Productivity Commission review of the Economic Structure and Performance of the Australian Retail Industry

Supplementary Submission to the Productivity Commission

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Executive summary

This submission has been prepared to support submissions made by the Retail Guild of Australia into the current Productivity Commission review of the Economic Structure and Performance of the Australian Retail Industry.

Specifically, this submission further addresses points introduced in the second Retail Guild of Australia submission with respect to planning, further developing and extending upon that section. In particular, this submission focuses on the management of competition through the planning system, including the role of a floorspace dominance test.

The key points are as follows:

- Competition is enhanced where market dominance is constrained, both in terms of the dominance of individual retail operators as well as the dominance of shopping centre ownership groups.

- Given the levels of concentration in Australia, the planning system has a justifiable role for managing the land use system/market to facilitate competition.

- Competition needs to be seen within the context of net community benefit, a principle which underpins all planning systems. Net community benefit ensures that social, environmental and other welfare outcomes are considered along with the benefits from enhanced competition.

- Market dominance can be considered through applying a floorspace dominance test. Market dominance can be measured on a catchment by catchment basis utilising gross leasable floor area as an easily measured surrogate for turnover per square metre. Retail catchments can be determined using commonly accepted tools and the results of regional catchment analyses can be aggregated to address markets that are broader scale, including metropolitan scale.

- Setting the floorspace dominance test at a 25% level is consistent with both Australian and UK work which suggests that dominance above this level is anti-competitive. The floorspace dominance test would operate as an assessment "trigger". Developments above this level of dominance would need to undertake a net community benefit test according to specified criteria. These criteria would include the need to demonstrate that competitive tension is not reduced.

- The regulatory burden can also be reduced by introducing an incremental change test. This could avoid the need for a community benefit test for proposals for centre expansion below 15% of current floorspace within a centre, provided there is evidence that overall floor space supply is at or below average levels and the centre is functioning well.

- Proposals to substantially increase the supply of zoned land above current demand are potentially risky. These include advantaging existing major players in terms of new development, undermining embedded value in commercial property which may limit investment and reinvestment, reducing confidence and investment while substantially increasing risk, and the creation of urban blight. In addition, by privileging commercial developments and investment this would produce distortions in the investment market when compared to investment in other forms of development.

The above package of measures is suggested as an approach to respond to pressures on state governments to improve competition, through the implementation of National Competition Policy. The measures balance other social and community outcomes against the benefits of improved competition by implementing a net community benefit approach. This is consistent with Hilmer principles requiring a public benefit test when regulatory activity is being considered that may potentially limit competition. Further, just as a public agency should not enjoy an economic benefit purely by reason of its incumbency, neither should market-dominant private sector entities. In this respect the proposals look to bring a higher level of competitive neutrality to the operation of the retail (supermarket) sector.

Background

Relationship between supply of land and competition

There has been strong pressure throughout Australia to review the current role of the planning system in the provision of commercial floorspace and, in particular, whether restrictions on the quantum or location of commercially zoned land are unduly constraining supply and, potentially, competition in the retail sector.

An important consideration is that enhanced supply of commercial land and enhanced competition are not necessarily one and the same thing. In particular, when high levels of market power are enjoyed by a relatively small number of dominant players, then increased supply may merely operate to further entrench market dominance.

As a result of these issues various state jurisdictions have been giving consideration to the way the planning system addresses competition. This review is driven, in part, by a number of recent enquiries, including the ACCC Inquiry into the Competitiveness of Retail Prices for Standard Groceries (July 2008) ("ACCC Grocery Inquiry") and stems, ultimately from the Hilmer review on competition, which established the principle that all regulation or intervention in the market needed to be justified by an over-arching community "good". This principle has been used by various dominant market players to support the notion that unrestrained access to commercial land is both consistent with Hilmer principles and would benefit competition.

Aims of the land use planning system

The overall quantum of commercial land and the location of that land is managed by the state-based land use planning system. Through control of land use, the planning system is a key element of regulation, exercised by government, with the intent of improving overall community outcomes. A key aspect of planning is the support, universally throughout Australia, for the concept of "activity centres" where community benefit is seen in the agglomeration of complementary uses including, specifically, retail uses into centres of varying sizes.

Together, the totality of the centres defines the commercial hierarchy, which ranges from the CBD of a major metropolis down to small neighbourhood centres. In addition to these typical mixed use centres, other centres within the hierarchy include specific purpose centres and single ownership centres... Agglomeration, in particular into mixed use/ownership centres, is seen to enhance the overall economic performance of urban areas through, in substantial part, optimization of the travel task.

