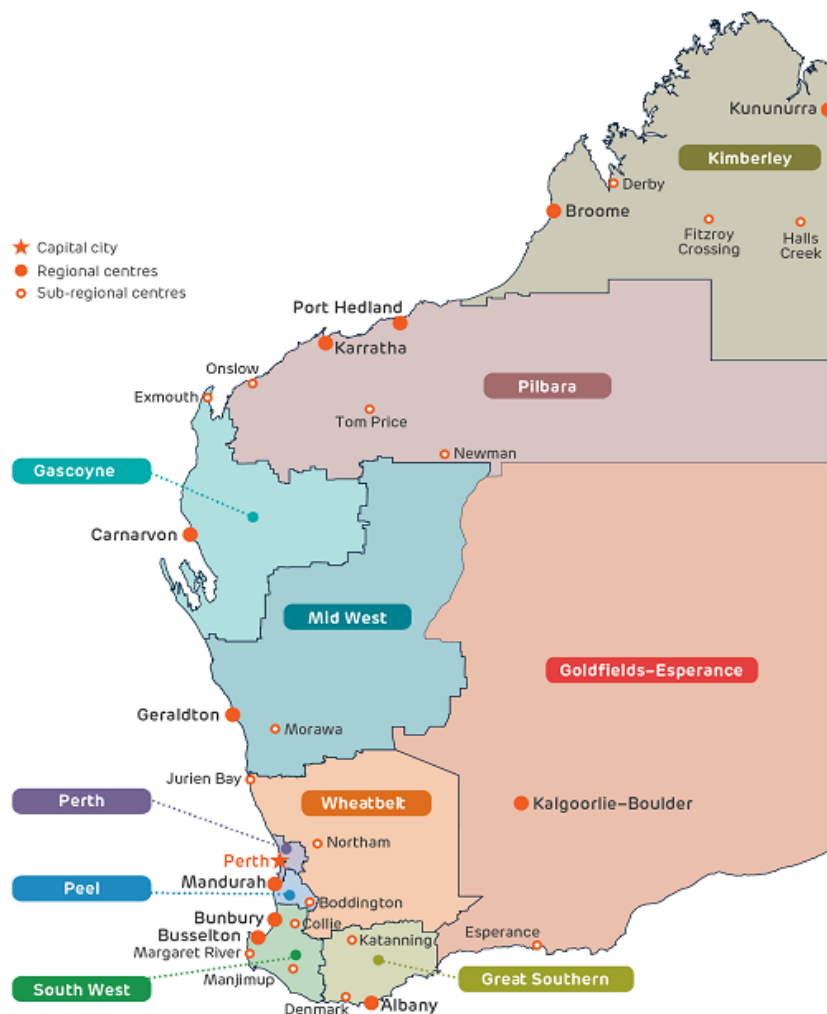


Figure 1. Regions of Western Australia³

The vast State experiences diverse weather extremes, with the northern regions prone to cyclones and wet season flooding, while the southern areas contend with intense storms and bushfires during the hot, dry summers. With the progression of climate change, there could be increasing frequency and intensity of extreme weather events that can (and often do) lead to supply chain issues.

The great distances between markets within the State impact on freight and the transportation of goods from locations where suppliers produce goods and delivery to their buyers.

Market behaviours and horticultural producers

Horticultural producers grow greenlife products such as seedlings, herbs, food plants and annuals. Greenlife Industry Australia (**GIA**), the peak industry body for greenlife production businesses, argues these perishable products tend to be low value that need be sold in high volumes to be profitable⁴. Bunnings is the prevalent buyer of

³ 'Foundations for a Stronger Tomorrow, State Infrastructure Strategy', Infrastructure WA, 2022.

⁴ Review of the Food and Grocery Code of Conduct submission, Greenlife Industry Australia, 29 February 2024. <https://www.greenlifeindustry.com.au/communications-centre-content/media-releases-1/2023-2/food-and-grocery-code-submission>.

greenlife products with a national market share of 70 per cent, rising to over 80 per cent in some regions and towns⁵.

Nationally there have been reports of suppliers to Bunnings accusing the retailer of forcing them into agreements they consider unfair and an abuse of market power⁶. According to GIA, the agreements include informal, verbal arrangements in place of enforceable contracts, rebates where growers are required to accept further discounts on their prices to have supposed benefit of association with seasonal promotions or new store openings, growers having to use the retailer's mandated freight and lack of contractual commitments for volumes or minimum guaranteed orders⁷.

