



Australian
Competition &
Consumer
Commission

Enforcing Competition Law In An Online Environment: A Regulator's Perspective

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Overview

● The ACCC: Who We Are & What We Do

● 1. Mergers & Acquisitions

● 2. Resale Price Maintenance

● 3. Misleading & Deceptive conduct

● 4. Scams

● 5. Franchising

● 6. SME Engagement & Advocacy

● Conclusion

The ACCC: Our Role

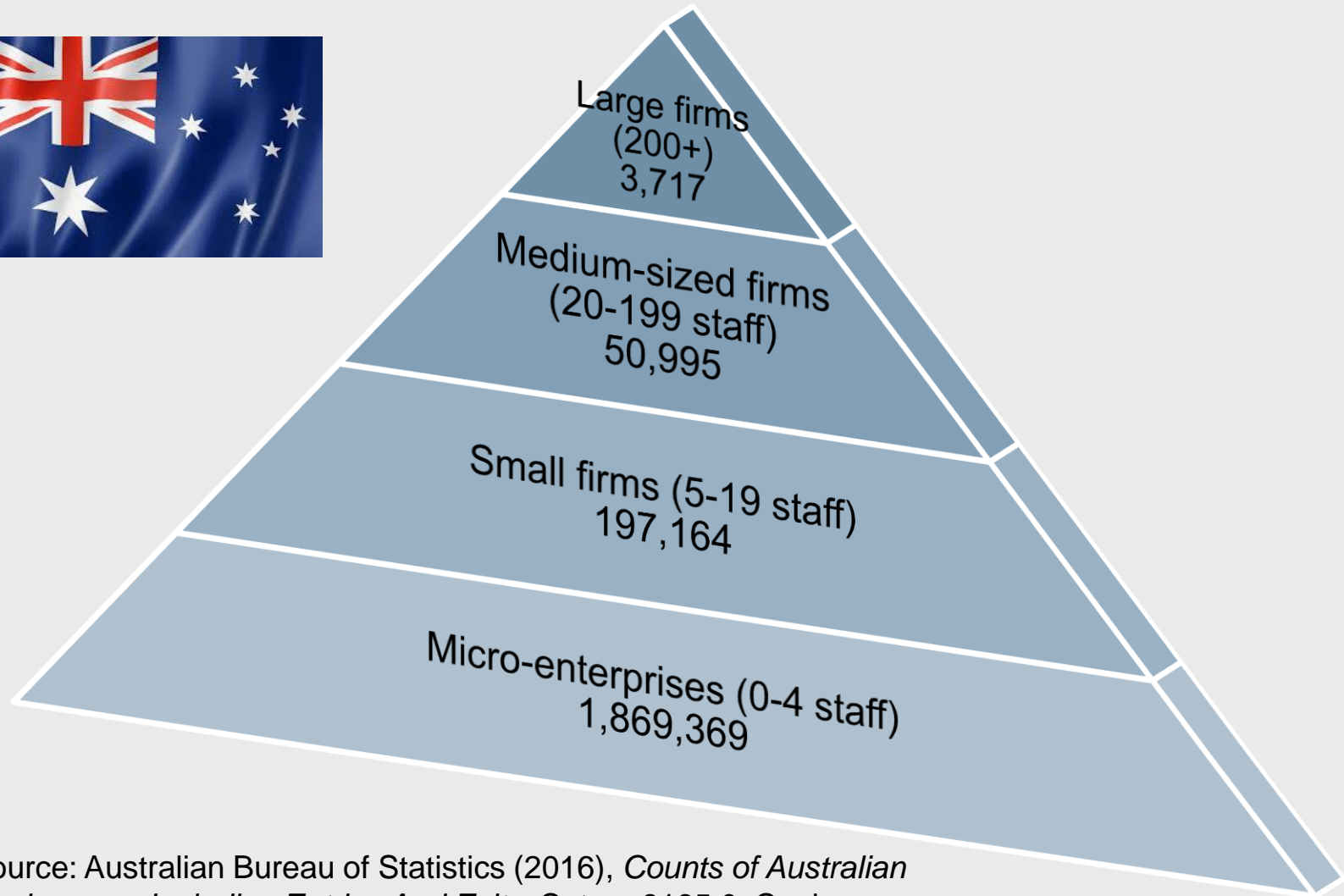
- **National regulator:** oversees laws on consumer protection, equitable competition, product safety, infrastructure access
- Also regulates some specific industries (such as energy, telecommunications), industry codes (franchising, horticulture) and price monitoring (airports, postage, stevedoring)
- An **independent statutory agency** within the Treasury portfolio
- **Court-based enforcement** of the law
- Dual educative and enforcement function
- Provides warnings and advice about scams
Scamwatch.gov.au
- **Enforcement agency...does not set policy**