This is in comparison with many sections of the United States, where development for retail purposes can, and does, locate anywhere. The consequence is a car-dominated society where the disaggregation of uses creates substantial economic inefficiencies, particularly for the consumer. Lower prices attributable to large developments on "greenfield" sites (with their attendant economies of scale) are offset by significantly increased travel time and distance. This includes the reduction in the ability to comparison shop, which also means that prices are still not optimized for the consumer in terms of effective competitive pressures. A further negative outcome of the US approach is the very substantial disinvestment that occurs in existing commercial areas. This has lead in many US cities to substantial problems of urban blight with the attendant social and economic costs.

In other words, economic benefit *for the individual retailer* does not automatically – and indeed rarely – equals overall social benefit for the *consumer* or for *society overall* It is for this main reason that state governments seek to control land use – in particular retail and commercial land use – to achieve improved public outcomes through an activity centre framework that encourages competition within centres, minimizes the transport task, and enhances the efficiency of public sector investment into urban infrastructure.

A good example of this approach can be seen in "home-maker" centres, particularly when co-located with key activity centres which provide a wider range of retail, commercial, recreational, social and administrative services. These centres facilitate competition between individual businesses in related areas of goods by enhancing comparison shopping and also provide generally lower rents than locations within main activity centres. At the same time the high accessibility of major activity centres moderates the transport task.

Challenges with the land use planning system

At times, however, the planning system has operated to substantially limit competition, particularly in the case of centres dominated by "the duopoly" (Coles/Woolworths) who have often used their economic power to land bank the limited number of sites available in centres or to engage in other economic practices that limit new entrants. This is particularly a problem if planning systems will not support additional sites within or adjacent to existing centres.

In short, the challenge for governments is in seeking to ensure that planning regulations clearly enhance overall community outcomes, while minimizing the negative impacts of regulation on competition – or indeed enhancing it through improved competitive neutrality.

There is often a strong desire to deregulate markets except where a clear net community disbenefit in so doing has been demonstrated. We suggest that a better approach would be to use and apply regulation where this can be shown to have a greater community benefit than deregulation of that market or activity – including enhancing competition. We suggest that centres policy working together with appropriate competition policy – and a land use based competition test - offers such a benefit.

Given the substantial role played by planning in the land market, it is critical that planning and land use policy both complement and are complemented by competition policy. Tools are available through land use planning to facilitate competition, where market failure has occurred through over-concentration and the presence of restrictive controls on new commercial and retail development or, conversely, where a substantially deregulated market has produced inefficiencies in the operation of the urban system.

Key principles to produce effective economic outcomes

The key locational principles involved in land use planning for commercial development are based on the *sequential test* where new key retail development should focus first on ideal locations within centres, then elsewhere within centres, then on the periphery of centres, and only then should out-of-centre development be contemplated.

Centres are proven elements of community good, and when centres are disrupted (or at times destroyed) by (often) single owner out of centre development, there are good reasons *not* to support these developments anywhere at any cost – particularly if they would be occupied predominantly by existing businesses within that sub-market rather than new entrants.

The sequential test can (and we submit should) operate together with a *floorspace dominance test* in which certain clearly defined triggers lead to a more comprehensive assessment of community benefit. In other words, regulation can operate as a series of "tests" or "challenges" for certain changes in development, without these being specifically prohibited or permitted. This complements and implements the approach taken by the National Development Assessment Forum which has developed a model of regulation that sees scrutiny ranging from none, through to very thorough, depending upon the potential impact of land use changes.

The rest of this submission looks to methods that could be used to better balance the (at times) competing objectives of facilitating competition and ensuring that the overall urban system functions at optimum economic efficiency – which is clearly in the public interest, and which therefore would meet the Hilmer test.

Competition and concentration

Concentration within the Australian retail sector

The Australian retail sector is subject to very high levels of concentration, particularly in the food and grocery sector. In addition to these high levels of concentration, which the ACCC Grocery Inquiry found reached at least 70% (page 61), there are regions both within cities and some regional areas where effective market dominance has been achieved by one major player.

A further area of concentration relates to shopping centre ownership. An assessment of shopping centre ownership was carried out by the Australian Retailers Association in 2008. This revealed that substantial concentration has occurred at the regional centre level, with 56% of centres controlled by Westfield. Westfield also has interests in the two centres controlled by AMP. Sub regional centres have a lower level of concentration with Centro the major owner, with 16%. At the district level concentration levels show AMP and Centro as the two major owners, having some 57% of centres (36 and 21% respectively). Floorspace comparisons reveal an even greater level of concentration at the regional level, with over 50% of floorspace dominated by Westfield.

The natural tendency of the capitalist firm is towards monopoly, and without legislative intervention market dominance tends to increase. It was for this reason that the USA introduced "anti-trust" legislation, and attention was given in Australia (albeit ineffectively) to this issue through the introduction of the Trade Practices Act.

