



Council of Small Business of Australia
National Small Business Summit
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1. Introduction

Good afternoon.

Today I want to use this to report to the SME community on the ACCC's activities and experience over the last year, and to raise some key issues for the year ahead. So, a talk in two parts: the year in review and in preview.

The last few years have seen a substantial number of changes in the nation's competition & consumer (fair trading) laws - the most notable of which has been the Australian Consumer Law. It's also been a period in which there have been major reviews of franchising. On top of this, the ACCC continues to work in a number of other areas that directly impact on SMEs.

But before we go through specifics, it helps to recap on where the ACCC is 'coming from' in general: what Parliament expects us to do for the community.

Our aim is to bring greater competitiveness and fair trading to the economy, as these benefit consumers, business and the wider community.

There's no doubt that, on balance, open and competitive markets help the small business sector. They give new entrepreneurs the chance to launch businesses, and help grow the total number of firms.

But we also know that a small business is not a corporation. It has different needs and capacities, and these have to be taken into account.

So while (to quote our 2010-11 Corporate Plan), 'We apply the law without fear or favour, to achieve wide reaching compliance... [We also] provide information and education to businesses and consumers about the laws we administer' – and that's one of the reasons I enthusiastically accepted the invitation to chat with you today.

No business should be subject to anti-competitive practices and other unfair trading – and when this occurs, it is often the case that small businesses are the victims. And no businesses should engage in them. So, for example, in enforcing the law, we tackle issues both big and small.

On the other hand, the ACCC doesn't treat SMEs the same as larger businesses in several important respects - we do take into account differences in such things as compliance resources and bargaining power. For example, this ranges from producing readily available guidance material aimed at SMEs, to taking strong account of SME needs in our enforcement work – and I note that one of the main strategies which the ACCC has again committed in its corporate plan is to:

Ensure that trading conditions between big and small firms are fair.

Overall, you could say that the Competition and Consumer Act and the ACCC together are a sword and a shield with regard to SMEs – we can and do intervene in markets where SMEs operate, to tackle breaches of the law *by any business*, be it, large, medium, small, square, round or pear-shaped. We are interested in free markets that are also fair markets.

Now, let's move on to hits and memories from the past year. We don't have time to cover the field so I'll just zip through a handful of indicative figures and cases.

2.1. The Big Picture: Some Overall Statistics

Firstly, you might be interested in some raw data on our dealings with small businesses, who are major clients for our Infocentre service.

Over the last year, the ACCC has received some 124,000 enquiries through our Infocentre. Of these, about 10,600 were queries relating to small firms:

- 5,048 were queries and complaints ***from*** small businesses
- 5,550 were queries or complaints ***about*** small business

While these figures seem large, they have to be considered in the context of the total business population in Australia. With some 2 million SMEs trading today, these figures indicate only very small proportions.

2.2 Outreach

The ACCC has a team of Education & Engagement Managers based in every state and territory. During the last year, they attended over 220 meetings and delivered nearly 160 presentations.

2.3 Court Actions

A key part of the ACCC's work is upholding the law, and prosecuting breaches of it. In the last year we have achieved some major outcomes for small business. About 10 per cent of the cases we litigated involved SB, and we achieved outcomes both big and small: these ranged from the nation's

biggest phone company paying an \$18.5 million penalty for impeding smaller competitors.

In another example, as a result of ACCC action, the Federal Court of Australia ordered that Cabcharge Australia pay \$15 million in penalties and costs for misuse of market power - the highest Australian penalty to date for this prohibition.

The court declared that Cabcharge had refused to deal with a smaller business that wanted to supply alternative payment-processing services for taxis; and had supplied taxi meters below cost for an anti-competitive purpose. As we said after the judgment, the ACCC took the view that Cabcharge had overstepped the line when it took advantage of its substantial market power to seek to lock out and/or kill off smaller rivals.

We now also have the power to issue what we call infringement notices; and, as I touched on just then, one of the first notices we issued was to a roller-door company that we were concerned had falsely represented it was a Master Builders Association and Housing Industry Association member. As you would know, industry-association membership can be a factor influencing consumer and business decisions; organisations are entitled to ensure that only genuine members are able to associate themselves with their brand.

