



Metcash Submission

Senate Select Committee Inquiry into “big box” retailer price setting

Introduction

Metcash Limited (**Metcash**) welcomes the opportunity to provide comment to the Senate Select Committee for the purposes of this Inquiry.

Metcash’s business purpose is “Championing Successful Independents in Support of Thriving Communities”. Across our food, liquor and hardware pillars we work with our customers to help Metcash supplied stores be the ‘best store in their town’ and for independent retailers to consider us their business partner of choice. Independent retailers occupy an important competitive position in Australia, providing an alternative route to market for local suppliers, which benefits both consumers and suppliers.

The problems being explored by this Inquiry have arisen because Australia’s Competition Laws and Planning Laws have not stopped the growth of dominant retailers with market power in the grocery, hardware and liquor sectors.

As we outlined in the Senate Inquiry into Supermarket Prices earlier this year, the problems that flow from the monopolisation in the retail sectors by big box retailers may be addressed by stronger Competition Laws and changes to Planning Laws.

Merger Law Reform

Treasury has released for comment draft Merger Legislation which reforms Australia’s Competition Laws. A key objective of the proposed changes is to address what is known as “Creeping Acquisitions”, which in a retail context includes both the purchasing of existing businesses but also the acquisition of interest in land to facilitate the building of new stores by dominant market players.

Metcash’s key submissions to the Government’s Mergers Inquiry earlier this year, sought two key changes to Australia’s Competition Laws.

What was sought by Metcash is encapsulated by two simple propositions:

1. That any consideration of a local market acquisition must consider the broader impact of the transaction including outside any local market; and
2. In considering the question as to whether an acquisition substantially lessens competition, there should be a reversal of the onus of proof in the context of acquisitions by dominant retailers.

Metcash supports proposed changes in the Draft Merger Legislation which includes a reference to substantially lessening competition ‘by creating, strengthening or entrenching a substantial degree of market power in any market’. This would seem to indicate that in considering a dominant retailer, its overall national or regional position should be included in assessing any substantial lessening of competition. However, Metcash considers there remains uncertainty regarding this issue. As such, Metcash considers that the drafting would be improved, and that concerns expressed by the Committee

in relation to big box retailers would be better addressed, if the competition law specifically required a consideration of national market share in assessing any substantially lessening of competition.

Metcash's position has been that the competition law should contain a reversal of onus for dominant retailers. The Draft Merger Legislation does not contain any reversal of onus. A general reversal of onus was specifically recommended by this Committee in its Report on Supermarket Prices earlier this year and was sought by the ACCC. Metcash continues to consider that a reversal of onus for dominant retailers is appropriate and would assist to address the concerns that arise out of the continued growth of big box retailers and their negative impact on suppliers and consumer choice.

This inquiry should recommend that national market share be a specific consideration in assessing any acquisition under the proposed Merger Legislation and that the onus of proof to obtain competition law clearance for dominant market participants should be reversed.

State Planning Systems – use of land

Metcash gave evidence to the Queensland Government Inquiry into Supermarkets, where we outlined how State Planning systems also have a role to play in ensuring consumer choice and lower prices.

All retail development involves the approval of a store. State Planning systems have large frameworks around the approvals process, which look at a variety of matters like natural land constraints, heritage and environmental issues. State Planning Frameworks include a test known as the Net Community Benefits Test "NCBT".

The NCBT is usually embedded in State Planning Legislation in the Objectives of State Planning Legislation. The purpose of the NCBT is to ensure that the community benefits on balance from development.

Most State Planning Frameworks expressly forbid considerations of any negative impacts on existing competitors when assessing any new proposals, except where the proposal is damaging to the planning framework of the local area. Dominance in the retail landscape has led to the practice where these retailers now expect approvals to be made for new big box stores, even in areas where they are already the dominant retailer.

State Planning Frameworks should take into account competition impacts as part of the NCBT, because it is clearly not in consumer's interests to have their retail choices diminished.