Work in the UK (Competition Commission Guidelines 2003) suggests that a market dominance above 25% would "normally be sufficient to raise potential concerns regarding the effects of the merger on competition" noting that lower levels of concentration may also trigger concern. Within the respective markets of regional and district centres, there are two existing entities operating substantially above this level, Westfield and AMP. It is also noted that for most items reviewed by the ACCC Grocery Inquiry, concentration by the major players was above 50% in most food sectors. That level of concentration had resulted in less competitive tension and higher prices for consumers.

The concentration that has occurred means that it necessary to enhance competitive conditions through the intervention of government. In this respect there is the role played by Federal legislation, particularly the Trade Practices Act, however as presently drafted this Act has a limited ability to manage market concentration, particularly on a regional and sub-regional level (notwithstanding the proposed changes to that Act to consider smaller markets). At the present time this leaves the planning system as the only available and effective tool to manage competition – noting that one outcome of the current enquiry may well be a further changed approach to the Trade Practices Act. We suggest that this Act could then work in harmony with the land use planning system, recognizing that the *spatial* aspects of competition may be best managed through the tools that the land use planning system has at its disposal.

Justification for using the land use planning system

A key issue which often arises is whether justification exists for the use of the land use planning system to address competition issues.

The concept of "net community benefit" underpins the notion of land use planning, and provides, in the context of national competition policy, justification for intervention by way of regulation in the operation of the land use system/land market. Clearly, within the framework of national competition policy, the furthering of competition is an important community benefit consideration. The weighing up of positive and negative competition impacts on communities should form part of the overall assessment of land use planning objectives that seek social, environmental and other welfare outcomes for communities. The overall outcome for society needs to be positive, recognising that achieving some positive outcomes may result in these being partially offset by other negative outcomes. Ideally, and at a theoretical level, this should be driven by Pareto optimality.

The key land use planning mechanisms to assist improve competition are the creation of a level playing field so that both incumbents and new entrants face the same regulatory environment (predominantly through land-use zoning and tools such as parking policies) and, further, to avoid the situation where single players are able to gain excessive dominance within a sub-market. Overall regulatory burdens should also be minimised consistent with achieving appropriate competitive and social outcomes (in other words, control only those things that must be controlled to achieve the requisite policy outcome rather than all the things that can be controlled).

Another key aspect in terms of overall economic efficiency and hence growth, is that the land use planning system should avoid preferential treatment of one particular type of land use (whether that be residential, industrial and commercial) over another. This is essential in order to avoid distortions in the investment market. A classic example of this type of distortion can be seen in the domestic housing market which, largely through through a range of tax incentives, has significantly over-attracted investment leading to major price distortions in the market and misdirection of capital investment. A similar risk would arise if regulatory systems removed the checks and balances relating to the development and location of commercial/retail enterprises.

We submit that there is a prime facie justification for the use of land use planning tools to address market dominance.

Tools to address market dominance

Measuring market dominance

Land use planning tools, by their nature, will always be somewhat imprecise in their ability to achieve their intended outcomes. In many cases, "pure" planning principles are difficult to apply, in particular in terms of available information. This is very much the case with the retail sector where one of the key pieces of information, turnover per square metre is "commercial in confidence" information.

Even if this information were available, verification would be difficult. Accordingly, the preferable measurement tool in terms of assessing issues such as market dominance becomes floorspace. Floorspace can be measured in a variety of ways, including net selling space and, more commonly, gross leasable floor space. Whilst net selling space is probably a better overall measure, gross leasable floor space is a reasonable surrogate that is easily and cheaply available.

With respect to the determination of catchments, which is necessary to define the spatial area within which market dominance is being considered, some issues arise. These include the spatial scale of catchments appropriate for consideration and also determining the boundaries of those catchments. There are a range of criteria for determining primary trade areas for retail centres of different size which are routinely applied as part of economic evaluations of new retail developments. Whilst there is a degree of professional judgement involved in these determinations, results tend to be reasonably consistent.

It is suggested that catchment determination would be best undertaken by state planning authorities, based on a set of criteria generally agreed with the retail industry. These would be based on the commonly accepted tools and could, it is suggested, operate usefully at the regional level and sub-regional level. Hierarchies overlap, and are nested. Nevertheless, centres can be and generally have been classified into centre types within a hierarchy. While significant differences in nomenclature occur between the states and territories, the principles are remarkably similar. In particular, hierarchies and can be used to identify and describe the typical nested activity spaces which describe people's use of the urban environment.

We therefore have a ready-made system for development of catchment models at a variety of spatial scales, which links to demonstrated human behaviour. For example, catchments for determining market domination at the regional level could be based on the primary trade area of the highest order regional activity centres with adjustments made to recognise overlapping trade areas. Lower order centres likewise would have catchments based on their highest order use, for smaller centres usually a supermarket. This would also allow easy aggregation to address markets at a broader scale, including metropolitan and other regional agglomerations while also permitting consideration of markets at the local scale, which is generally defined by a 15 minute isochrone (contour of 15 minute time distance radius from a given point). It is generally at this more local scale where concentration is most pronounced.

