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To whom it may concern

Thank you for the opportunity to provide a submission to the *Revitalising National Competition Policy (NCP)* consultation paper. The NSW Small Business Commissioner (the Commission) is an independent statutory office of the NSW Government. It provides strategic advice, advocacy and affordable dispute resolution services across NSW.

The Commission supports the review of NCP as an opportunity to ensure relevant legislation, regulatory frameworks and market structures remain appropriate and promote competitive markets. Small businesses often experience barriers to entry or business growth, which can lead to less competitive markets and poorer outcomes for consumers. The Commission encourages consideration of how these barriers, including those associated with increasingly complex government regulation and requirements, might be addressed as part of a revitalised competition policy agenda.

A level playing field for small businesses

Small businesses are often owner-operated, with responsibility for a wide range of tasks, including bookkeeping, legal and regulatory compliance and business operations. Small businesses often face significant disadvantages compared to larger businesses due to their limited resources. While there are some efficiency dividends associated with scale, smaller businesses play a vital role and serve segments of markets where diseconomies of scale may be present. For example, many small businesses play a vital role in delivering services to regional communities and customers with unique needs, such as vulnerable, linguistically and culturally diverse communities.

Small businesses are also an important source of innovation and emergent order within the economy. By allowing numerous small players to experiment, succeed, or fail, they foster a dynamic environment where new ideas and practices can take shape organically. These innovations often occur through the trial and error of small firms, driving competition and shaping market structures in ways that are unpredictable but ultimately beneficial for consumers and the economy at large. This emergent process, guided by the collective actions of many independent actors, underpins the adaptability and resilience of competitive markets.

For these reasons, it is vital to create an environment where small firms can succeed. While economic fundamentals may naturally favour efficiencies associated with scale, smaller firms should be able to compete based on their own merits and not be placed at a disadvantage because larger firms are more adept at navigating complex regulatory requirements (or other forms of regulatory arbitrage). It is important to ensure that the regulatory environment does not disproportionately disadvantage small businesses, allowing them to compete and contribute to the economy on a level playing field.

Increasing burden of regulation

As noted in the consultation paper, poorly designed regulations and unnecessary compliance activities can create barriers to market entry and exit, hindering competition and forcing businesses to allocate more resources to navigate complex rules. Certain sectors, especially those with high fixed costs, significant network effects, and first-mover advantages, are particularly susceptible to anti-competitive practices by dominant firms. In these cases, effective competition laws and policies are essential for maintaining a fair market. Governments can promote competition by creating favourable conditions for new businesses and innovations while ensuring regulations do not unnecessarily increase operational costs or stifle growth.

The Commission regularly tracks small business attitudes towards a range of common business challenges including business costs, ability to find suitably qualified staff and supply chain issues. Over the past two years, there has been a significant increase in the number of small businesses reporting regulatory compliance as a top concern for their business (see Chart 1). Similarly, in a recent survey of over 1,000 small businesses a majority of respondents indicated compliance had become harder over the past 12 months while only 2 per cent indicated it had become easier to comply (see Chart 2).

