



Australian Government



Australian  
**Small Business and  
Family Enterprise**  
Ombudsman

5 December 2017

Ms Michelle Landry MP  
Chair  
Standing Committee on Industry, Innovation, Science and Resources  
P.O. Box 6021  
Parliament House  
Canberra ACT 2600

By email: [iisr.reps@aph.gov.au](mailto:iisr.reps@aph.gov.au)

*Michelle*  
Dear Ms Landry,

**RE: INQUIRY INTO THE IMPACT ON LOCAL BUSINESSES IN AUSTRALIA FROM GLOBAL INTERNET-BASED BUSINESSES**

Thank you for the opportunity to submit comments to the Parliamentary Committee Inquiry on impacts on local businesses in Australia from global internet-based competition. My office has two primary functions – assisting and advocating for small businesses and family enterprises in relation to policies, practices and legislation that impact the sector.

We have focused our submission to address two key points. These are:

- The speed at which existing legislative frameworks react to new global internet-based companies which disrupt existing industry sectors. The inertia of the existing framework means there is often an uneven regulatory and/or taxation environment for participants in the same industry, and
- The imbalance of power in the relationship between small businesses and large global internet-based business with regard to unfair contract terms and issues with payment times.

***Global internet based businesses can present opportunities for small business***

It is important to recognise that global internet-based businesses have created a range of opportunities for new and existing small business to grow. Often, businesses, both large and small, are able to use the new online services offered by global-internet based companies, especially peer-to-peer platforms, to drive down their costs, access more efficient infrastructure, open new markets or to reach new consumers. For example, accommodation industry sources advise that approximately 35% of listing on Airbnb are commercial operators that lease out property all year round, and have investment properties designed specifically for the sharing economy.

These global internet-based businesses act as disrupters using peer-to-peer sharing platforms that capitalise on key technologies such as cloud services, online payment systems and the use of smartphones by consumers. These internet-based businesses use technology to bring owners of assets with 'excess' or 'slack' capacity into industries as

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new suppliers of goods and services to consumers. This allows for the commercialisation of existing excess capacity, such as in transport or lodging. This creates additional competition in the market and increases economic efficiency.

Like it or not, the arrival of global internet-based businesses are a key driver behind the changing preferences of consumers in how they buy goods and services. One example is the use of online marketplaces, such as eBay and potentially Amazon Marketplace. Increasingly, new small businesses using these platforms are ditching the traditional shop in the shopping centre altogether or opting for small retail showrooms outside of a shopping centre. The digitised showroom model can offer a small business increased efficiency and add value in many ways. Essentially this model takes the best of both online retail and traditional brick and mortar business structures. Customers can physically touch and try on products in showrooms, not possible for online-only businesses. As consumers change their method of buying, the infrastructure supporting business in retailing needs to change too. This is especially the case for the legislative frameworks regulating business.

***Legislative frameworks react too slowly resulting in an uneven playing field***

The arrival of global internet-based companies in some highly regulated industries can lead to situations where existing participants are unfairly penalised.

*Case Study 1 – GST and Council charges*

*A regional small business providing motel accommodation was subject to increased competition from short-term holiday rentals. This competition was from individual apartment owners in accommodation complexes around their business. These apartments could be leased through short-term accommodation websites. The small business was subject to GST and local council commercial rates and charges, which were significant. In comparison, the owners of individual apartments rented out were only subject to residential council charges and rates and did not earn enough income to register for GST. The small business owner noted that the products being marketed by their competition were largely identical to their own product – short-term accommodation, but the regulatory and tax costs incurred by each party were not the same.*

The example above shows the challenge facing existing legislative frameworks: How to respond to new participants in a regulated environment? This is particularly difficult when the new entrant does not meet the exact definition of the legislation or regulation. It is the inertia of these frameworks that can be exploited by global internet-based businesses and cause disadvantage to established participants particularly small businesses. Whether is it a local council charging some participants commercial rates and charges but not others, or a state government issuing taxi licenses while ride-sharing participants fill in an application form, the existing legislative and regulatory frameworks must be responsive to the changing industry environment and players. They should respond quickly to minimise any inequality.

***Global internet-based businesses bring global contract terms, payment times and tax practices***

The global internet-based businesses bring with them contract terms, payment times and practices that reflect their bargaining power. The following case study provides an example of this.

*Case Study 2 – Lowest price deals: “It’s in the contract”*

*A small business in a capital city was providing executive accommodation. When signing up to a global internet-based business contract to promote their accommodation, the small business owner discovered they could only advertise their lowest price online with the provider. They were unable to place a cheaper price on their own business website. Ironically, if a prospective customer rang their business or walked in the door and asked for a price they could provide a lower unadvertised price. However, under the contract terms provided by the global internet-based business the small business could not do the same on its own website without providing the same price the global business. They noted that once the global internet-based business took its commission from their listed price, the small business effectively made no margin. They were giving away accommodation! When trying to negotiate a better deal, the small business was told to “take it or leave it” and was repeatedly threatened with legal action when they took action independently.*

The asymmetry of power between any large business and a small business is not a new phenomenon, notwithstanding the large business being a global internet-based business. As the number of global internet-based businesses increases and they continue to disrupt established markets, they cement their market dominance through favourable contract terms, market practices and payment times. In Australia, unfair contract terms legislation has provided some level of protection for small businesses although the matter still has to get to court for a ruling to determine if a term is unfair. Regarding payment times, our Inquiry into Payment Times and Practices found that large businesses, including several large global internet-based businesses, have payment times and practices that hold negative cash conversion cycles. This means they get paid by their customers before they pay their suppliers and typically is manifested as extended payment terms. This means the small business suppliers usually provide a measure of financing to the large business through trade credit, often without much choice.

Lastly, recent media coverage has highlighted the tax minimisation strategies of global internet-based businesses through the release of the Panama Papers and the Paradise Papers. This coverage has laid bare the strategies and lengths some global internet-based businesses will take to minimise the tax they pay globally, reducing the tax payable to the authorities in countries in which they operate. Again, the inertia of legislative frameworks to change and even the playing field is exposed. Some progress is being made in Australia with the introduction of the tax on digital downloads (the ‘Netflix tax’) and the Multinational Anti-Avoidance Measures tax legislation. Further work to refine these laws is needed to ensure they continue to address tax minimisation strategies and do not lose their effectiveness over time.

We hope these comments assist the Committee's deliberations. Please feel free to contact either myself or Mr James Strachan, by telephone or email

Yours sincerely,

**Kate Carnell AO**  
Australian Small Business and Family Enterprise Ombudsman