Enhancing competition

For competition to operate effectively there needs to be consideration given to competition *within* centres, as well as competition *between* centres.

Competition between centres

Competition between centres means ensuring that market dominance does not occur, in terms of the main retail anchors in competing centres, and in terms of the ownership of those centres, in particular planned centres[1]. It also includes identification of appropriate sub-markets and looking at the market dominance of single retail operators within that area.

The issue with respect to competing regional centres is the issue of planned centre ownership. At the present time there is no control that would prevent a single centre owner developing and operating all the planned centres within an overall city or metropolitan catchment. On the face of it there is already a significant anti-competitive issue. The issue of planned centre ownership and competition between district and subregional centres is also of importance, noting that sub-regional centres have a reasonable spread of ownership at the present time.

Competition between centres also needs to be managed in terms of avoiding unrestricted expansion of centres or the formation of new centres leading to a substantial oversupply of floorspace. As has been clearly seen in US experience, a substantial oversupply of floorspace, particularly outside existing centres, leads to urban blight and significant disinvestment.

Competition within centres

For larger centres, such as district and subregional centres, it is usual to expect two to three supermarkets, which, ideally, should have different operators although at the present time there is nothing to constrain multiple supermarkets in the same retail "stable" operating in a single district centre (for example a Coles and Bi-Lo) or having centres dominated by the current Coles/Woolworths duopoly. In circumstances such as this alternative sites are often in short supply. This leads to pressure for out of centre sites so that other operators can compete within that sub-market. This leads to the need to provide a mechanism for additional releases of commercial land in all directly adjoining existing centres but ensuring that this land is not landbanked or occupied by a market dominant operator within that submarket.

Use of the floorspace measure

The floorspace measure can be used to determine market dominance at all spatial scales. In practice, it would be expected that the focus would be on the regional/subregional level, as assessment at this scale can easily be aggregated up to cover city or metropolitan areas. It can, however, also be utilised at the district/neighbourhood level responding to the 15 minute isochrone of travel indifference within urban areas. Within regional areas, the appropriate isochrones of travel indifference may extend up to 40 minutes.[2]

[3]

The floorspace dominance test

The suggested measure to facilitate competition is the use of a "floorspace dominance test" relating to each shopping centre ownership group and retail operator group within their market.

With respect to retail operators, although supermarket concentration is often raised as the primary anti-competitive issue, the use of a floorspace dominance test should operate

[1] A planned centre consists of an activity centre within a single ownership and usually within a single structure. A typical example would be centres developed by Westfield, Stockland or Centro.,

[2] Travel indifference comes from the theory of indifference curves. In practice, once people are in their car, they are relatively indifferent to travel times up to approximately 15 minutes. This would allow access to several neighbourhood centres within a reasonable radius, and represents common driving times between regional centres within metropolitan areas.

across all portions of the retail sector where market concentration above a 25% threshold occurs. It is noted that care is needed from a definitional point of view, as retailing follows traditional categories to a lesser and lesser extent. In particular, when looking at commodity purchases (known, predictable, routine) there is a strong move towards stores spanning multiple categories of goods. For example supermarkets now sell clothing, electrical goods, hardware items and the like and we are also seeing the emergence of USA style hypermarkets which blur the boundaries between a discount department store and a supermarket. In this respect concentration measures need to address all the categories of significance within a single retail outlet. The ANZIC codes provide a straightforward method of codification of industry segment, albeit one with some limitations.

Levels of market concentration

Implementation of a 25% floorspace dominance test addressing the ownership of planned shopping centres and also retail concentration within specified markets and sub-markets would provide improved competitive tension with respect to planned shopping facilities and also ensure that new supermarket and liquor opportunities within regional and sub-regional markets were largely taken up by new entrants. New entrants will ensure additional competition. The ACCC Grocery Inquiry found at page 169 that large independent stores add competitive price tension to grocery retailing, and at page 263 that the level of competition might be increased if large format independent stores increased in number.

Market concentration and neighbourhood centres

A floorspace dominance test could also operate in terms of neighbourhood centres, both in terms of overall size and the composition of centres.

With respect to the overall size of a neighbourhood centre, the ideal size should be focused around the optimisation of walkability. Research varies with respect to the optimum size of a walkable neighbourhood centre however recent research undertaken by Macroplan for the Master Grocers Association Submission to the Victorian retail review (2009) suggested a limit of approximately 1700 m². Work carried out by Wakefield Planning in Ballarat and also for Eurobodalla Shire in NSW suggests centres can extend in size up to 2000-2500 m² depending upon the overall balance between district and local retailing. These sizes are consistent with a centre spacing of approximately 1.6 km, which facilitates an 800 m "ped-shed" - typically used as the walking radius for rail transit. Details of this work can be supplied if required.

