



**Australian
Chamber of Commerce
and Industry**

ABN 85 008 391 795

T: +61 2 6270 8000

info@acci.com.au

www.acci.com.au

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Senate Standing Committees on Economics
PO Box 6100, Parliament House
Canberra ACT 2600

(e) economics.sen@aph.gov.au

RE: Big-box Retailer Price Setting Inquiry

The Australian Chamber of Commerce and Industry is Australia's largest and most representative business association. Our members are all state and territory chambers of commerce, which in turn have 430 local chambers as members, as well as over 70 national industry associations. Together, we represent Australian businesses of all shapes and sizes, across all sectors of the economy, and from every corner of our country.

We welcome the opportunity to provide comment to the Economics References Committee inquiry into 'Big-box' Retailer Price Setting.

ACCI believe that a strong and competitive retail sectors are in the interests of all businesses. A competitive environment ensures that businesses who perform well have the best chance of growing, it ensures that consumers get competitive prices, and it results in an efficient business environment that's good for the economy as a whole. With the high cost-of-living it is essential that retailers remain competitive and provide the lowest prices to their customers.

'Big-box' / large format retailers provide a very important role in Australia's retail landscape. Ultimately, through the economies of scale of these retailers and the increased competition across the retail sector, large format retailers make a significant contribution to increasing choice for consumers and driving down retail prices. The attraction of customers to large format retailers clearly shows that they are providing a service that customers want and at prices that are competitive. For a supplier, large format retailers offer a very large volume customer and a broad geographic reach for their products.

Market behaviour of such retailers

The Competition and Consumer Act 2010 (CCA) is a comprehensive regulatory framework that govern the behaviour of Australian businesses, including retailers.

Canberra
Commerce House
24 Brisbane Avenue
Barton ACT 2600



Similarly, Australian Consumer Law (ACL) sets the rules for interactions between businesses and their customers, suppliers, and competitors. Small business protections were recently strengthened through amendments to unfair contract terms (UCT) laws that were introduced in November 2023. The revised laws impose significant penalties for businesses proposing and/or applying UCT.

There is nothing to indicate that the large format retailers are in any way engaged in price setting behaviour or that they are abusing their market power in their relationship with suppliers or customers. If this were the case, then it is the role of the Australian Competition and Consumer Commission (ACCC) to investigate this behaviour. Under the CCA and ACL, the ACCC has the power to examine the practices of large format retailers and where they find retailers are engaged in illegal practices or malicious behaviour, it can apply to the courts to place restrictions on the retailer and impose fines. This ensures procedural fairness to the retailer and the concerns of customers and suppliers are dealt with appropriately. There is no evidence that the ACCC is not performing its role effectively. For the retailers, the risk of court proceedings and heavy fines provide sufficient incentive for them to treat their customers and suppliers fairly.

Should large format retailers be included in the grocery code of conduct?

The Food and Grocery Code of Conduct (Code) was initially developed as a voluntary code to address issues specific to supermarket sector. The Code was designed with a focus on the unique commercial, regulatory and operating environment of the food and grocery sector, particularly its supply chains, the perishable nature of many of the goods stocked and relationship between the supermarkets and their suppliers. The business model of other retailers, such as hardware, electrical goods, furniture, etc., and their customers, is very different to that of the food and grocery sector. The products are very different. The customers are very different. The relationships with the retailer and their suppliers are very different.

To apply the Code to other retail sectors, is putting a square peg in a round hole. The large format retail sector operates in distinct ways and has circumstances and practices that aren't in common with the food and grocery sector. Applying the food and grocery Code to the large format retail sector would only lead to confusion and greatly increase the regulatory burden in the sector. ACCI considers extending the Code to other retailers will produce unintended consequences and may ultimately reduce competition and inhibit innovation.

ACCI earlier cautioned that instituting undue regulatory requirements on the food and grocery sector, by making the code of conduct mandatory, sets a significant precedent that could lead to regulatory contagion. This concern has now been realised. There is now an expectation to extend an equivalent regulatory impost to other areas of the economy deemed to have a significant concentration of large



firms. We are now arguing the case of applying the Code to the large format retail sector, despite the sector being a functioning, effective, competitive market. What sector will be next?

Acquisition and use of land

Large format retailers have been accused of land banking, but this fails to acknowledge the important role of large format retailers as anchor tenants in the shopping precincts, which in turn supports numerous other smaller businesses.

Due to land zoning restrictions and the size of large format retailers, there are limited sites suitable (or where large format retailers are able) to build a new store in a developed area. Large format retailers are typically restricted to the edge of commercial districts, industrial precincts or new land developments on the urban fringe.

Following the land purchase, the retailer faces an extensive list of regulatory and compliance requirements, at Commonwealth, state and local government levels, that need to be completed before construction of a new store can begin. This includes gaining planning and environmental approvals, as well as permits and licences for its activities. These take a considerable amount of time to complete and can lead to long delays in construction of the new store.

For land purchased in the early-stage development of new housing estates on the urban fringe, due to the large footprint of the store, the retailer may need to wait until the population around it has grown to a point that it can provide the customer traffic to support a large format store.

In addition, the current tight labour market and skill shortages, particularly in the construction sector, can also delay the commencement and slow the construction of a new store.

It needs to be acknowledged that the presence of a large format retailer as an anchor tenant in a shopping precinct attracts other retailers, many of them smaller businesses, that rely on the customer-traffic it generates. The large format retailer supports the commercial viability of a shopping precinct and the other businesses that operate within it, playing an important role in the local economy.

Ultimately, it must be recognised that large format retailers provide an essential service to all Australians. It is important that they treat their customers and suppliers fairly. Equally so, they must be free to make commercial decisions without the burden of excessive regulation, to ensure they operate efficiently, effectively and competitively, and provide the best service to their customers at the lowest prices.



We look forward to further consultation on the role of 'big box' retailers and large format retailers in price setting, to ensure the recommendations of the Committee are fair, workable for the retailer and their customers and suppliers, and are not just another regulatory burden being placed on retailers.

Yours sincerely

Peter Grist

Director Economics, Industry and Sustainability