Legal Framework

- *Competition & Consumer Act 2010*
- Includes the Australian Consumer Law
- Laws apply across the country
- **Apply to all activities “in trade or commerce”**
– legal structure is usually irrelevant
- **Covers both goods and services**
- Activities of government often exempt
- **ACCC cannot impose penalties: court-based litigation** (but can issue infringement notices)
- Mandatory codes of conduct prescribed under the Act (Franchising Code)



Total Number of Firms: Australian Business Pyramid

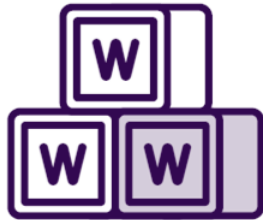


Source: Australian Bureau of Statistics (2016), *Counts of Australian Businesses, Including Entries And Exits*, Cat.no.8165.0, Canberra, Table 13 2014-2015

Australian Small Businesses & e-Commerce

51%

take orders online



and



67%

receive payments online

Top 3 reasons SMBs take up e-commerce

79%

To provide better customer service

60%

To promote business more effectively

58%

To improve delivery



34%

of SMBs use social media advertising



Where do SMBs sell?

85% make local sales with 67% saying most of their sales are local



47% make interstate sales

25%

make overseas sales

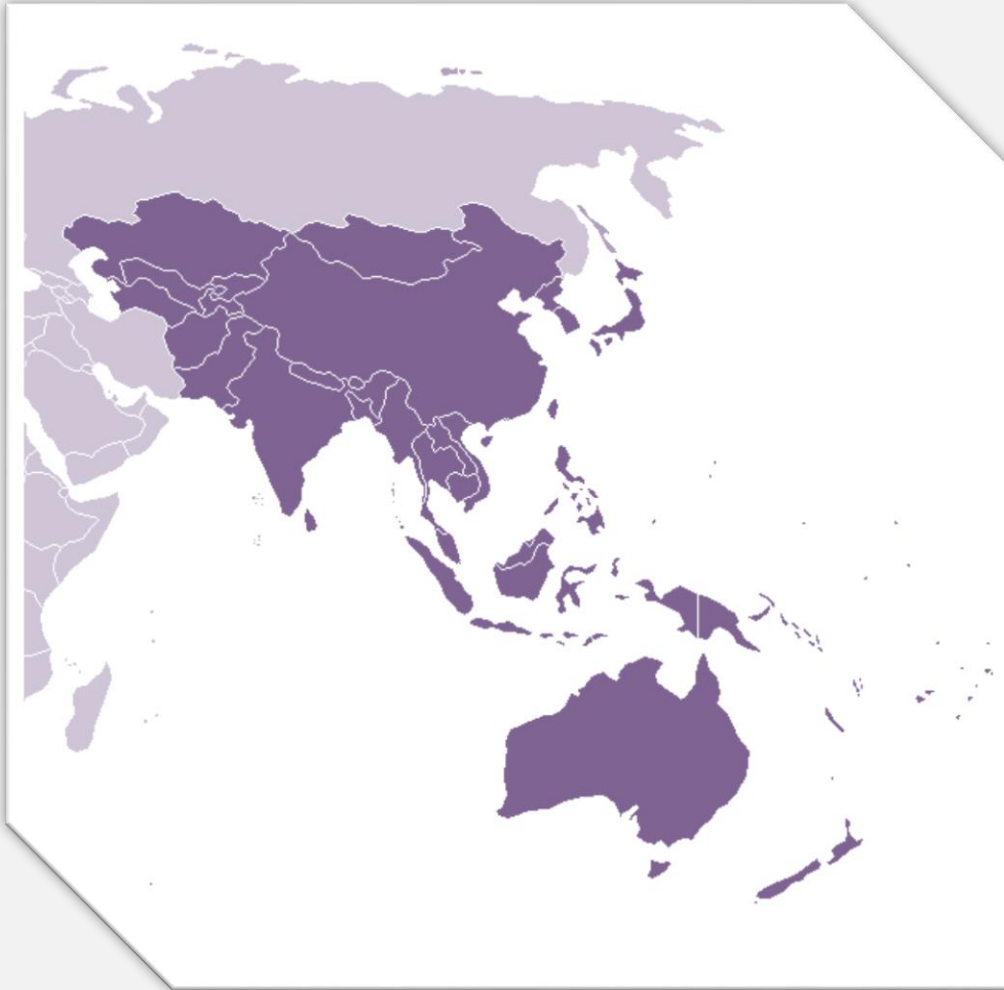


11%

are specifically targeting international customers



A Region of SMEs



Viet Nam: 320,000 (97%)