Floorspace dominance tests could also operate in terms of centre composition. In order to ensure a good retail "mix" and to ensure competition within the neighbourhood centres, floorspace dominance tests can be used to manage the overall floor space dominance of a single retailer. Wakefield Planning conducted work in Eurobodalla Shire in NSW which established that effectively functioning local centres needed at least 30% floor space as (a single) supermarket but not more than 50%. In addition “tied” specialty shops should be considered within the supermarket floorspace.

The floorspace dominance test as an assessment "trigger"

A key aspect in utilising a floorspace dominance test is to ensure that there is a robust mechanism for reviewing developments that trigger the floorspace dominance test to determine whether they have a significant net community benefit or disbenefit. This avoids the floorspace dominance test being seen as an arbitrary control (such as a cap would be) but instead sees it as providing "trigger levels" beyond which specific justification in terms of net community benefit needs to be demonstrated for new development.

Above 25% market concentration, new development would have to demonstrate that competitive tension would not be lessened where proposals come forward above this prima facie level. This approach should be incorporated into the net community benefit test as a specific requirement for assessment. This is the approach adopted in UK planning legislation, but has been specifically refined here for the Australian situation.

Tools to reduce the regulatory burden

The use of trigger levels before a formal net community benefit test was conducted can also be utilised to reduce the regulatory burdens associated with new development, either by way of expansion of existing centres or by redevelopment within centresA further test to reduce the burden of regulation is the incremental change test. This can assist the growth of centres in a way which breaks the “logjam” created by ownership concentration within many existing centres.

The incremental change test

An incremental change test establishes a tool whereby development which is likely to be unproblematic in terms of net community benefit from an economic perspective can proceed "as of right" for that quantum of development, noting that there is still a necessity to assess merit aspects such as urban design, centre integration, traffic and parking and the like. The incremental change test assumes that the sequential test is also being applied.

An incremental change test could operate so that a full net community benefit test would only be required for developments above a certain size provided certain criteria were met. The traditional "level of attention" with respect to economic impact has tended to be in the order of 10-15%. This suggests that developments by way of expansion to the centre which fell below 15% of the current floorspace within the centre could generally be considered unproblematic on the basis of economic impact.

This test could also be applied when considering proposals to establish new centres within urban areas.

The incremental change test should, however, only be utilised in circumstances where the overall provision of retail floorspace is less than, say, 2.2 m^2 per head, assessed on a sub-regional basis. This is the figure utilised in comprehensive studies in Victoria (e.g Essential Economics work for the Victorian Retail Review) This would ensure that where areas of substantial oversupply exist, pressure is applied to utilise existing zoned land and infrastructure more efficiently prior to rezoning additional lands.

Economic modeling and a net community benefit test

Once "trigger levels" have been achieved, either in terms of ownership concentration or retail dominance a net community benefit test should be utilised.

There has been concern expressed regarding the effective traditional measures of assessing retail impact, in particular the spatial impact of change. While commonly used modelling tools are fairly good at identifying available expenditure, and hence the profitability of new development, they are often quite in effective in assessing impacts on existing development and, therefore, whether an overall net community benefit is being generated. It is important, therefore, to ensure that robust and defensible criteria are utilised to assess the net community benefit, and that these are capable of objective review.

The net community benefit test needs to examine both tangible and intangible aspects of proposals. It needs to recognise that centres are much more than the provision of retailing, but that they represent social and administrative hubs as well. Net community benefit tests need to include (but are not limited to) the following:

- Will there be a net benefit in terms of the total value of land and commercial development in the relevant retail catchment?
- Will there be any loss of capital value within a specific retail sector, or amongst competing centres so that the retail sector would be restricted in its ability to raise capital and compete?
- Will there be a net reduction in overall car travel?
- Will there be an increase in local accessibility to frequently used goods and services?
- Will new development integrate with and complement an existing centre or, if a new centre, will it not significantly undermine the viability of an existing centre *(sequential test)*?
- Are there other social implications arising from the new development?
- What are the implications for net employment?
- Will the development facilitate competition within the relevant retail catchment?

Risks of unconstrained supply

Some submissions to the enquiry promote the unconstrained supply of land for retail purposes (the "build anywhere" model) sometimes on the basis of an asserted particular market niche or style of retailing.

Proposals to substantially over-zone commercial floorspace or to eliminate any barriers to rezoning in order to lower costs of entry and reduce barriers to entry are likely to be ineffective in improving the competitive environment. In particular, the dominance of the market by several key players (both in terms of regional shopping centres and retail operators) will significantly favour those players as compared to new entrants. This arises as a result of their financial capacity and through existing land banking both within and adjacent to centres.