Chart 1: Small business concerns - ppt change July 2022 to August 2024

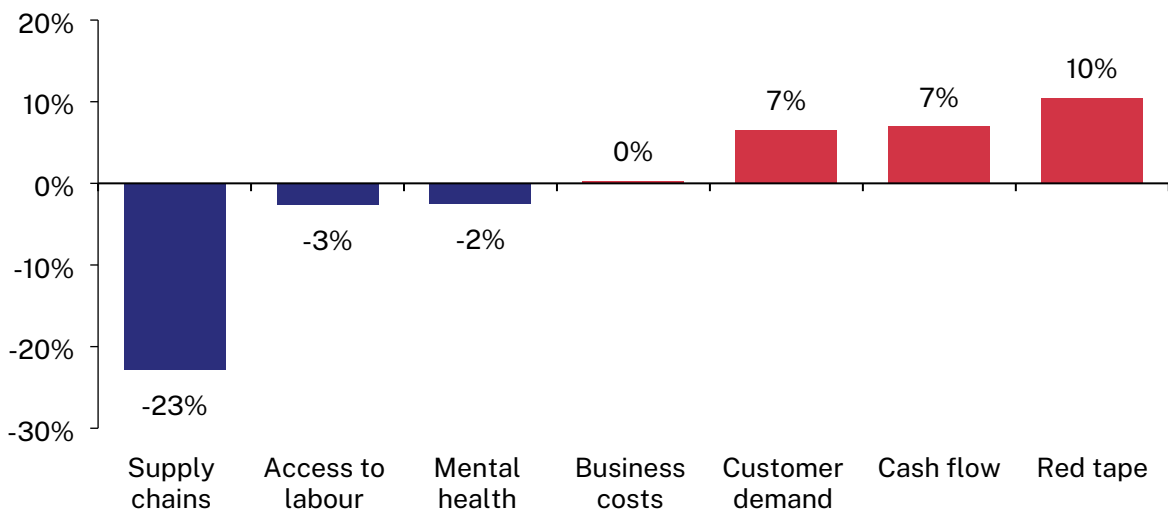
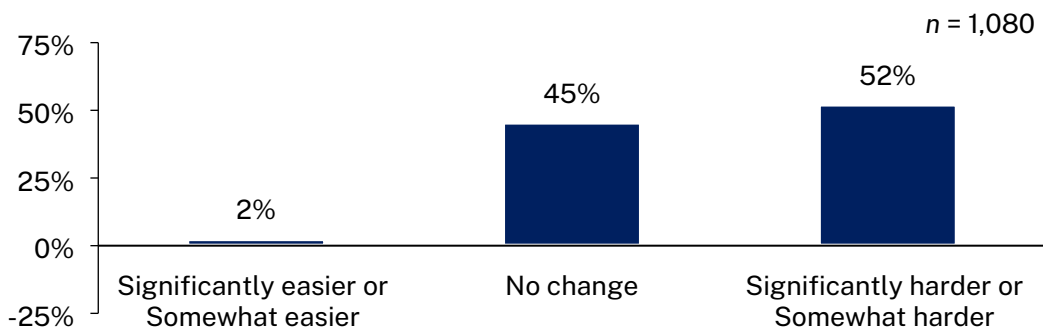


Chart 2: Extent to which compliance has become easier or harder in the past 12 months



Reducing regulatory barriers

The Commission has previously advocated for a more dedicated focus on the impact of proposed regulatory requirements on smaller firms. This includes more comprehensive impact assessment through adoption of a Small Business Impact Statement (SBIS). As part of an SBIS, policymakers would be required to specifically consider how new regulatory proposals affect smaller firms. While impacts on business are required to be considered through existing regulatory impact assessments, they do not necessarily consider whether smaller firms have unique needs or whether the benefits of extending new requirements to smaller firms exceed any associated costs.

The adoption of the SBIS approach would be consistent with best practice approaches adopted in other jurisdictions including the OECD's SME test, the EU's 'Think small first' policy, the UK's Small and Micro Business Assessment and Canada's 'Small business lens'.

The SBIS would support more competitive markets by enabling small businesses to contribute to the economy unhindered by poorly designed regulation which does not meet their needs.

Digital platforms

Small businesses are increasingly reliant on digital platforms to buy, sell, advertise, and engage with their customers. Many of these businesses depend on these platforms to access their markets, exposing them to significant risks. In some cases, their risk profile is comparable to that of a retail tenant operating from a physical 'bricks and mortar' shop. However, they lack the rights afforded under retail leases, let alone the protections provided by retail leasing legislation. These challenges are particularly prevalent where there is a dominant platform, often headquartered offshore, or where power imbalances mean small businesses are unable to negotiate more favourable terms. Examples frequently raised with the Commission include major travel services platforms which are perceived as holding a particularly powerful position within the accommodation sector.

The Commission's June 2024 Small Business Survey found that one in four respondents were conducting operations or selling products or services on a digital platform or online marketplace. Of those respondents, one in two (54 per cent) indicated that being suspended or banned from a digital platform or online marketplace would have a severe or major impact on their business, resulting in catastrophic or significant loss of revenue and profits.

We note the consultation paper acknowledges the globalisation of the economy since the National Competition Principles were agreed, with digital platforms and data ownership emerging as crucial sources of market power. Further, that digital markets often depend on large and extensive networks that favour larger businesses, leading to a concentration of market power that restricts competition and negatively impacts consumers and small businesses.

Small business participation is essential to ensuring a competitive marketplace and digital platforms are becoming increasingly essential to maintaining a viable business model. Other forms of marketplace infrastructure, such as retail leasing, are regulated to promote good business practices and eliminate predatory or harmful conduct yet there are no equivalent frameworks applying in this emerging area. Improvements in dispute resolution and customer support are areas previously identified by the Commission as many small businesses contact the Commission indicating they have been unable to contact digital platform providers to resolve matters which in some cases can have a catastrophic impact on their business.

Thank you for the opportunity to make a submission. If you require further information, please contact my Executive Officer Megan Bennett, at either megan.bennett@smallbusiness.nsw.gov.au or (02) 93728767.

Yours sincerely

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