Brunei: 5,000 (98%)

Indonesia: 57,000,000 (99%)

Malaysia: 645,000 (97%)

Philippines: 937,000 (99%)

Singapore: 187,000 (99%)

Thailand: 2,760,000 (97%)

Australia: 2,100,000 (99%)

New Zealand: 460,000

1. Mergers & Acquisitions

- Central issues for merger analysis: product dimension, geographical dimension, counterfactual (“with and without test”)
- Much more difficult online: Is **geography** still a valid tool? What happens if potentially all customers around the world could be clients? How to compare **new business models to old ones** (Uber v. taxis)? How to effectively **measure market shares**?
- EG: 2014 purchase of Wotif by Expedia
- EG: 2016: purchase of *Sunday Times* newspaper by rival *The West Australian* (Seven West Media)

2. Resale Price Maintenance

A supplier may recommend resellers charge an appropriate price but they can't stop you discounting or advertising below that price. RPM is a *per se* offence in Australia.



In 2015, the Federal Court ordered online retailer Omniblend Australia Pty Ltd to pay a \$17,500 penalty.

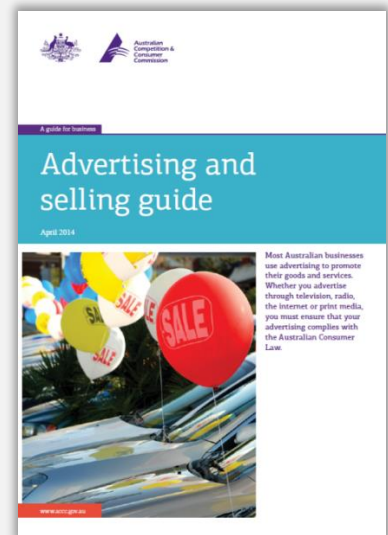
Omniblend attempted to stop a competitor from discounting the prices of Omniblend blenders and refused to supply the blenders to the competitor unless it stopped discounting.

There is nothing wrong with using a supplier's recommended resale price (RRP) list so long as it is just that—recommended.

3. Misleading & Deceptive Conduct

Two fundamental rules apply:

1. Don't engage in conduct likely to mislead or deceive
 2. Don't make false or misleading claims or statements
- The **overall impression** created is important
 - Don't rely on fine print exceptions
 - Reviews must be honest & accurate
 - **Same rules apply online and in-store**
 - Difficult for consumers to verify the truth



PENALTIES

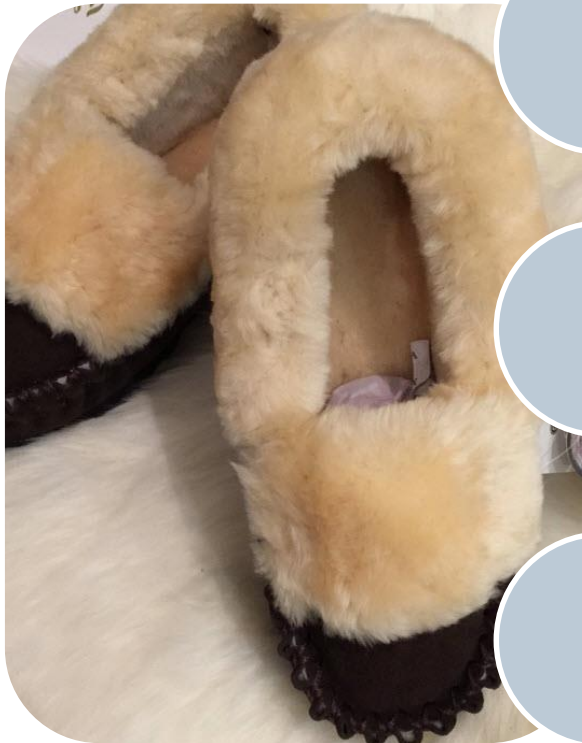
Misleading or deceptive conduct: injunction, damages

False or misleading misrepresentations:

Up to \$1.1 million for corporations and \$220,000 for individuals

The Provenance Of Goods Is Often Easy To Falsify Online...

