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Submission to the Senate Economics Legislation Committee Inquiry into the Small Business Commissioner Bill 2013

BACKGROUND

Who is SPAR?

SPAR is a broad based wholesaler and the only competitor to Metcash in the supply of packaged grocery products to the independent supermarket sector. As such SPAR seeks to provide a competitive force to Metcash in the market for packaged grocery products but is facing increasing anti-competitive behaviour that if successful and unchecked, will even further limit choice for the independent supermarket retail sector which will ultimately be to the detriment of consumers, particularly in rural and regional Australia.

It is because of this that SPAR believes that legislative proposals such as the Small Business Commissioner Bill will go some way to assisting small business in having an advocate that will act on its behalf. The Bill is a good start but needs improvement.

Currently SPAR supply around 400 independent retailers, predominately located in Queensland, New South Wales and the ACT and mostly in rural and regional centres.

What is the SPAR Guild, and who does it represent?

SPAR Guild Members are retailers who have a contract, agreement or licence to trade under a SPAR Australia Limited retail brand **("Members")**.

The SPAR Guild is controlled by the SPAR Guild National Council **("the Guild Council")**. The Guild Council is comprised of ten persons, five of whom are Members elected annually and voted for by the Members and five employees of the Company appointed by the Managing Director.

The purpose of the Guild Council is to advance the interest and efficiency of Members "independent retailers "by:

- Sharing information between SPAR Guild Members "retailers" and the Company;
- Providing advice to SPAR Australia Limited on how to increase efficiency in dealings between the Members and the Company; and
- Enacting initiatives to grow and develop the brands and drive retail profitability of Members.

The decisions of the Guild Council affect all SPAR Australia supplied stores; this includes around 160 Branded (Franchised) stores, and another 240 independent stores.

What is a typical SPAR Franchise?

A classic small business to which the proposed Bill would apply and hopefully from which they would benefit given most SPAR Franchises would employ less than 20 staff.

The key distinguishing attributes of a SPAR Franchise are:

- Most SPAR store owners are single store operators.
- Most are NSW and Queensland country/rural based.
- In some cases these stores would be the only supermarket in the town.
- In some cases these stores are the largest business and employer in the town.

The Role of the Small Business Independent Supermarket Retailer and the issues they face:

The Market in which they operate

The market in packaged goods is dominated by Coles and Woolworths with an approx 77% market share, with Metcash and the independents accounting for about 18%.

The remainder is made up of the international players ALDI and Costco which are growing strongly but are not widely represented. Both are new entrants and both have zero presence in rural and regional Australia and are unlikely to do so, as their business models only support serving large population centres in order to drive profit through large volume through put. As such rural and regional Australians will continue to see less competition even with the entry of new players such as ALDI and Costco.

This sees Metcash with a 98% market share and SPAR the other 2% in the market to supply to independent retail supermarket sector – small businesses. Even with just 2% market share it is becoming clear to SPAR that Metcash will do whatever it can to stifle SPAR's growth. Hence our interest in this Bill is that SPAR sees it as a positive but incremental step in the right direction of potentially being able to provide some assistance to the SPAR family of franchised small businesses.

Key Issues faced by the Small Business Supermarket Retailer

Small business as a whole is one of the biggest employers and wealth creators in Australia. However, in the retail sector they are becoming increasingly extinct, with anti-competitive behaviour being a key driver of their extinction.

Continued consolidation has seen the major rationalisation of the industry.

The remaining small businesses provide a valuable service, employ thousands of people in the towns and rural areas in which they operate, but face continual threats

to their very survival with Government and regulators seemingly unable or unwilling to prevent the march of increasing market concentration to the detriment of rural and regional Australia in particular.

Current legislation on zoning and planning also means there is a restricting on supermarket site availability or the potential to enter big box retailing centres.

The 2008 ACCC Grocery Inquiry

In the context of the Small Business Commissioner Bill it is worth revisiting some findings from the 2008 ACCC Grocery Report Inquiry as it helps to highlight that nothing has really changed since this report came down nearly 5 years ago. Hence small business needs as much assistance as it can get and SPAR sees this Bill as a move in the right direction.

The report found in regards to Metcash in particular that:

- Independent supermarkets provide a competitive force in grocery retailing often providing consumers with a more convenient alternative to the major supermarket chains (MSCs)

- There are a reasonable number of independent supermarkets that have the size and location that should give them the ability to compete strongly with Coles and Woolworths on price. Indeed, some independent supermarkets do compete on price. **However, the ACCC considers that the prices Metcash sets for its wholesale packaged groceries are a significant factor holding back many independent retailers from more aggressive price competition.** (SPAR emphasis)

- Large independents which do opt to compete on price with the MSCs are often only able to do so by **earning little net margin on goods supplied by Metcash.**

- The inability of independent retailers to source grocery products from Metcash at competitive prices makes it difficult for large independent retailers to compete aggressively on price.

