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The Manager
Unfair Contract Terms Consultation Paper
Small Business, Competition and Consumer Policy Division
The Treasury
Langton Cres.
PARKES ACT 2600

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Unfair contract terms (UCT) legislation

I am sorry to make another submission but some issues have come up in my recent discussions with clients and colleagues.

There are few issues I wish to draw attention to,

“Agency” contracts

Does the current definition of ‘supply’ in the ACL cover agency or commission contracts? Many small business agreements with suppliers are “agency” or said to be “agency” arrangements. It is suggested that it is essential that these be subject to UCT law. It is currently not clear if the current definition of “supply” covers such contracts.


“Re supply” of good and services

In relation to consumer guarantees some business purchases are covered but that excludes goods or services acquired for re supply. I assume that that exclusion will not apply to UCT legislation as much of what small business acquires in a commercial sense is for “re supply”.

Evasion

If the new UCT law eventually adopts monetary thresholds for the definition of what is a small business there will be an incentive for some suppliers to deliberately avoid the law by ,say, extending contract periods and then take a contract outside the law as the extension of the contract period will increase the value of the contract. Consideration may need to be given to a provision that negates such conduct.

Yours truly,

A handwritten signature in black ink that reads "Hank Spier". The signature is written in a cursive style with a large, stylized initial 'H' and a distinct 'S'.

Hank Spier
Principal