

25 March 2020

Mr Rod Sims
Chairman
Australian Competition and Consumer Commission
Level 17,
2 Lonsdale Street,
Melbourne VIC 3000



Dear Rod,

Concerns surrounding adverse competition impact of COVID-19 measures

I refer to our conversation of earlier today relating to a series of emerging concerns within the small business community about some of the market measures being put in place as part of the Australia's response to the COVID-19 health pandemic.

Let me say at the outset that the Council of Small Business Organisations of Australia (COSBOA) recognises the gravity of the community health situation that Australia is facing. We recognise that all Australian Governments are rightly pursuing unprecedented measures to respond quickly to the rapidly evolving nature of this national health crisis.

That said, we are concerned that some of these responses are poorly considered and run significant risk of damaging market competition in both the near term and longer term. This risk is particularly acute within the Australian Fast Moving Consumer Goods (FMCG) market, which is currently dominated by Coles and Woolworths.

Our specific concerns are two-fold. The first relates to the ACCC's announcement today that it has granted authority for the two major supermarkets to coordinate their activities in respect of supply of grocery lines - with the overall objective of ensuring that Australia's consumers continue to enjoy good access to grocery product in the face of increased consumer demand.

We have received several reports suggesting that the two supermarkets may be using their substantial market power, coupled with these new arrangements, to put additional pressure on suppliers for grocery products within the FMCG sector. These reports include:

- A distributor business being told by a significant confectionary supplier that it should submit its last orders as, due to a 40% increase in demand from the supermarkets, the supplier was unlikely to be able to provide products for sale in convenience stores until further notice.
- A significant Australian family business in the food manufacturing industry that has been told that the supermarkets have recently ‘bought total farm lots’, resulting in the business not being able to source potatoes for its’ manufacturing operations. The business has been advised that the situation is likely to continue for the foreseeable future
- A family-owned service station business in Sydney being told by its’ fresh juice supplier that it would not be able to supply product until further notice, given increased demand from the two supermarkets.

These reports come on the back of recent and growing concern being voiced by many small format retailers (e.g. convenience stores, mixed businesses, newsagents, butchers) about extreme difficulties being encountered in sourcing core products over recent weeks – apparently due to a surge in demand being experienced by the two major supermarkets.

While COSBOA is not alleging that this action is coordinated, the net affect of the actions of a variety of suppliers suggest that they are unwittingly participating in a collective boycott that is starving smaller FMCG market participants of grocery product. If the current situation is allowed to continue, there is a significant risk that significant numbers of the smaller market participants will be forced to close, further concentrating market power in favour of the two supermarkets.

Of particular interest to COSBOA, is whether the current supplies being sold into the two supermarket chains are being immediately on-sold to consumers or being stockpiled for sale at some time in the future (i.e. particularly non-perishable items and products with medium term shelf life). Such action, should it be occurring, would appear to be a contravention of Section 46 of the Australian Competition Consumer Act (2010) as it would undoubtedly have the effect of *substantially lessening market competition*.

The second concern relates to the apparent arbitrary decisions being made by State and Territory Governments about the forced shutdown of small businesses in response to COVID-19. There is a significant risk that these shutdowns could result in small format retailers being required to close, while their large format ‘supermarket’ competitors are allowed to continue to trade.

Given that the forecast COVID-19 economic downturn is expected to last up to 6 months, any business that is forced to close its doors as part of the progressive national lockdown is likely to be closed for a significant period. Such an occurrence runs the risk of severely damaging market competition, as a result of embedding new consumer behaviours that deliver benefit to the two supermarkets. Examples of the types of businesses that would potentially be impacted by such actions, include independent supermarkets, mixed businesses, stand-alone bottle shops, convenience stores, newsagents, butchers, and green grocers.

The above concerns are material to the interests of COSBOA's members and Australian small business in general. I am therefore writing to seek your earliest possible advice in respect of both matters.

Should you require any additional information in the meantime, please contact me on [REDACTED] or our CEO, Peter Strong, on [REDACTED].

Yours sincerely,

A large rectangular grey box redacting the signature of the sender.

Board Chair
Council of Small Business Organisations of Australia