

SHOPPING CENTRE COUNCIL OF AUSTRALIA



FAXED
14/7/08

14 July 2008

Mr Gavin Jones
Director
Grocery Inquiry
Australian Competition and Consumer Commission
GPO Box 520
Melbourne VIC 3000

Dear Mr Jones,

UK Competition Commission Recommendations

The Shopping Centre Council of Australia has noted that recommendations made by the United Kingdom Competition Commission in relation to the grocery industry in the UK have been raised during public hearings of the ACCC's Grocery Inquiry. In particular, witnesses have been questioned on the relevance of these recommendations for Australia, particularly those relating to shopping centre leases and planning laws. The Shopping Centre Council has not had an opportunity to consider the recommendation concerning the introduction of a competition test to the planning system and the referral of development applications for a competition assessment in detail. We would, however, like to make the following comments for consideration by the ACCC as it frames its own recommendations.

The UK Competition Commission has recommended that all planning applications for large grocery retailers (over 1,000 square metres) should have to be referred to the Office of Fair Trading for advice as to whether a particular retailer has passed or failed a 'competition test'. (Applications would pass the test if within the area bounded by a 10-minute drive-time of the development site the grocery retailer that would operate the new store was a new entrant to that area; or the total number of competing stores in that area was four or more; or the total number of competing stores in that area was three or fewer and the relevant grocery retailer would operate less than 60 per cent of groceries sales in the area, including the new store.)

While SCCA has no objection in principle to such competition assessments we do have reservations about whether such referrals or tests would be workable in the Australian context and we note that their workability in the United Kingdom has not yet been established either. (Our understanding is this still remains a recommendation only in the UK.)

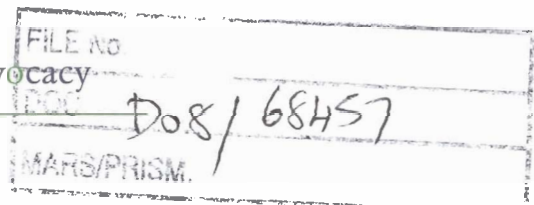
Our main concern, however, is that a proposal such as this would add further complexity, cost and delay to state and local planning systems that are already imposing significant costs and delays on Australian businesses. Reform of development assessment has been identified by COAG as one of its top 27 regulatory reform priorities. In this context, adding a further layer to already overloaded systems is unlikely to pass a cost/benefit analysis. At a practical level, we also question whether the ACCC would have the capacity or resources to assess every supermarket development proposal, and every supermarket lease, that is submitted or signed across the country every week.

Leaders in Shopping Centre Advocacy

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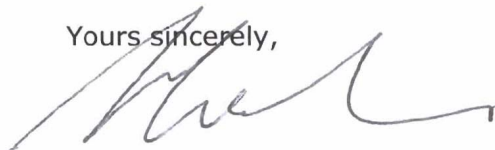
It must also be recognised that the retail environment in the United Kingdom is vastly different to that in Australia. There is a much larger consumer market and consequently much more diversity in retail in the UK. Shopping centres in the UK also have a much greater choice of supermarkets and other anchor tenants, compared to Australia. In addition the shopping centre industry is still in its infancy in the UK with high street retail still the predominant retail format.

This proposal would also have the potential to significantly affect the economics of shopping centre developments and redevelopments in Australia. If a particular supermarket brand is rejected as an anchor tenant on competition grounds, there is every likelihood in the limited Australian market that there would be no other suitable supermarket anchor tenant available and the shopping centre development or redevelopment would simply not proceed. This of course would be to the detriment of consumers.

If there was an alternative brand available then this brand would obviously be able to drive a much harder bargain on rent and other lease conditions, knowing that they have been given a virtual monopsony (i.e. would be a single buyer) by the ACCC. A reduced rental from a supermarket tenant would mean the rents required from speciality retailers would have to be higher in order to make the development/redevelopment viable. The ACCC is aware that the respective rents paid by large anchor tenants (when converted to a dollar per square metre basis) compared to the rents paid by speciality retailers (again, on a dollar per square metre basis) is already a matter of controversy. Although this is an illogical debate – for reasons which the ACCC knows well – it has already been used, for example, by policy-makers in NSW as justification for proposing additional retail tenancy regulation.

In summary, these proposals, if implemented, may well lead to less retail space being created in Australia than is currently the case and therefore lead to less choice rather than more choice for consumers. For these reasons we would respectfully urge the ACCC to consider these implications carefully before making any recommendations and to specifically adapt its recommendations to the Australian market.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Milton Cockburn', written over a light blue horizontal line.

Milton Cockburn
Executive Director