2.4 Australian Consumer Law

On what you could call the fair-trading front, the big news over the past year has, of course, been the phased introduction and bedding down of the ACL. ACL stands for Australian *Consumer* Law but, by creating a single national framework, it simplifies the laws facing *businesses* as well, giving them the opportunity to cut their compliance burden.

The key changes that affect small businesses include:

- a simplification of the old “consumer warranties” system into one easily-understood “consumer guarantees” regime
- unified national laws that apply in all states and territories

2.5 Scams

In the last financial year, the biggest single issue about which small businesses complained was scams, particularly ‘false-billing scams’: where a business is targeted to pay for directory entries, advertising, supplies or domain-name renewals it doesn’t really want or need, let alone asked for.

The total loss reported to the ACCC in the 2010 calendar year for false billing was just under a million dollars but, unfortunately, this is likely to be the tip of a nasty under-reported iceberg.

Although this wasn’t the criteria, we did take court action against the three businesses triggering 10 or more scam complaints from small businesses in 2009-10; and we have already had a successful resolution in one case, Yellow Page Marketing – a prime example of bringing the new ACL powers to bear.

The ACCC moved quickly to stop the circulation of a fake ‘Yellow Pages’ scam that had duped many SMEs. We took successful court action against two overseas entities and, under the new regime, obtained orders for them to pay \$2.7 million. Just as importantly, we obtained a ruling that all contracts were void, under the new power to apply for orders to give redress to people not named in proceedings.

It’s very timely to be talking to people in the SME sector about scams and alleged scams. Our complaints data confirm that around the end of the financial year is a common time for scammers to target businesses.

The number one thing the ACCC can do is to disrupt the scams by raising awareness. So, if, for example, you are from an industry association, I would encourage you to get from our website the media release we put out on this topic on 30 June, get some further tips from our scamwatch website and get warnings out to members.

I'll also put in a plug for the joint ACCC-COSBOA Small Business and Scams education forum we're running in Canberra on 12 September.

2.6 Collective bargaining

I'm keen to note our collective bargaining work briefly. As you would know, the Competition and Consumer Act provides mechanisms for businesses that might otherwise be competitors to work together to deal with their suppliers or customers.

Key benefits from collective bargaining include improving access to information and resources and, most importantly, improving input into contract talks, by providing an effective mechanism for productive discussions.

For many years the ACCC has provided streamlined processes for small business collective bargaining, including a simple 'notification' process, and in 2011 we've already authorised five arrangements. Generally, the ACCC allows arrangements for small businesses to deal with a larger business to proceed.

The ACCC has recently given the tick for collective bargaining by groups ranging from drivers carting concrete to chicken growers

3. Looking Ahead

To talk very briefly about the year ahead, it's almost a matter of 'well where do I start?' But unfortunately I have to, very rapidly, bring this chat to an end.

3.1 ACL

There will still be a number of changes to come as the impact of the Australian Consumer Law works its way through our regulations and laws.

New rules on unsolicited selling are coming in. And there will be new requirements for disclosure on goods.

We definitely plan to be out and about on the topic of the new consumer guarantees. The guarantees do not significantly change consumers' effective rights when buying goods or services but clarify them for businesses and consumers alike, compared with the previous differing national and state and territory regimes

I won't try to detail the law here and now. To help businesses and consumers alike, the ACCC has produced a poster and sign about the new laws that businesses can display. It is short and to the point. The ACCC has also produced training videos, available free as downloads from our website.

Many of you would know that aspects of the ACL are still being phased in over this financial year and there's one that came into force at the start of this month that I want to note, relating to consumer guarantees.

When consumers take goods such as mobile phones, computers and portable music players for repairs, they may not always click that stored data could be lost in the repair process.

Similarly, they might be surprised to know that a business might use refurbished parts to fix a product or supply refurbished goods as an alternative to repair.

From 1 July, before accepting goods for repair, a business must give a consumer a notice about these issues, where applicable.