Claims or representations using words, images or logos must be clear, accurate and truthful



In May 2016, Kingdom Groups International Pty Ltd paid a penalty of \$10,800 after the ACCC issued an infringement notice.

Statements and images on the website represented the Aries Sheepskin boots were manufactured in Australia, when they were made in China.

The website showed the Australian Made logo attached to footwear and said manufactured in 'Junee, Canberra, Australian Capital Territory'.

Comparator Websites Are Often Prone To Misleading & Deceptive Conduct

- May not cover all the industry (or even most of it)
- May receive remuneration for recommending some sites
- Ratings may be based on very small samples
- Ratings may be open to all (including competitor businesses), not just actual users



In 2014, Compare The Market Pty paid an infringement notice penalty of \$10,200 in relation to advertising claims. Compare The Market said they “*Compare more health funds than anywhere else*” when there were two other websites that compared more funds.

Online Reviewing Systems Can Be Skewed Or Gamed...

90% of businesses agree “negative reviews or social media drive us to take complaints more seriously”. Manipulated reviews effect competition.

Meriton accused of rorting online reviews

Misa Han

Harry Triguboff's Meriton serviced apartments are being accused of manipulating TripAdvisor ratings by deliberately withholding guests' email addresses from the travel review website when there were hot water outages and lift delays.

The Australian Competition and Consumer Commission filed an action

ings more effectively and capture all guests who have recorded a complaint,” the email said.

ACCC says the masking practice reduced the number of negative

reviews of Meriton apartments on TripAdvisor and artificially improved its ratings. This, in turn, misled the public and gave Meriton an “unfair competitive advantage” over other accommodation providers. ACCC says

The ACCC alleges Meriton took steps to prevent guests it suspected would give a negative review from receiving TripAdvisor's 'Review Express' email

Sharing Economy

The sharing economy provides consumers with increased choice and offers individuals new ways of generating income.

The ACCC has published guidance for

- platform operators
- consumers, and
- Private traders

These roles are interrelated and it is important that each understand their legal obligations under the Australian Consumer Law.



4. Online Scams

UNCLASSIFIED



Public Service Announcement

FEDERAL BUREAU OF INVESTIGATION



June 14, 2016

Alert Number

I-061416-PSA

Questions regarding this PSA should be directed to your local **FBI Field Office**.

Local Field Offices:

www.fbi.gov/contact-us/field

BUSINESS E-MAIL COMPROMISE: THE 3.1 BILLION DOLLAR SCAM

This Public Service Announcement (PSA) is an update to the Business E-mail Compromise (BEC) information provided in Public Service Announcements (PSA) 1-012215-PSA and 1-082715a-PSA. This PSA includes new Internet Crime Complaint Center (IC3) complaint information and updated statistical data.

DEFINITION

BEC is defined as a sophisticated scam targeting businesses working with foreign suppliers and/or businesses that regularly perform wire transfer payments. The scam is carried out by compromising legitimate business e-mail accounts through social engineering or computer intrusion techniques to conduct unauthorized transfers of funds.

Business Email Compromise Scams

How it works

Scammer gets access to company's email system via virus or phishing attack

Scammer sends email from 'the boss' advising a financial officer of an urgent \$ transfer

Scammer pressures the officer to quickly wire \$ to strike a major deal

Money sent is lost for good

Protect your business

Install and update security software

Advise payments staff to be suspicious of requests for secrecy to transfer money

Put in place sound financial security procedures including a two-step verification process for wire transfer payments

Current Scam: Domain Name Renewals

Looks like a renewal invoice, but it is a solicitation for registering a new (very similar) domain name.
(eg .com or net.au rather than com.au).



Limit the number of people authorised to make orders or pay invoices

Have clearly defined procedures for the verification, payment and management of accounts and invoices

Check if an Australian .au domain name provider is legitimate and accredited by visiting the auDA website www.auda.org.au

5. Franchising & E-Commerce

Number of franchise systems and franchisees is still low across the Asia-Pacific region.

Significant potential exists for future growth of franchising in most countries.

Major growth tool for entrepreneurial SMEs with proven products/services

Countries with Specific Franchise Laws

January 2016

EVERYTHING MATTERS

Blue = Disclosure Law
 Green = Relationship Law
 Red = Disclosure & Relationship Laws
 Black = Other



Does Not Include:

- Codes of conduct which do not provide for governmental or private enforcement, even if promulgated under governmental authority.
- Bodies of law (e.g. commercial agency, distributorship, competition, intellectual property, etc.) which may also cover franchising.
- Registration requirements that exist in many countries under various laws (e.g., franchise, foreign exchange, intellectual property, competition, etc.).