Anecdotally, the SBDC has heard that in WA Bunnings dominates around 80 per cent of the market and tends to provide agreements rather than formal contracts (that do not offer the same level of security as contracts, potentially putting suppliers at risk), and that there is an imbalance with negotiations where businesses supply products below cost due to supplier fears of being excluded from the market.

Big box and large format retailers and the Food and Grocery Code

The Food and Grocery Code (**the Code**) is an instrument to address harmful practices in the grocery industry stemming from an imbalance in bargaining power between supermarkets and suppliers. An element of the power imbalance is the disparity between smaller suppliers to larger buyers.

The harmful practices and bargaining power imbalance are being experienced by many small suppliers. For example, AUSVEG (the peak industry body for Australian vegetable, potato and onion industries) noted undesirable retailer behaviour occurring that does not align with the Code, including absence of price and volume certainty in arrangements with retailers, disproportionate risk and compliance burden being placed on suppliers, a lack of negotiating power, and asymmetrical information flow⁸.

It is important to note that in the current economic environment where businesses are facing the challenges of increased costs of doing business, cost of living, labour shortages, and climate change and adaptation, that conduct associated with the imbalance in bargaining power could prompt business closures. Indeed, an AUSVEG survey found that over half of growers (51 per cent) stated 'poor retail pricing' was a factor in considering leaving the industry⁹.

⁵ Ibid.

⁶ 'Plant suppliers say Bunnings pushed them 'into the dirt' with unfair, unprofitable contracts', Emilia Terzon, *ABC News*, 15 April 2024.

⁷ Review of the Food and Grocery Code of Conduct submission, Greenlife Industry Australia, 29 February 2024. <https://www.greenlifeindustry.com.au/communications-centre-content/media-releases-1/2023-2/food-and-grocery-code-submission>.

⁸ 'AUSVEG proposes solutions to grower-retailer power imbalance', AUSVEG, 21 February 2024. <https://ausveg.com.au/articles/ausveg-proposes-solutions-to-grower-retailer-power-imbalance/>.

⁹ Senate Select Committee on Supermarket Prices submission, AUSVEG, February 2024. https://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Supermarket_Prices/SupermarketPrices/Submissions.

The SBDC notes that the *Food and Grocery Code of Conduct Review 2023–24 - Interim Report (Interim Report)* recommends that the Code be made mandatory for all supermarkets that meet an annual revenue threshold of \$5 billion (indexed for inflation)¹⁰. By their very nature, big box and large format retailers in Australia are sizeable and it is possible they could meet the annual \$5 billion threshold set for supermarkets.

If big box and large format retailers were included in the Code, smaller businesses that supply to them would have many advantages. As outlined in the Interim Report, these advantages would include greater emphasis on addressing the fear of retribution, effective penalties to apply when the Code is breached and access to an effective, fair and equitable dispute resolution process for raising and investigating complaints and resolving supplier disputes with retailers or wholesalers¹¹.

Acquisition and use of land

Location is highly relevant for retailers and land use can impact small businesses, in particular independent supermarkets.

In its submission to the Senate inquiry into supermarket prices, a Victorian independent supermarket business highlighted that although supermarkets are held to the Code and the *Competition and Consumer Act 2010*, retailing is fundamentally related to property and that the land planning approvals process does not necessarily consider competition issues¹².

In February 2018, Mr Rodney King, an independent supermarket operator in the Coolbellup Shopping Centre (a suburb in Perth), approached the SBDC with the grievance of a pending development of a Woolworths supermarket adjacent to his business. Shop owners within the Coolbellup Shopping Centre also objected as competition would increase to their detriment. While the WA planning approvals for the development followed due process, Mr King noted the difficult trading environment and concern for a supermarket chain with market power to be established in such proximity. The Woolworths opened in the new development, and by April 2019 Mr King's business had closed¹³.

A type of land use is creeping acquisitions where multiple acquisitions of smaller competitors happen over time that individually do not raise competition concerns yet when viewed collectively can be anti-competitive. Section 50 of the *Competition and Consumer Act 2010* prohibits mergers or acquisitions that would have the effect or be likely to have the effect of substantially lessening competition in a market.

¹⁰ *Food and Grocery Code of Conduct Review 2023–24 - Interim Report*, The Commonwealth Treasury, April 2024.

¹¹ Ibid.

¹² Senate Select Committee on Supermarket Prices submission, Ritchies, 9 February 2024. https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Supermarket_Prices/SupermarketPrices/Submissions

¹³ 'Shock closure for Cooby IGA', Steve Grant, *Fremantle Herald*, 12 April 2019.

