

8 June 2021

ACCC response to Parliamentary Joint Committee on Corporations and Financial Services question on notice relating to Greensill

Question:

Please provide an update from the ACCC on its review of the use of and reporting on supply chain financing by large entities (as described in the ASBFEO report on supply chain financing).¹

Answer:

The ACCC has not been conducting a “review of the use of and reporting on supply chain financing by large entities” as such.

Following reports from some small businesses, the ACCC has investigated allegations that certain extended payment times in standard form small business contracts raise concerns under the competition and consumer laws contained in the *Competition and Consumer Act (Cth) 2010*, which also includes the Australian Consumer Law (the ACL).

These investigations have related to various companies, and included concerns about whether certain agreements include unfair contract terms, or whether actions of the companies may involve misleading or deceptive, or unconscionable conduct. Whether extended payment times and/or supply chain financing would amount to contraventions of the ACL will depend on the circumstances particular to each case.

Some of the matters investigated were resolved voluntarily by the large business in question changing its practices either of its own volition, or following contact from the ACCC. The ACCC has made public comment in only one of these matters.

The ACCC [had been engaging with](#) engineering company UGL and the finance company it was using, Greensill Capital, about allegations that UGL had unilaterally extended its payment terms to 65 days on new purchase orders, and that it was advising suppliers requiring earlier payment that they would need to accept a discount on the amount of their UGL invoice, and the invoice would be paid by Greensill Capital. Subsequently, both companies announced actions to ensure that their payment and financing arrangements do not disproportionately burden small business suppliers.

The ACCC did not have any engagement with Greensill Capital outside of this matter.

In other investigations, the conduct was unlikely to contravene the ACL as the large business had actually negotiated the payment terms with individual suppliers, or had excluded small business suppliers from its extended payment terms requirements. Further some matters were discontinued for lack of evidence as some small business suppliers were reluctant to provide evidence to the ACCC for fear of commercial repercussions.

"Reverse factoring" is also likely to involve the supply of a financial service which would mean some of the alleged conduct may fall for consideration under the *Australian Securities and Investments Commission Act 2001* rather than the *Competition and Consumer Act 2010*. The ACCC liaises closely with ASIC in assessing any allegations of conduct around extended payment terms involving the offer of supply chain financing.

¹ Australian Small Business and Family Enterprise Ombudsman, *Supply Chain Finance Review*, March 2020, pp. 6–7.