What Is The Future Of Franchising?

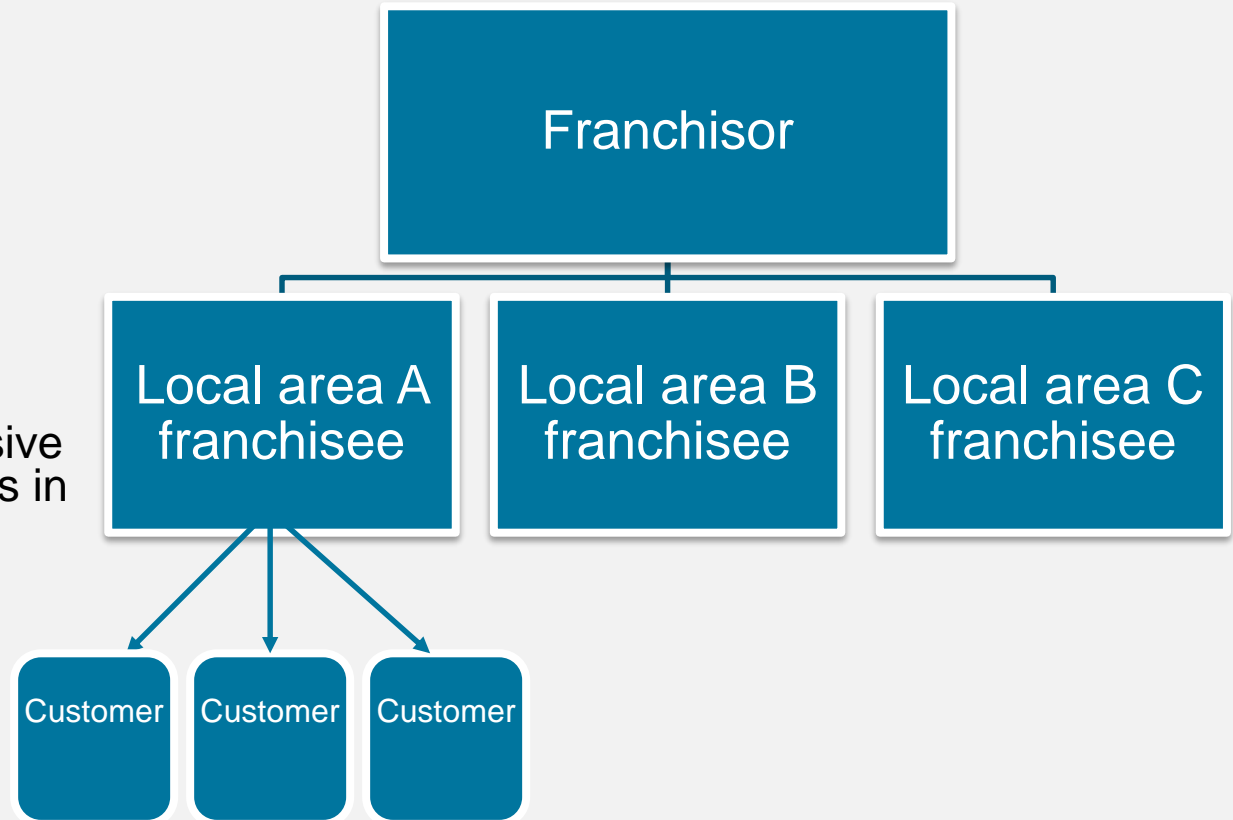
The traditional franchising relationship