By way of example, the Australian Competition and Consumer Commission (**ACCC**) released in July 2014 a Statement of Issues for the proposed acquisition across several WA locations by Coles Supermarkets Australia Pty Ltd ("Coles") of:

- a Progressive Supa IGA supermarket in Busselton (South West Region);
- a Progressive Supa IGA supermarket in Halls Head, Mandurah (Peel Region);
- a Progressive Supa IGA supermarket at Bunbury Forum (South West Region); and
- a Progressive Supa IGA in Dianella (a suburb in Perth).

There was concern over the impact to small WA suppliers as their deals with these IGA stores would likely be terminated. The president of the WA Independent Grocers Association, Mr John Cummings, asserted that "A lot of local suppliers will be put off the shelf. You have to be a national supplier to be stocked at Woolworths or Coles"¹⁴. The ACCC Statement of Issues echoed these sentiments stating "the Busselton store stocks a variety of local products from regional areas, such as milk and cheese products, which are not available in Coles or Woolworths"¹⁵.

The Busselton location was in the relatively new shopping centre (opened December 2003) located at 30 Kent Street, in central Busselton¹⁶. At that time if the Busselton acquisition proceeded, Coles would own two out of four major supermarkets within a three-kilometre radius with Woolworths as the only competitor¹⁷.

The ACCC considered the impact of the proposed acquisition in the local markets by assessing overlap and competitors within 3-5km of the target stores¹⁸. In the ACCC decision only the Bunbury, Dianella and Halls Head supermarket sites were considered. The ACCC decided that in the three target stores, it was unlikely that when their leases expired (between 2017 and 2021), that they would be acquired by alternative purchasers or that an independent supermarket was likely to be established at the target site¹⁹.

The public informal merger reviews register stated that:

Coles did not seek an ACCC view on the Busselton acquisition at the time the decision on the three other stores was made, as Coles was seeking to provide further information to the ACCC. A separate public register entry for the Busselton supermarket will be prepared if the matter is considered further by the ACCC.²⁰

¹⁴ 'Coles' bid to buy Supa IGA stores ramps up concerns over supermarket duopoly in WA', Kristen Robb, *SmartCompany*, 11 July 2014.

¹⁵ Issues paper on determination website :0 Coles Supermarkets Australia Pty Ltd - proposed acquisition of four Progressive Supa IGA stores in Western Australia (including two liquor licences), Statement of Issues, 10 July 2014. Available from <https://www.accc.gov.au/public-registers/mergers-registers/public-informal-merger-reviews-register/coles-supermarkets-australia-pty-ltd-proposed-acquisition-of-certain-sup-a-iga-supermarkets-in-western-australia-including-two-liquor-licences>.

¹⁶ Ibid.

¹⁷ 'ACCC concerns could stymie Coles's WA growth plans', *Australian Financial Review*, 12 July 2014.

¹⁸ Issues paper, paragraph 23.

¹⁹ Coles Supermarkets Australia Pty Ltd - proposed acquisition of certain Supa IGA Supermarkets in Western Australia (including two liquor licences), ACCC Public informal merger reviews register, 18 September 2014.

²⁰ Ibid.

The SBDC searched the ACCC media releases and public registers for Coles and Busselton and no results relative to the Kent Street site were found²¹. However, in May 2018, the IGA in the Busselton Central Shopping Centre on Kent Street closed and Coles was confirmed as the new tenant²². As of September 2024, there is an IGA in Busselton on 170 Bussell Hwy, around two kilometres from the Kent Street site, while the 30 Kent Street Coles store is 550 meters from another Coles store located at 63 Prince Street.

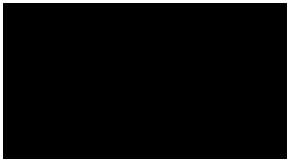
This example demonstrates the impact on competition that the acquisition and land use of major retailers can have on smaller, independent operators, often leading to their inability to continue trading.

Concluding remarks

In summary, conditions for smaller businesses when supplying to big box and large format retailers and market behaviours regarding horticultural producers could and should be improved. The SBDC strongly advocates for key decision makers to consider the interests of small businesses to ensure they do not cease trading, are not exposed to imbalances in negotiating agreements with buyers or lose opportunities to stock their products in local supermarkets.

Thank you for the opportunity to provide comments to this inquiry. If you would like to discuss this submission in more detail, please contact Oonagh Quigley, Policy and Advocacy Officer, on [REDACTED] or at [REDACTED]

Yours sincerely



Jeff Healy
A/Small Business Commissioner

27 September 2024

²¹ ACCC website, accessed and searched on 16 September 2024.

²² 'New Coles', Sarah Ison, *Busselton Dunsborough Times*, 11 May 2018.