This Inquiry should recommend that State Planning Framework be specifically changed to deter dominance by any one retailer. Development should encourage competition and choice. This in practice means big box retailers should not have their developments automatically approved.

Hardware examples

1. **a)** *The role of Australia's 'big box' retailers and large format retailers in price setting, with particular reference to the market behaviours of such retailers, including price negotiation practices, abuse of market power and engagement with suppliers, in particular horticultural producers;*

Supplier relationships

Our major competitor in hardware has exclusive arrangements in place with many national suppliers such as Ryobi, Irwin and Nylex. These brands were once available to consumers via the independent market and are now only available in the hardware channel via our major competitor. Dominant market

participants have the power to demand exclusive arrangements, detrimental to smaller independent retailers, suppliers and ultimately consumers.

Horticulture (Greenlife) category

IHG supplies Greenlife products to Mitre 10 stores, however it is a comparatively small operation - only ~30% of Mitre 10 stores have a sizeable Greenlife offering under our Garden Centre branding. Of those stores, many purchase plant products direct from local producers creating competition in the supply chain. Plants account for just 2.5% of total IHG DIY Wholesale sales to stores.

c) acquisition and use of land;

We highlighted in the Cost-of-Living Inquiry last year that we are aware of Bunnings writing to at least seven Mitre 10 businesses asking them to consider entering negotiations to sell their store to Bunnings. We are also aware of several examples of our major competitor in hardware purchasing land or opening big box stores on sites that have significant impact on competition and choice for local shoppers. For example:

Loganholme, Queensland

Loganholme Mitre 10 had served its loyal customers since 1984. In 2012 the owner of Mitre 10 Loganholme moved the store to the Hyperdome Home Centre as a 1,400sqm shop. The Hyperdome Home Centre is the premier shopping centre in Loganholme Area and one of the main shopping centres in the Logan Area.

In 2017, Bunnings opened a shop double the size (3,000 sqm) in the same Hyperdome precinct. In 2019 the Mitre 10 owner commenced negotiations with the owners of the Hyperdome, QIC Investments, to reduce rent, because turnover had fallen by 30% since the opening of the Bunnings across the carpark. The Mitre 10 was advised by the leasing agents for QIC, that Bunnings was in negotiations to lease a site for a 12,000sqm store at the southern end of the Hyperdome – nearly nine times the size of the Mitre 10 store.

The threat of Bunnings enlarging its already much larger store, forced the owners of the Mitre 10 to make the difficult decision to close in 2021. The ACCC should have intervened on the basis that the acquisition or proposed acquisition of a new lease led to Bunnings having complete dominance in DIY hardware in the Loganholme area, and for the local community to lose its only other alternative.

Bunnings already had three other stores in the immediate area surrounding Loganholme;

1. Bunnings Underwood, Compton Road &, Ewing Rd, Underwood, 10,000 sqm.
2. Bunnings Bethania, 9 Glasson Dr, Bethania, 13,000 sqm.
3. Bunnings Browns Plains, Cnr. Browns Plains Road &, Commerce Dr, Browns Plains, 12,000sqm.

Jimboomba, Queensland

In 2019, Bunnings purchased land next to the Jimboomba Mitre 10, announcing plans to build a large format store on the site. Bunnings in Jimboomba has already ~70% of the DIY hardware market because Jimboomba is serviced by three Bunnings stores at Springfield Lakes, Browns Plains and Bethania. These are all big box stores which the residents of Jimboomba pass as they drive to Brisbane to work. The only competition to Bunnings in Jimboomba is the Mitre 10, which will close if Bunnings opens another big box store in that town.

The Queensland State Planning system does not allow authorities to consider the impact on competition flowing from a development approval which, as in this case, will lead to the complete dominance of the DIY hardware market by one company.

This Committee should recommend the ACCC investigate the competitive impact of the land purchase and associated development plans as it eliminates consumer choice in the area.