Franchisor is a wholesaler/distributor, not retailer

Defined geographic territories

Franchisees have exclusive rights to sell to customers in their region

Customers can only buy from one franchisee



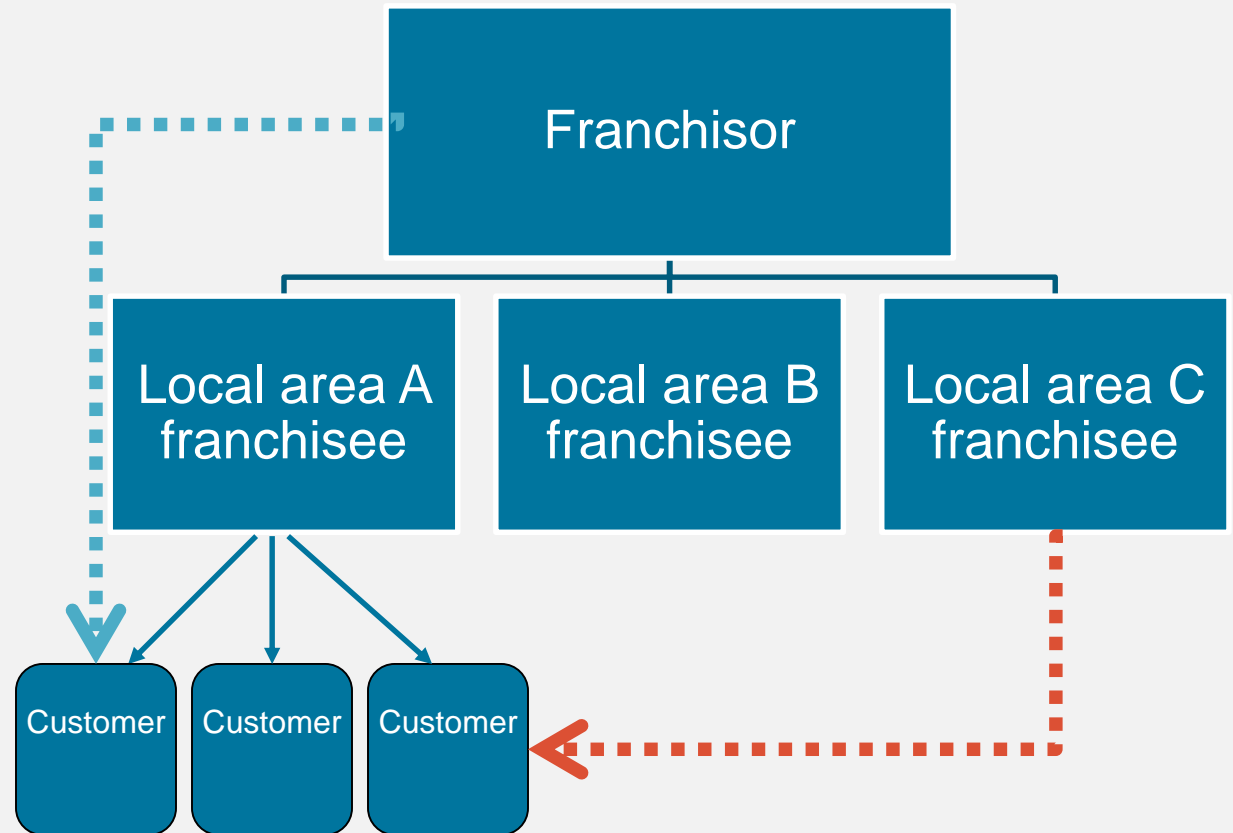
But What If This Occurs?

Online franchising relationship

Franchisors can sell directly to customers at minimal cost

Customers can choose who they buy from

Exclusive rights to a franchise territory have limited value



6. Advocacy, Outreach & Engagement

- Allows faster, wider, cheaper communication with SMEs
- Common tools: websites, apps, social media
- Most SMEs now use online services (Google) as first source of advice for competition law
- Most SMEs also prefer to receive information electronically (URLs, PDFs, etc)
- Online education tools very popular in Australia
- Problems: no face-to-face contact; not everyone is online; websites often difficult to navigate; not all regions have easy internet access in ASEAN
- 2016 Australian Consumer Survey: Key Business Findings

What Do SMEs Typically Want To Know About Trading Online?

Is my competitor making false claims?

How should I display my prices?

What are my refund obligations?