With respect to the accommodation of market demand, it needs to be recognised that demand exists only at a price. On this basis, whilst significant over zoning through deregulation of zoning controls may have the outcome of reducing price, this is likely to substantially undermine the embedded value in existing development. This would substantially weaken the ability of existing commercial development to compete against new development by raising capital based on existing property values. It would also create major uncertainties for the investment environment, which is based on a balanced approach to supply and demand.

A substantial over zoning of land within commercial zonings would also discourage redevelopment which would make more effective use of existing infrastructure and investment, particularly public investment. This includes service infrastructure but also transport infrastructure.

A further issue with this approach is the potential risk that a substantial oversupply of floorspace may contribute to urban blight. The risk is that new development would predominantly be replacing existing floorspace rather than utilising price signals through managed supply to balance provision of retail floorspace through a combination of refurbishment/redevelopment and new development. The American experience in this regard is instructive, in particular the move towards spatially disaggregated very large-scale car dependent retail developments. This has produced significant areas of urban blight in traditional "downtown" areas and also traditional town centres and high streets. Whilst the economies of scale have some benefits in terms of price (e.g. Wal-Mart) this comes at a very high cost in terms of loss of capital value, very high levels of car dependency and undesirable social and community outcomes associated with failed centres. These centres would struggle to pass a net community benefit test.

Regional communities with slow growth rates or declining growth are particularly vulnerable to "out of centre" development as they have limited or no capacity to "grow out of trouble" and generate the investment necessary to resuscitate a failed "main street". Such out of town centres, particularly if single owned, change a competitive retail environment (unless the existing centre is particularly closely held) into a monopoly owned environment, with very significant barriers to entry other than the "favoured few" and a substantial lessening of competition.

Summary

To further the aims of National Competition Policy the land use planning system can be utilised to improve the competitive environment with respect to retailing. This can operate through a floorspace dominance test set at 25% of the floorspace owned or managed by a single retail operator or planned centre owner.

A floorspace dominance test can also be applied at the neighbourhood level to avoid dominance of a neighbourhood centre by a single retailer, and also to maintain neighbourhood centres at an appropriate scale to maximise walkability.

An incremental change test can operate to reduce the burden of regulation for expansion of centres and the development of new centres.

A floorspace dominance test working with an incremental change test can be used as a "trigger" for the conduct of rigorous and comprehensive net community benefit tests where proposals come forward outside the trigger levels.

An incremental change test can substantially reduce the regulatory burden for small-scale proposals where a total floor space provision is at or below average levels.

Proposals to substantially increase the level of zoned commercial land by substantial "over zoning" would produce deleterious effects in terms of both market concentration, competition, and overall community benefit.

APPENDIX A – DRAFT COMPETITION GUIDELINES

Introduction

These guidelines have been prepared to operationalise the planning framework outlined in the submission to the Productivity Commission's retail review. They outline how the various suggested controls would operate in practice and also how these controls would intersect with each other. The guidelines also present a framework for assessing the economic impact of retail proposals.

Definitions

In these guidelines the following definitions are used:

Accessibility principles means the location of retail development so as to minimise overall trip making within the town or region, including the location of retail development so as to maximise chained trip patterns by consumers.

Activity centre means an area of retail and commercial development, identified by a business zoning, which may also contain recreational, administrative and service uses.

Category floorspace means floorspace over 400 m² within the same retail category.

Competitive tension describes the economic process by which the existence of two or more competing firms in a market leads to consumers benefiting from outcomes such as lower prices, increased choice or higher service levels because of the competition between those firms.

Note: Competitive tension does not include use by a firm with market power of techniques that, without the existence of market power, would cause harm to that firm (e.g sustained pricing of products at levels below marginal cost so as to force a rival out of business).

Core commercial area means that portion of an activity centre where the majority of activity is located.

Gross leasable floor area means the sum of the area within the floors of the building, being the area within the internal faces of the walls excluding stairs, amenities, lifts, corridors and public areas but including all stock storage areas. In the absence of gross leasable floor area information, the gross leasable floor area will be taken to mean 80% of the gross floor area of the building.

Market means the geographic area of operation of a local firm for the purpose of assessing market dominance.

Market dominance means the proportion of a market that is held by a single business (including other businesses within the same ownership group including related entities).

Metropolitan means areas within the relevant metropolitan statistical divisions.

Net community benefit means whether, on balance, a proposal is of net benefit to the community.

Note: This is determined through tests as outlined in these guidelines, which provide a structured approach to merit-based assessment of major retail proposals.

Non-metropolitan means areas outside the metropolitan statistical divisions.

Primary trade area means the trade area of a retail business (eg a supermarket or department store or hardware store) the outer edge of which is defined by a line where people are equally likely to shop at an equivalent competitor that is outside this area.