3.2 Carbon pricing

You might be aware that the ACCC is receiving extra funding to deal with any false claims relating to the carbon price. The message from the ACCC to businesses is simple: don't mislead your customers about price increases or *you* will pay the price. As the national consumer protection regulator, the ACCC is well placed and will be well resourced to take swift enforcement action regarding false or misleading claims about the impact of the carbon price.

As I explained, the ACCC has a range of tools and remedies under the Australian Consumer Law. Importantly, we can require businesses to substantiate the claims they make about the impact of the carbon price on their goods and services.

The ACCC recognises the vast majority of businesses are compliant with the law and we will be working with industries right across the economy to provide guidance on this issue.

3.3 Franchising

On another topic, it wouldn't be right for an ACCC deputy chairman to talk to a small business summit and not touch on one of the more important issues for the ACCC and SMEs – franchising. Franchising queries made it to number

two on our list of top Infocentre contacts from small business last financial year, behind scams.

The key point I want to note today is the ACCC's new audit power. It allows the ACCC to carry out random audits for compliance with mandatory industry codes, such as the Franchising Code.

The ACCC can compel a business to...

...provide information or produce documents or records

...that the business is required to keep, generate or publish under the Code.

Documents that come to mind include pre-entry disclosure documents, franchise agreements and termination notices.

Parties must provide information to the ACCC within 21 days; and there are penalties for providing false or misleading information or documents.

We will be undertaking audits across the franchising sector, in an effort to ensure that franchise systems are compliant with the law, and that franchisees are receiving the information they should be getting.

The points to make to franchisors are, perhaps self-evidently,...

- do the right thing and stick to the Franchising Code in letter and, particularly, in spirit; then, *on top of that*
- keep paperwork evidencing compliance in good order.

3.4 Small Business Commissioners

The ACCC looks forward to continuing to work productively with bodies in this space such as the Victorian Small Business Commissioner, for the benefit of fair-trading businesses and consumers. We look forward to striking up productive ties with new entities in this space. Just this month New South Wales appointed its first Small Business Commissioner, former ACCC Associate Commissioner Yasmin King, whilst Qld is currently advertising for a Business Commissioner and the WA Parliament has passed legislation to create its own Small Business Commissioner.

You would be aware that the Commonwealth Department of Innovation has released an options paper on small business disputes. Our submission is that a new office of National Small Business Commissioner be established, complementing but not duplicating existing dispute resolution mechanisms and bodies working in the small business area.

Many small business complaints to the ACCC about their dealings with larger businesses, such as landlords or suppliers, are really about contractual or commercial disputes, rather than the forms of anti-competitive, unconscionable or misleading conduct the ACCC can address under the law.

We recommend that the new office have capacity to deliver a formal mediation function, together with what we call an 'honest-broker' informal dispute resolution function, to allow for effective and efficient dispute resolution.

4. Final Points

Some final but important further points.

In the year to come, the ACCC remains keen to continue working with SMEs and their representatives, through a range of channels including our longstanding Small Business Consultative Committee and Franchising Consultative Committees.

At the end of the year we will also be calling for expressions of interests for membership over the 2012-2013 period.

We will continue to emphasise that the Competition and Consumer Act gives businesses not just responsibilities but rights as well.

And we will help enforce them.

Last point. Graeme Samuel hangs up his ACCC Chairman boots this weekend and Rod Sims puts the mouthguard in on Monday. There is great continuity at the top of the Commission, with six Commissioners continuing on, but upon any change at the very top there is always likely to be some refreshing and refocusing of relationships – including relationships with the SME sector.

Just to recap:

- the ACCC stands ready to tackle anti-competitive conduct and unfair trading occasioning significant detriment - whenever, wherever. SMEs are neither a protected species nor an unprotected species.
- A big feature of the year just gone in this space has been the introduction of the ACL and the quick start the ACCC was determined

to make with these laws – and the record is in: all new powers used, nearly \$9 million in penalties to date

- A big feature of the year to come will be continuing co-operation and education in the SME sector, on things like the new consumer guarantees regime.

I hope you enjoy the rest of the conference.

(ends)