



Australian Government

**Australian
Small Business
Commissioner**

11 February 2016

Attn: Scott Rogers
Manager
Competition Policy Unit
Commonwealth Treasury

Dear Mr Rogers

Re: Options to strengthen misuse of market power law

Thank you for the opportunity to comment in response to the Treasury's discussion paper *Options to strengthen misuse of market power law*, December 2015 (Discussion Paper).

I commend the work of the Harper Review in consulting widely with business and providing its comprehensive report to Government. I agree broadly with the Harper Review's recommendation relating to misuse of market power. In particular I would like to take this opportunity to support the move to an 'effects' test.

The Harper Review found that the current laws permit conduct that undermines the competitive process. This is a very important finding for small business. Focussing on the effect of conduct, and not only the purpose of conduct, will provide better protection for all participants since it ensures that the real world impact of firm conduct can be taken into account.

The law of misuse of market power should be viewed in the context of other recommendations of the Harper Review, the broader competition and fair trading law, and most importantly the general environment for business including access to alternative dispute resolution. I encourage the Government to give ongoing consideration to how small businesses can best be supported to compete on their merits to the benefit of the broader business and economic environment.

I would be pleased to discuss this matter further if that would be of assistance.

Yours sincerely

Mark Brennan
Australian Small Business Commissioner
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