Note: This should generally be determined by way of household survey.

Regional catchment means the primary trade area of the nearest high order activity centre directly servicing the locality (e.g. regional shopping centre, town centre or the like).

Note: This should generally be determined by way of household survey.

Retail impact assessment means the qualitative and quantitative methods used to assess the economic impacts of new retail development.

Sequential test means the principle of first seeking to locate additional retail floorspace within the existing activity centres and, if this is not feasible, then seeking to locate

floorspace on the edge of existing activity centres. New activity centre development should only be considered where is impracticable to locate within or on the edge of existing activity centres, or where an area can justify a new activity centre based on accessibility principles.
Vacancy rate means the percentage of shopfronts vacant at ground floor level (including shops within arcades) within the business zoned lands of the activity centre.

Overall planning approach and the interrelationship of tests

Application of the guidelines and the trigger levels

The guidelines identify the "trigger levels" at which enhanced assessment of retail development needs to occur. Proposals need to meet both the incremental change test and the market dominance test, otherwise a retail impact assessment is required.

The guidelines are consistent with the best practice guidelines of the Development Assessment Forum. This establishes a national approach to determining levels of assessment, based on impact. In other words, the greater the potential for impact, the greater is the required level of assessment. Smaller-scale developments and larger developments not exceeding the trigger levels would consistent with the Code and Merit tracks respectively (e.g. complying or standard DA assessment), while developments that meet or exceed the trigger levels would be Impact Assessable (the most rigorous level of assessment). These guidelines provide the basis and tests for impact assessment.

The trigger levels for the tests are as follows:

Incremental change test for new retail development involving a rezoning

- Merit assessment through a net community benefit test is required if any of the following triggers occur:
    - regional catchment floorspace >2 m² per head, or
    - site is not within or directly adjacent to existing commercial zoning, or
    - area rezoned > 15% of existing business zoned area, or
    - activity centre vacancy rates > 10%, or
    - development is not within the core commercial area ("Main Street") (non-metropolitan areas only)

Details
The regional catchment is reviewed to assess whether total floor space provision exceeds 2 m² per head of population. This is to ensure that where areas of substantial floorspace oversupply exist, pressure is applied to utilise existing zoned land and infrastructure more efficiently prior to rezoning additional lands. For the purpose of this test, additional floorspace is to be calculated from the maximum floorspace ratio under the proposed zoning.

If the catchment has a total floor space provision of 2 m² per head of population or less, and the proposed rezoning site is within or directly adjacent to an existing commercial zoning (the sequential test) then the rezoning should be supported provided that the quantum of the rezoning is 15% or less of the business zoned area of the existing activity centre and that vacancy rates within the activity centre are also less than 10%.

Within regional areas it is vital that the "Main Street" be supported. The test therefore examines whether the proposal is within the commercial core, as defined by the most active part of the business area. This area would be less than the existing business zoning and should be determined on the basis of indicators including major pedestrian generators (e.g. newsagent, pharmacy, chemist, bank, supermarket) and overall pedestrian activity. As a guideline, areas failing a "health check" would not be considered core areas.

Incremental change test for new retail development not involving a rezoning

- Merit assessment through a net community benefit test is required if any of the following triggers are met:
    - increased floorspace > 15% of existing activity centre floorspace, or 1000 m² (whichever is the smaller) or
    - activity centre vacancy rates > 10% or
    - development is not within the core commercial area ("Main Street") (non-metropolitan activity centres only).

Details
If the development is located within an existing activity centre and represents an increase in floorspace of less than 15% of the ground floor floorspace of retail development within the activity centre or 1000 m² (whichever is the smaller), no additional economic impact assessment is required provided vacancy rates within the existing activity centre are also less than 10%.

Market dominance test for new retail development (whether or not involving a rezoning)

- Impact assessment is required if
    - 25% of category floorspace within the 15 minute off-peak isochrone is within the same ownership group (metropolitan areas), or
    - 25% of category floorspace within the 45 minute off-peak isochrone is within the same ownership group (non-metropolitan areas).

Details
In addition to the incremental change tests, retail proposals would need to pass a market dominance test to determine whether additional economic impact assessment would be required. Retail proposals have been identified for this test on the basis of the relative catchment size as compared to other forms of development (e.g. housing). Because of the nature of retailing, in particular convenience retailing, the focus of competition relates to market dominance within a sub-region, generally defined by a 15 minute off-peak isochrone. Convenience retailing is of most significance when reviewing local accessibility to goods and services.

The market dominance test is applied using a floorspace dominance test. This test utilises gross leasable floor area. On the basis of the relevant regional catchment, commercial rivals are identified within the relevant retail category. Where 25% or more of the floorspace within that retail category is within the same ownership group (including related entities) then a retail impact assessment needs to be conducted.