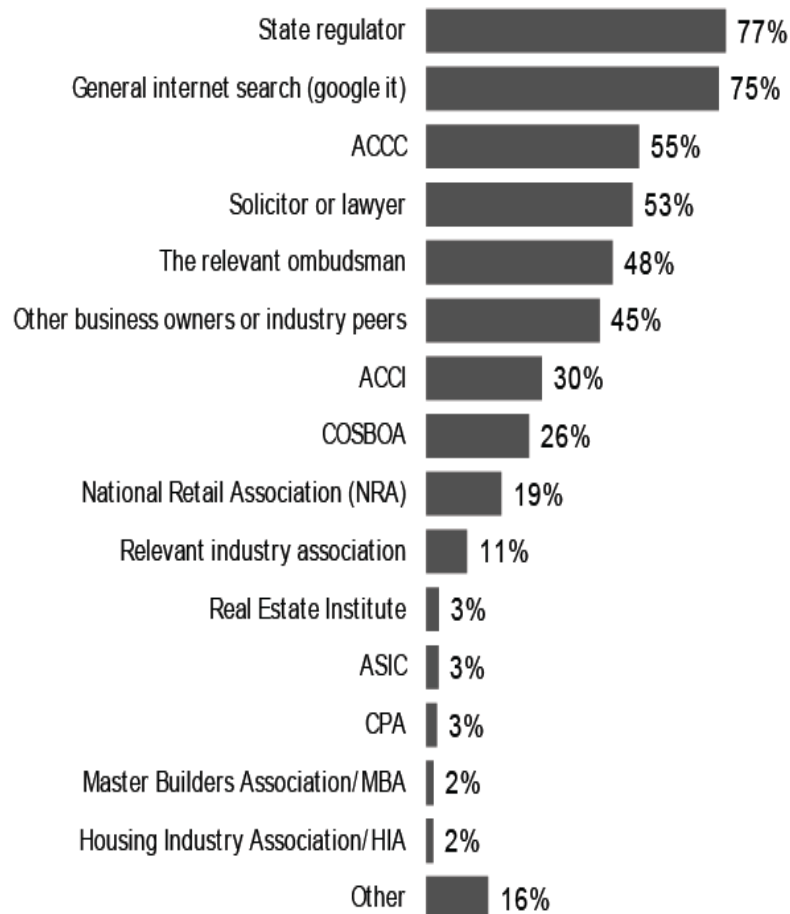
Who's responsible for product safety?

How do I avoid getting scammed? Is this request for payment real?

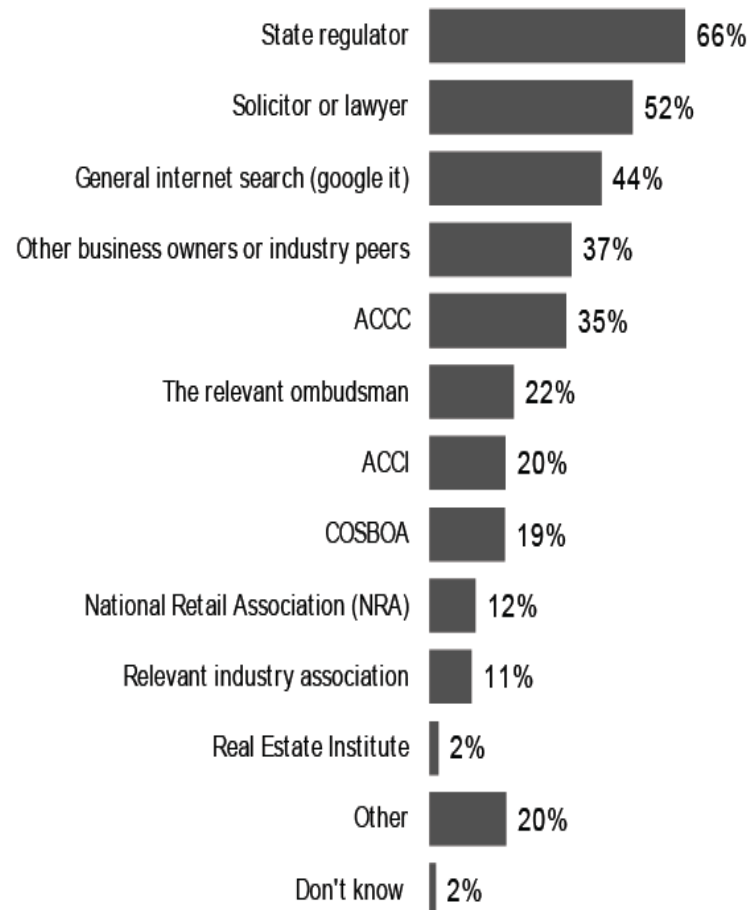
How should I handle online reviews?