- **Metcash is able to achieve healthy margins primarily because it is the only national wholesaler to independent retailers**. There is some evidence that Metcash is acting to protect this position by locking in retailers and suppliers. However, it is clear that Metcash has expanded its profit margins and now achieves in excess of those achieved by the MSCs.

- **The ACCC considers that Metcash is extracting some 'monopoly' profits because of the lack of alternative wholesaling arrangements available to most independent retailers. The size of these 'monopoly' profits is likely to be a small percentage of retail prices. However, given that grocery retailing is a high turnover business with low EBIT margins, this is significant.** Moreover, there is some evidence that Metcash is acting to protect its business as the only national grocery wholesaler supplying independent retailers. Metcash is implementing strategies that appear to unnecessarily impede independent retailers from dealing directly with suppliers or leaving Metcash to set up their own wholesaling operations.

The Small Business Commissioner Bill 2013

The SPAR Guild Supports the Small Business Commissioner Bill 2013, as a move in the right direction. Hopefully the Bill will provide the Parliament with an opportunity to address some of the issues identified in the 2008 ACCC report by giving Small Business an advocate that at a minimum can highlight in the public arena some of the practices identified in the Report by the likes of Metcash and possibly allow for the Commissioner in highlighting such practices, to work with the ACCC to bring about more vigorous law enforcement or recommendations to make changes to the law, in this case the Trade Practices Act.

To this end the SPAR Guild makes the following observations:

- Section 8 of the Bill seeks to provide the Commissioner to undertake any action that is appropriate for the purpose of facilitating the fair treatment of small businesses in their commercial arrangements with other businesses.

- Section 9 gives the Commissioner a monitoring and reporting role. This gives the Commissioner the power to monitor and investigate market practices that may adversely impact on small business and report their findings to the Minister for Small Business.

- Section 11 allows the Commissioner to share information with the ACCC and ASIC.

- Subsection 13(1) provides the Commissioner with information gathering powers and Subsection 13(3) to (5) provides for the compelling of witnesses to answer questions under oath.

These provisions are all welcome improvements but in the SPAR Guild's view they need to go further.

Suggested improvements to the Bill

In regards to section 8, the SPAR Guild recognises that the ACCC has responsibility for the Trade Practices Act (TPA) but this Bill can be improved to provide a greater role for the Commissioner in regards to assisting Small Business through greater coordination with the ACCC.

The SPAR Guild would recommend that the Small Business Commissioner (SBC) have the power to refer to the ACCC an issue for inquiry that the ACCC must inquire into and report on, particularly where the SBC has identified for example market abuse or anti-competitive behaviour in regards to a commercial arrangement of a small business in its dealings with a larger business that can bring undue influence to the arrangement by virtue of its size and market power.

From the SPAR Guild's experience and observations, it is clear that market abuses are happening and that the ACCC has been slow to act, if act at all. A referral from the SBC would force the ACCC to investigate and either initiate action and/or be required to report to the parliament why a SBC referral has not been acted upon.

Give small business a specific entry point to have confidence that potential action may flow from the discovery of market abuse anti-competitive behaviour. At the moment small business has little expectation that their complaints will be given the attention they deserve. The SBC could change this.

That the SBC be given the power to make a prima-facie declaration for example that market abuse/anti-competitive behaviour has occurred, that the ACCC needs to conduct an investigation and that such a declaration be tabled in the Parliament within 30 days of the declaration being made.

While an annual report is to be made available to the Small Business annually maybe the SBC should report directly to the Parliament and be made a statutory officer of the Parliament. This would add weight and gravitas to the Office of the Small Business Commissioner and demonstrate the seriousness with which the Parliament sees small business and the role it plays in the community and economy at large.

In regards to section 11 and the sharing of information with the ACCC and ASIC, maybe it could encompass a provision to name and shame companies involved in unsavoury market practices. This could be combined into a redrafted section 8.

No specific comment is made on subsection 13 as this strikes the SPAR Guild as a common sense provision required for the SBC to achieve any of its stated objectives contained within the Bill.

Summary/Conclusion

SPAR Australia, together with the SPAR Guild Council Members, believes that the Small Business Commissioner Bill 2013, with suggested improvements would provide a legislative move in the right direction to assist small businesses.

Given the dominance of the Major Supermarket chains, and the monopoly in the independent wholesale supply of packaged groceries, the Small Business Commissioner Bill 2013, could assist in any misuse/abuse of market power. These market powers are currently placing a strain on the independent supermarket retail sector, and ultimately the Australian consumer.

Lou Jardin
Chair
SPAR Guild