Components of a net community benefit test

This section of the guidelines outlines the components of a net community benefit test. This test combines both qualitative and quantitative measures needed to review the social, environmental and economic aspects of new development.

The test needs to recognise that activity centres are much more than the provision of retailing, but that they represent social and administrative hubs as well.

Below are the key "dot points" of the recommended test.

Economic Impacts

- Retail economic impact assessment (see Appendix 1 for draft methodology)
  - what are overall impacts of the proposal on the host activity centre and sub region?
- impact on competitive tension
  - would the proposal tend to exclude other competitive entrants?
- Impact on net employment
  - what is the predicted net employment impact by employment sector?

Environmental Impacts

- Impact on overall vehicle trips
  - including consideration of chained trips, would car-based net trip making (by distance) increase or reduce as a result of the proposal?
  - would the development result in a net increase in the number of walk-based trips undertaken for convenience shopping purposes?
- Site specific impacts ("traditional" DA assessment) - Traffic and parking, urban design, sustainability
  - does the development comply with local policies and codes?

Social Impacts

- "Urban blight"
  - are any activity centres/sectors at particular risk?
    - If so, for what time period?
  - Would there likely be a call on public investment in those activity centres if risks are identified?
- Accessibility to local goods and services
  - does the development increase in overall accessibility to local goods and services within a 15 minute off-peak isochrone?
  - Would any areas or groups suffer disadvantage not made good by the proposed development?
- Integration with/strengthening of an existing activity centre
  - does the proposal take best advantage of its site in terms of integration with the existing activity centre?
  - does the proposal maximise synergistic opportunities with other retail types?
  - does the proposal fill an identified a gap in service provision?

- Contribution to social places/spaces
  - does the development enhance the public realm?
  - does the development contribute social and meeting places?
  - does the development minimise privately owned public open space?

Appendix 1

Draft methodology for retail economic impact assessment
This methodology establishes guidelines for the conduct of retail impact assessment. Each of the dot point indicated below can be further expanded to provide increased certainty regarding the operation of the methodology.

The key point to undertaking retail economic impact assessment is to ensure that whichever techniques are selected (e.g. conventional modelling, spreadsheet approaches or the like) are data driven. This means that, wherever possible, the data are sourced from local/subregional survey work including household surveys and street surveys within activity centres.

Assumptions used in modelling are to be explicit and justified.

Base data

- project description
    - location
    - type of floorspace
        - business type (e.g. supermarket, specialty retailing, etc)
        - category of goods sold (e.g. convenience retail, comparison retail)
- study area identification
    - identification of regional/subregional catchment
        - description of overall retail hierarchy (existing)
        - relationship to highest order activity centre directly serving the study area
        - sub-catchments by activity centre
    - determination of primary trade areas (e.g through isochrones, standard radii based on activity centre type and floorspace or household survey (preferred)).
        - activity centre of proposed location
        - other competing activity centres within the subregion
- review of existing shopping provision (activity centre of proposed location and other competing activity centres within the subregion)
    - retail census and "health check"
        - quantitative (all activity centres)
            - floorspace by category,
            - diversity of uses,
            - retailer representation,
            - vacant properties
        - qualitative (activity centre of the proposal)
            - safety and security

        - overall quality of activity centre
        - current activity centre urban design/integration
        - indicators of over/under performance
        - pedestrian activity levels
        - accessibility (car, public transport, walking)
        - consumer satisfaction (street survey)
    - recent developments/approvals/proposals
        - floorspace, business type

Quantitative Analysis

- Definition of base parameters and key assumptions
    - Population
    - Growth rates (population and expenditure)
- Determination of existing retail expenditure
    - Population and per-capita on business type or goods type (preferably triangulated through survey work)
- Existing activity centre and category turnover estimates
    - Market shares (based on household survey)
    - Escape expenditure (based on household survey)
    - Inflows from outside study area (eg tourists)
- Capacity analysis
    - Growth in expenditure (including basis for assumptions)
    - Recovery of escape expenditure (including basis for assumptions)
    - Other committed or planned developments
    - Current floorspace provision (by sector and activity centre)
- Impact assessment (base year and roll forward to year 10)
    - Trade diversions (amount and %)
        - Basis for the assessment
    - Potential spin-offs from new development
    - Revised turnover estimates by activity centre and sector
    - Sensitivity analysis
        - Expenditure growth
        - Escape expenditure recovery
        - Turnover per m2 of the new development
- Interpretation and conclusions
    - impacts on existing retail in the sub region by sector and activity centre
    - identification of "at risk" activity centres/key anchors (if any)

        - risk of "urban blight" through increased activity centre vacancies and reduced investment capacity
    - review of net employment impacts
        - by employment type
    - overall conclusions regarding the development