Sources of information and advice

Information



Advice

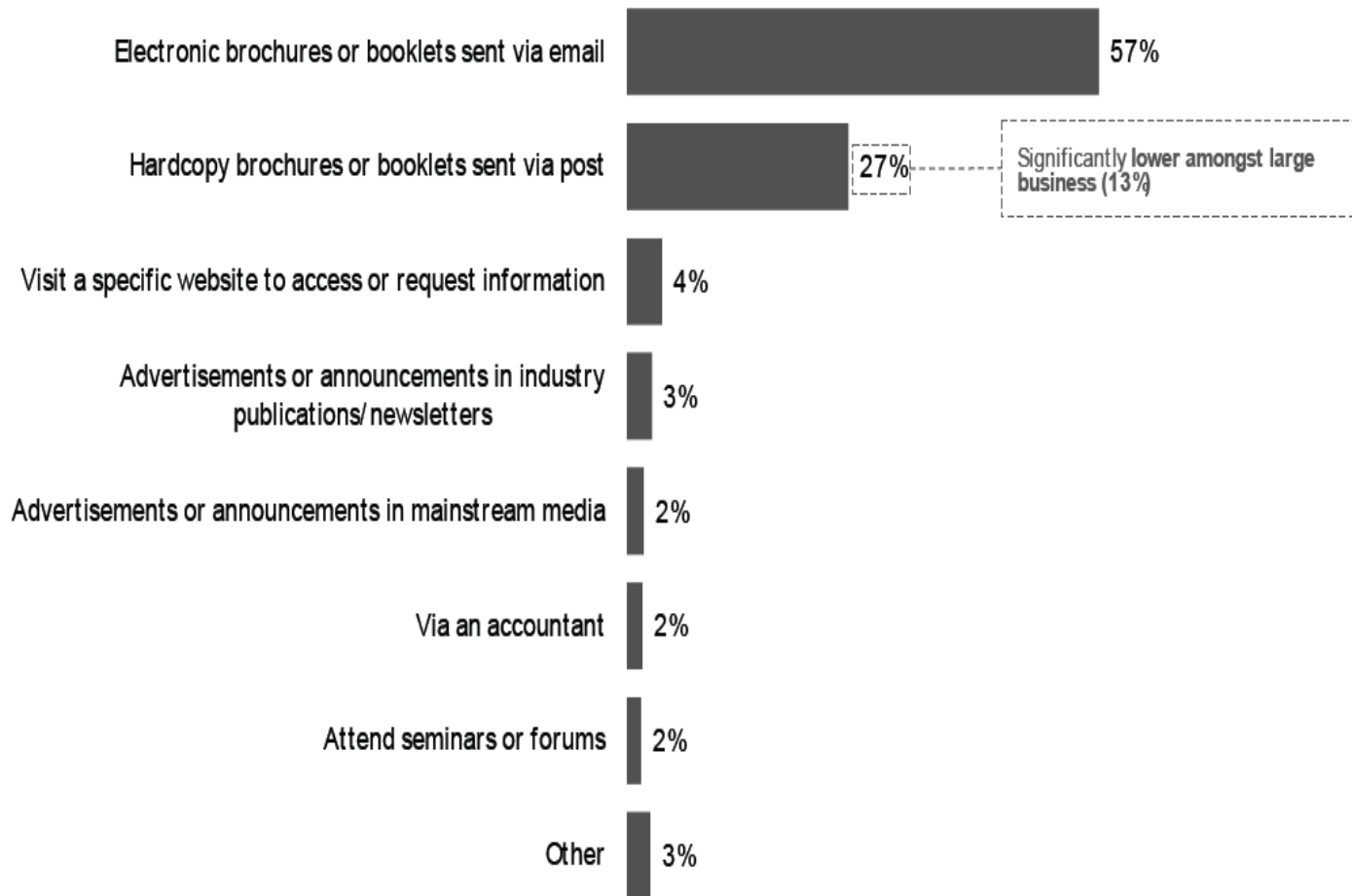


Base: Total sample 2011 n=1,210; 2016 n=1,210

Q9. If you needed information for your business about the Australian Consumer Law, where would you seek it?

Q10. If you needed advice about your rights and obligations under the Australian Consumer Law for a particular scenario with a consumer, where would you seek it?

Preferred format for receiving information



Base: Total sample 2016 n=1,210

Q38. What is your preferred method of receiving information for your business about new laws such as the Australian Consumer Law (ACL)?

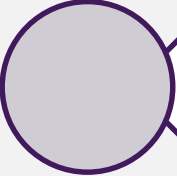
Conclusion



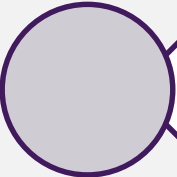
E-commerce creates multiple challenges for competition regulators



Are agencies converging or diverging in their responses? Hard to tell...



Common approach is to modify existing regulatory arrangements, not adopt a new model



But note national variations in regulator cultures/history, national business practices, online access



Still very much a work in progress, especially in ASEAN

ACCC Contacts



Small business helpline 1300 302 021

www.accc.gov.au/smallbusiness



**Keep up to date and sign up to the
Small Business Info Network**
Sign up at www.accc.gov.au/sbin



Free Online Training Programs
www.ccaeducationprograms.org



Small Business in Focus

